GAME AND FISH COMMISSION
Title 12, Chapter 4

Amend: R12-4-107, R12-4-118, R12-4-121, R12-4-611

New Section: R12-4-102.01, R12-4-102.02

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: June 15, 2023

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

Amend: R12-4-107, R12-4-118, R12-4-121, R12-4-611

New Section: R12-4-102.01, R12-4-102.02

Summary:

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend three (3) rules and add two (2) rules to Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions and amend one (1) rules in Article 6 regarding Rules of Practice Before the Commission.

Specifically, the Commission indicates, during the Second Regular Session of the 55th Arizona State Legislature, the Legislature amended A.R.S. § 17-332 to allow a qualified organization to transfer a big game tag or permit to a minor whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Legislature also amended the statute to allow the Commission to prescribe a manner of refunding the cost of a big game permit or tag, if, during the time period in which the big game tag is valid, the tag-holder is ordered to leave Arizona as an active duty member of the U.S. Armed Forces,

assigned to special duty as a peace officer; or assigned to special duty as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department.

The Commission proposes to adopt a new rule, R12-4-102.02. Refund of Tag or Permit Fee; Active-duty Military; Peace Officer; Professional Firefighter, and amend the following rules to implement the refund of a big game permit or tag: R12-4-107. Bonus Points, R12-4-118 Hunt Permit-tag Surrender, R12-4-121. Tag Transfer, and R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy.

In addition, the Legislature amended A.R.S. § 41-1080.01 to require state agencies to waive any fee charged for a license, issued by the agency for the purposes of operating a business in Arizona or providing a service, when the person is applying for a license in Arizona for the first time and the individual applicant's family income does not exceed 200% of the current federal poverty guideline, any active duty military member's spouse, any honorably discharged veteran who has been discharged not more than two years immediately preceding application for the license.

The Commission proposes to adopt a rule to establish eligibility and application requirements for the initial license fee waiver: R12-4-102.01 License Fee Waiver; Eligibility; Application.

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 a study in its evaluation of or justification for a rule in this rulemaking.

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

The Department indicates that during the Second Regular Session of the 55th Arizona State legislature, the Legislature amended A.R.S. § 17-332 to allow a qualified organization to transfer a big game tag or permit to a minor whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a police officer, or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The legislature also amended the

statute to allow the Commission to prescribe a manner of refunding the cost of a big game permit or tag, if, during the time period in which the big game tag is valid, the tag-holder is ordered to leave Arizona as an active duty member of the U.S. Armed Forces, assigned to special duty as a peace officer, or assigned to special duty as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. In addition, the Legislature amended A.R.S. § 41-1080.01 to require state agencies to waive any fee charged for a license, issued by the agency for the purpose of operating a business in Arizona or providing a service, when the person applying for a license in Arizona for the first time and the individual applicant's family income does not exceed 200% of the current federal poverty guideline, any active duty military member's spouse, any honorably discharged veteran who has been discharged not more that two years immediately preceding application for the license. Stakeholders include the Department, persons engaging or wanting to engage in service or business that requires an agency issued license, persons who are now eligible to receive a donated big game tag, and persons eligible for a refund of a big game tag.

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 alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The Commission states the rulemaking establishes the required documentation necessary to determine an applicant's eligibility for a refund, tag transfer, and initial license fee waiver. The Commission anticipates the proposed rulemaking will result in a loss of revenue, the license fees that may be waived range from $45 to $425; permit and tag fees that may be refunded range from $25 to $5,400. The Commission states it is not possible to quantify the impact given the individuals who are eligible, however, the Commission anticipates it will not be significant.

The Commission anticipates the rulemaking will benefit individuals and businesses, both large and small. The Commission anticipates the rulemaking will have minimal impact on persons regulated by the rule. The Commission anticipates that the rulemaking will not have a significant impact on State revenue and no impact on the general fund.

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

The Commission indicates it made the following changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- R12-4-102.01(B) was changed to identify the information required on the License Fee Waiver Form.

- R12-4-118(E)(3) was changed to replace the statutory reference "A.R.S. § 17-332(E)" with "A.R.S. § 17-332(F)."

Council staff does not believe these changes make the final rules substantially different from the proposed rules pursuant to 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 did not receive any public 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 Department indicates that the rules do not require the issuance of a regulatory permit, license or agency authorization.

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

Not applicable. The Department indicates federal law is not directly applicable to the subject of the rules. The rules are based on state law.

11. Conclusion

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend three (3) rules and add two (2) rules to Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions and amend one (1) rules in Article 6 regarding Rules of Practice Before the Commission.

Specifically, the Commission is proposing rule changes in response to recent amendments to A.R.S. § 17-332 allowing a qualified organization to transfer a big game tag or permit to a minor whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Legislature also amended the statute to allow the Commission to prescribe a manner of refunding the cost of a big game permit or tag, if, during the time period in which the big game tag is valid, the tag-holder is ordered to leave Arizona as an active duty member of the U.S. Armed Forces, assigned to special duty as a peace officer; or assigned to special duty as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department.

In addition, the Commission is proposing rule changes in response to amendments to A.R.S. § 41-1080.01 requiring state agencies to waive any fee charged for a license, issued by

the agency for the purposes of operating a business in Arizona or providing a service, when the person is applying for a license in Arizona for the first time and the individual applicant's family income does not exceed 200% of the current federal poverty guideline, any active duty military member's spouse, any honorably discharged veteran who has been discharged not more than two years immediately preceding application for the license.

The Commission is requesting an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(4) given that the proposed changes provide a benefit to the public and a penalty is not associated with a violation of the rule. Council staff believes the Commission has provided adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

April 27, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, 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 Sornsin:

1. **The close of record date:** April 14, 2023
2. **Does the rulemaking activity relate to a Five Year Review Report:** No
   a. **If yes, the date the Council approved the Five Year Review Report:** NA
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 not notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule because the rule does not require any new full-time employees.

The following documents are enclosed:

1. **Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;**
2. **An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;**

3. **General and specific statutes authorizing the rules, including relevant statutory definitions; and**
4. **<u>If applicable</u>: 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,


for

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**
	R12-4-102.01	New Section
	R12-4-102.02	New Section
	R12-4-107	Amend
	R12-4-118	Amend
	R12-4-121	Amend
	R12-4-611	Amend

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), 17-231(B)(1), 17-332, 17-333, 41-1080.01, 41-2752, and Title 41, Chapter 6, Article 10

3. The effective date of the rules: As authorized under A.R.S. 41-1032(A)(4), the rules shall become effective immediately upon filing the Notice of Final Rulemaking and Certificate of Approval with the Secretary of State's Office.

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: 29 A.A.R. 23, January 6, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 10, January 6, 2023

Notice of Public Information, 29 A.A.R. 519, February 3, 2023

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:

An exemption from Executive Order 2021-02 was provided for this rulemaking (Senate Bill 1170) and October 11, 2022 (House Bill 2741).

During the Second Regular Session of the 55th Arizona State Legislature, the Legislature amended A.R.S. § 17-332 to a allow a qualified organization to transfer a big game tag or permit to a minor whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Legislature also amended the statute to allow the Commission to prescribe a manner of refunding the cost of a big game permit or tag, if, during the time period in which the big game tag is valid, the tag-holder is ordered to leave Arizona as an active duty member of the U.S. Armed Forces, assigned to special duty as a peace officer; or assigned to special duty as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Commission proposes to adopt a new rule, R12-4-102.02. Refund of Tag or Permit Fee; Active-duty Military; Peace Officer; Professional Firefighter, and amend the following rules to implement the refund of a big game permit or tag: R12-4-107. Bonus Points, R12-4-118 Hunt Permit-tag Surrender, R12-4-121. Tag Transfer, and R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy.

In addition, the Legislature amended A.R.S. § 41-1080.01 to require state agencies to waive any fee charged for a license, issued by the agency for the purposes of operating a business in Arizona or providing a service, when the person is applying for a license in Arizona for the first time and the individual applicant's family income does not exceed 200% of the current federal poverty guideline, any active duty military member's spouse, any honorably discharged veteran who has been discharged not more than two years immediately preceding application for the license. The Commission proposes to adopt a rule to establish eligibility and application requirements for the initial license fee waiver: R12-4-102.01 License Fee Waiver; Eligibility; Application.

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

R12-4-102.01(B) was changed to identify the information required on the License Fee Waiver Form.

R12-4-118(E)(3) was changed to replace the statutory reference "A.R.S. § 17-332(E)" with "A.R.S. § 17-332(F)."

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 about the proposed 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 reason why a general permit is not used:**

Not applicable

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

Federal law is not directly applicable to the subject of the rules. The rules are based on state 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 any analyses.

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 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-102.01 License Fee Waiver; Eligibility; Application

R12-4-102.02. Refund of Permit-Tag Fee; Active-duty Military; Peace Officer; Professional Firefighter

R12-4-107. Bonus Point System

R12-4-118. Hunt Permit-tag Surrender

R12-4-121. Tag Transfer

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-5-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-102.01. License Fee Waiver; Eligibility; Application

A. The Department shall waive the initial license fee when an eligible applicant as identified under subsection (B) requests an initial license for any license listed under subsection (C). At the time of application, the eligible applicant shall submit to the Department the applicable license application and a signed licensing fee waiver form affirming the information provided on the form is true and accurate. The license application and licensing fee waiver forms are available from any Department office and on the Department's website. The applicant shall provide all of the following information:

1. Type of exemption, see subsection (B); and
2. Applicant's:
   a. Name;
   b. Date of birth;
   c. Mailing address;
   d. Email, if available;
   e. Telephone number;
   f. Customer ID number;
   g. Affirmation that the information provided on the application is true and accurate; and
   h. Signature and date.

B. Under A.R.S. §41-1080.01, persons eligible for the initial license fee waiver are limited to any:

1. Individual whose family income does not exceed 200% of the current federal poverty guidelines,
2. Active military service member's spouse, or
3. Honorably discharged veteran who has been discharged not more than two years before application.

C. The Department has determined the following licenses may be used for the purpose of operating a business or providing a service in Arizona and are subject to A.R.S. §41-1080.01:

1. Aquatic Wildlife Stocking License,
2. Fur Dealer's License,
3. Game Bird Field Training License,
4. Game Bird Field Trial License,
5. Game Bird Shooting Preserve License,
6. Guide License,
7. Live Bait Dealer's License,
8. Private Game Farm License,
9. Sport Falconry License,
10. License Dealer's License,
11. Taxidermist License,
12. Trapping License,

13. Wildlife Holding License,
14. Wildlife Service, and
15. Zoo License.

D. An applicant for a license fee waiver shall certify they meet the eligibility criteria proscribed in subsection (B), as applicable.

E. All information and documentation provided by the applicant is subject to Department verification.

R12-4-102.02. Refund of Permit-Tag Fee; Active-duty Military; Peace Officer; Professional Firefighter

A. The Department shall refund the fee paid for a big game permit-tag, nonpermit-tag, or limited-entry tag when an eligible person as identified under subsection (B) requests a refund at any time during the time period in which the tag is valid. To request a refund, the eligible person shall submit to the Department:

1. The tag for which the refund is requested,
2. The big game tag refund form, and
3. Proof of order or special assignment as identified under subsection (C).
4. A person requesting a refund under this Section shall certify the information provided on the big game tag refund form is true and accurate;
5. The big game tag refund form is available from any Department office and on the Department's website.

B. Under A.R.S. §17-332, persons eligible for a refund are limited to:

1. A person who is ordered to leave Arizona as an active duty member of the U.S. Armed Forces,
2. A peace officer assigned to special duty, or
3. A professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department and who is assigned to special duty.

C. An eligible person requesting a refund shall provide the following as applicable:

1. For an active duty member of the U.S. Armed Forces, an official order or letter.
2. For a peace officer assigned to special duty, an official letter of assignment to special duty showing evidence of assignment status during the time period in which the big game tag is valid.
3. For a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department and who is assigned to special duty, an official letter of assignment to special duty showing evidence of assignment status during the time period in which the big game tag is valid.
4. All information and documentation provided by the applicant is subject to Department verification.

D. For subsections (C)(1), (2), and (3), the official order or letter, as applicable, shall provide the eligible person's name and the dates of the assignment.

E. When an eligible person submits a request for a refund for a big game hunt permit-tag awarded through a computer draw, the Department shall reinstate any expended bonus points for a successful Hunt Permit-tag Application and award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the refunded big game tag.

R12-4-107. Bonus Point System

A. For the purpose of this Section, the following definitions apply:

"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

B. The bonus point system grants a person one random number entry in each computer draw for bear, bighorn sheep, bison, deer, elk, javelina, pronghorn, Sandhill crane, or turkey for each bonus point that person has accumulated under this Section.

1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.
4. The Department shall not transfer bonus points between persons or genera.

C. The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
3. The applicant either provides the appropriate hunting license number on the application, or submits an application and fees for the applicable license with the Hunt Permit-tag Application Form, as applicable.

D. An applicant who purchases a bonus point only shall:

1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104 at the times, locations, and in the manner and method established by the schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
    a. When the application is submitted for a hunt permit-tag or bonus point, the Department shall reject any application that:
        i. Indicates the bonus point only hunt number as any choice other than the first-choice,
        ii. Includes any other hunt number on the application,
        iii. Includes more than one Hunt Permit-tag Application per genus per computer draw, or
        iv. Is submitted after the application deadline for that specific computer draw.
2. When the application is submitted for a bonus point during the extended bonus point period, the Department shall reject any application that:

i. Includes more than one Hunt Permit-tag Application per genus, or

ii. Is submitted after the application deadline for that extended bonus point period.

3. Include the applicable fees:

a. Application fee, and

b. Applicable license fee, required when the applicant does not possess a valid license at the time of application and the applicant is applying for a hunt permit-tag.

E. With the exception of the conservation education and hunter education bonus points, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.

F. With the exception of a permanent bonus point awarded for conservation education or hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:

1. The person is issued a hunt permit-tag for that genus in a computer draw;
2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).

G. Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.

H. An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.

I. An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.

J. The Department shall award one permanent bonus point for each genus upon a person's first graduation from either:

1. A Department-sanctioned Arizona Hunter Education Course completed after January 1, 1980, or
2. The Department's Arizona Conservation Education Course completed after January 1, 2021.

a. Course participants are required to provide the following information upon registration, the participants:

i. Name;

ii. Mailing address;

iii. Telephone number;

iv. E-mail address, when available;

v. Date of birth; and

vi. Department ID number, when applicable.

b. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.

c. Any person who is nine years of age or older may participate in a hunter education course or the

Department's conservation education course. When the person is under 10 years of age, the hunter education completion card and certificate shall become valid on the person's 10th birthday.

d. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:

i. Bowhunter Education,

ii. Trapper Education, or

iii. Advanced Hunter Education.

K. The Department provides an applicant's total number of accumulated bonus points on the Department's application website or IVR telephone system.

1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
2. In the event of an error, the Department shall correct the person's record.

L. The following provisions apply to the loyalty bonus point program:

1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.
4. A loyalty bonus point is accrued in addition to all other bonus points.

~~**M.** A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.~~

~~1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:~~

~~a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or~~

~~b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and~~

~~c. The valid, unused hunt permit-tag.~~

~~2. The Department shall deny requests post marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.~~

3. ~~Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.~~
4. ~~Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.~~

~~N.~~**M.** It is unlawful for a person to purchase or accrue a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

R12-4-118. Hunt Permit-tag Surrender

A. The Commission authorizes the Department to implement a tag surrender program if the Director finds:
1. The Department has the administrative capacity to implement the program;
2. There is public interest in such a program; or
3. The tag surrender program is likely to meet the Department's revenue objectives.

B. The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.
1. The Department may establish a membership program that offers a person various products and services.
2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
   a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
   b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
3. The Department may establish terms and conditions for the membership program in addition to the following:
   a. Products and services to be included with each membership level.
   b. Membership enrollment is available online only and requires a person to create a portal account.
   c. Membership is not transferable.
   d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.

C. The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.
1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
   a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
   b. At the time of tag surrender.
2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.
3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points

accrued for that species must be expended.

D. A person who wants to surrender an original, unused hunt permit-tag or an authorized nonprofit organization that wants to return a donated original, unused hunt permit-tag shall comply with all of the following conditions:

1. Submit a completed application form to any Department office. The application form is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application form:
   a. The applicant's:
      i. Name,
      ii. Mailing address,
      iii. Department identification number,
      iv. Membership number,
   b. Applicable hunt number,
   c. Applicable hunt permit-tag number, and
   d. Any other information required by the Department.
2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.

E. Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:

1. Restore the person's bonus points that were expended for the surrendered tag, and
2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § ~~17-332(E)~~ 17-332(F).

F. The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:

1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process; or
4. Offering the surrendered tag through the first-come, first-served process.

G. For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the

person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For the purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.

H. When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.

1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.

I. A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.

1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all bonus points accrued for that genus, except any accrued Education and loyalty bonus points.
2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.

J. A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under ~~R12-4-107(M)~~ R12-4-102.02(E).

K. For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

R12-4-121. Tag Transfer

A. For the purposes of this Section:

"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.

"Unused tag" means a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag that has not been attached to any wildlife.

B. A parent, grandparent, or guardian issued a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.

1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
    a. Proof of ownership of the unused tag to be transferred,
    b. The unused tag, and
    c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
    a. The deceased person's death certificate, and
    b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

C. A person issued a tag or the person's legal representative may donate the unused tag to an authorized nonprofit organization for use by a minor child ~~with a life-threatening medical condition or permanent physical disability~~ or a veteran of the Armed Forces of the United States ~~with a service-connected disability~~ as prescribed under A.R.S. § 17-332(D)(1).

1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
    a. To obtain a transfer, the nonprofit organization shall:
        i. Provide proof of donation of the unused tag to be transferred;
        ii. Provide the unused tag;
        iii. Provide proof of the minor child's or veteran's valid hunting license.
    b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:
    a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
    b. The person submits a completed application form as described under R12-4-118;
    c. The person provides acceptable proof to the Department that the tag was transferred to an authorized

nonprofit organization; and

d. The person submits the request to the Department:

i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and

ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.

D. To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:

1. Possess a valid hunting license,
2. Has not reached the applicable annual or lifetime bag limit for that genus, and
3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.

E. To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:

1. Possess a valid hunting license, and
2. Has not reached the applicable annual or lifetime bag limit for that genus.

F. A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:

1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
2. Affords opportunities and experiences to:
   a. Children with life-threatening medical conditions or physical disabilities~~,~~; ~~or~~
   b. Children whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department; or

   ~~b.~~c. Veterans with service-connected disabilities.
3. This authorization shall remain in effect unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
   a. Nonprofit organization's information:
      i. Name,
      ii. Physical address,
      iii. Telephone number;
   b. Contact information for the person responsible for ensuring compliance with this Section:
      i. Name,

ii. Address,

iii. Telephone number;

c. Signature of the president and secretary-treasurer of the organization or their equivalents; and

d. Date of signing.

5. In addition to the application, a nonprofit organization shall provide all of the following:

a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;

b. Document identifying the organization's mission;

c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and

d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.

6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

A. A person may request a hearing before the Commission when an administrative remedy does not exist under statute, rule, or policy by submitting a petition as prescribed by this Section.

B. A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:

1. Petitioner identification:

a. When the petitioner is a private person:

i. Name of person;

ii. Physical and mailing address, if different from the physical address;

iii. Contact telephone number; and

iv. Email, when available;

b. When the petitioner is a private group or organization:

i. Name of the person designated as the contact for the group or organization;

ii. Physical and mailing address, if different from the physical address;

iii. Contact telephone number;

iv. Email, when available; or

c. When the petitioner is a public agency:

i. Name of person,

ii. Name of agency,

iii. Petitioner's title,

iv. Agency's physical and mailing address, if different from the physical address,

v. Contact telephone number, and

vi. Email, when available;

2. Statement of Facts and Issues:

a. Description of issue to be resolved, and

b. Any facts relevant to resolving the issue;

3. Specific proposed remedy;

4. Petitioner's signature;

5. Date on which the petition was signed; and

6. Any other information required by the Department.

C. If a petition does not comply with this Section, the Department shall:

1. Return the petition to the petitioner, and

2. Indicate in writing why the petition does not comply with this Section.

D. After the Department receives a petition that complies with this Section, the Department shall place the petition on the agenda of a regularly scheduled Commission meeting.

E. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.

F. This Section does not apply to the following:

1. An action related to a license revocation, suspension, denial, or civil penalty;

2. An unsuccessful hunt permit-tag draw application that did not involve an error on the part of the Department~~;~~ or

3. The reinstatement of a bonus point, except as authorized under ~~R12-4-107(M)~~ R12-4-102.02(E).

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-102.01, R12-4-102.02, R12-4-107, R12-4-118, R12-4-121, and R12-4-611

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

An exemption from Executive Order 2021-02 was provided for this rulemaking (Senate Bill 1170) and October 11, 2022 (House Bill 2741).

During the Second Regular Session of the 55th Arizona State Legislature, the Legislature amended A.R.S. § 17-332 to a allow a qualified organization to transfer a big game tag or permit to a minor whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Legislature also amended the statute to allow the Commission to prescribe a manner of refunding the cost of a big game permit or tag, if, during the time period in which the big game tag is valid, the tag-holder is ordered to leave Arizona as an active duty member of the U.S. Armed Forces, assigned to special duty as a peace officer; or assigned to special duty as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department. The Commission proposes to adopt a new rule, R12-4-102.02. Refund of Tag or Permit Fee; Active-duty Military; Peace Officer; Professional Firefighter, and amend the following rules to implement the refund of a big game permit or tag: R12-4-107. Bonus Points, R12-4-118 Hunt Permit-tag Surrender, R12-4-121. Tag Transfer, and R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy.

In addition, the Legislature amended A.R.S. § 41-1080.01 to require state agencies to waive any fee charged for a license, issued by the agency for the purposes of operating a business in Arizona or providing a service, when the person is applying for a license in Arizona for the first time and the individual applicant's family income does not exceed 200% of the current federal poverty guideline, any active duty military member's spouse, any honorably discharged veteran who has been discharged not more than two years immediately preceding application for the license. The Commission proposes to adopt a rule to establish eligibility and application requirements for the initial license fee waiver: R12-4-102.01 License Fee Waiver; Eligibility; Application.

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

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. §§ 17-332 and 41-1080.01.

(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.

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. §§ 17-332 and 41-1080.01.

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

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. §§ 17-332 and 41-1080.01.

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

The rulemaking establishes the required documentation necessary to determine an applicant's eligibility for a refund, tag transfer, and initial license fee waiver.

The Commission anticipates the proposed rulemaking will result in a loss of revenue, the license fees that may be waived range from $45 to $425; permit and tag fees that may be refunded range from $25 to $5,400. It is not possible to quantify the impact given the individuals who are eligible, however, the Commission anticipates it will not be significant.

The Department will benefit from compliance with the amended statutes.

The Commission anticipates the rulemaking will most significantly affect persons regulated by the rule, both resident and nonresident. The Commission believes persons regulated by the rule will benefit from the rulemaking due to the realized cost savings and refund for a tag or permit.

The Commission anticipates the proposed rulemaking will not impose increased monetary or regulatory costs on other state agencies and political subdivisions of this State.

The Commission anticipates the proposed rulemaking will benefit individuals and businesses, both large and small. The Commission has determined that the rulemaking will not negatively impact business revenues or payroll expenditures.

The Commission anticipates the proposed rulemaking will have a minimal impact on persons regulated by the rule.

The Commission anticipates the proposed rulemaking will not significantly affect a person’s ability to practice an activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity.

The Commission anticipates the proposed rulemaking will not impact public or private employment.

The Commission anticipates the proposed rulemaking will not have a significant impact on State revenues and no impact on the general fund.

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

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 Rules and Policy Manager

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

Phoenix, Arizona 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

Persons who will be directly affected by and bear the costs of the proposed rulemaking:

Arizona Game and Fish Department

Persons engaging or wanting to engage in a service or business that requires an agency issued license

Persons who directly benefit from the proposed rulemaking:

Arizona Game and Fish Department

Persons engaging or wanting to engage in a service or business that requires an agency issued license

Persons who are now eligible to receive a donated big game tag

Persons eligible for a refund of a big game tag

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) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.

The Commission anticipates the Department will incur a substantial impact implementing and administering the fee waiver and refund programs: costs associated with rulemaking, implementation of the rules, which includes systems modifications and the resources necessary to administer the 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 does not anticipate the proposed rulemaking will significantly affect 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 amendments will have a no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

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 amendments 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. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

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

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

Businesses that require, or businesses that provide a service that requires, an agency issued license

(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 rules are less burdensome than the previous process implemented under A.R.S. § 17-363.

(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 result in a minimal impact to persons engaging or wanting to engage in a service or business that requires an agency issued license.

The Commission does not anticipate the fee will significantly affect a person’s ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity.

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 that administer and enforce the rules included in this rulemaking. The Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports [sportsman data, violation data, etc.], other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. The subjects 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 rules relating to refunds, fee waivers, bonus points, and big game tag transfers. In its review, the team considered all comments from the public and agency staff who administer and enforce licensing requirements, 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 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,

Set the number of permits available for limited hunts, or

Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

"Day-long" means the 24-hour period from one midnight to the following midnight.

"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.

"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

"Handgun" means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.

"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.

"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

"Management unit" means an area established by the Commission for management purposes.

"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

"Nonprofit organization" means an organization that is recognized under Section 501(c) of the U.S. Internal Revenue Code.

"Person" has the meaning as provided under A.R.S. § 1-215.

"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

"Pursue" means to chase, tree, corner or hold wildlife at bay.

"Pursuit-only" means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

"Pursuit-only permit" means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

"Validation code" means the unique code provided by the Department and associated with an electronic tag.

"Waterdog" means the larval or metamorphosing stage of a salamander.

"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.

"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.

"Buck pronghorn" means a male pronghorn.

"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.

"Bull elk" means an antlered elk.

"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (A) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). 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 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022; when amended the Commission inadvertently removed the definitions of "Arizona Conservation Education" and "Arizona Hunter Education." These definitions are included as originally published (Supp. 21-4). Under the definition of "nonprofit organization" a citation error to the U.S. Internal Revenue Code, has been corrected to Section 501(c) as published at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022 (Supp. 22-2).

R12-4-102. License, Permit, Stamp, and Tag Fees

A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.

B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).

C. As authorized under A.R.S. § 17-345, the license fees in this Section include a $3 surcharge, except Youth and High Achievement Scout licenses.

D. A person desiring a replacement of a Migratory Bird Stamp shall repurchase the stamp.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	$37	$55
Community Fishing License	$24	$24
General Hunting License	$37	Not available
Combination Hunting and Fishing License	$57	$160
Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday.	$5	$5
High Achievement Scout License, as authorized under A.R.S. § 17-333(C). Fee applies until the applicant's 21st birthday.	$5	Not available
Short-term Combination Hunting and Fishing License	$15	$20
Youth Group Two-day Fishing License	$25	Not available

Hunt Permit-tag Fees	Resident	Nonresident
Bear	$25	$150
Bighorn Sheep	$300	$1,800
Bison		
Adult Bulls or any Bison	$1,100	$5,400
Adult Cows	$650	$3,250
Yearling	$350	$1,750
Cow or Yearling	$650	$3,250
Deer and Archery Deer	$45	$300
Youth	$25	$25
Elk	$135	$650
Youth	$50	$50
Javelina	$25	$100
Youth	$15	$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Pronghorn	$90	$550
Raptor	Not applicable	$175
Sandhill Crane	$10	$10
Turkey and Archery Turkey	$25	$90
Youth	$10	$10

Nonpermit-tag and Restricted Nonpermit-tag Fees	Resident	Nonresident
Bear	$25	$150
Bison		
Adult Bulls or any Bison	$1,100	$5,400
Adult Cows	$650	$3,250
Yearling	$350	$1,750
Cow or Yearling	$650	$3,250
Deer	$45	$300
Youth	$25	$25
Elk	$135	$650
Youth	$50	$50
Javelina	$25	$100
Youth	$15	$15
Mountain Lion	$15	$75
Pronghorn	$90	$550
Sandhill Crane	$10	$10
Raptor	Not applicable	$175
Turkey	$25	$90
Youth	$10	$10

Stamps and Special Use Fees	Resident	Nonresident
Bobcat Seal	$3	$3
Limited-entry Permit	Application fee only	Application fee only
State Migratory Bird Stamp	$5	$5

Other License Fees	Resident	Nonresident
Challenged Hunter Access/ Mobility Permit (CHAMP)	Application fee only	Application fee only
Crossbow Permit	Application fee only	Application fee only
Fur Dealer's License	$115	$115
Reduced-fee Disabled Veteran's License, available to a resident disabled veteran who receives compensation from the U.S. government for a service-connected disability. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 25%, and then rounded down to the nearest even dollar.	$42	Not available
Reduced-fee Purple Heart Medal License, available to a resident who is a bona fide Purple Heart Medal recipient. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 50%, and then rounded down to the nearest even dollar.	$28	Not available
Guide License	$300	$300
License Dealer's License	$100	$100
License Dealer's Outlet License	$25	$25
Pursuit-only Permit	$20	$100
Taxidermist License	$150	$150
Trapping License	$30	$275
Youth	$10	$10

Administrative Fees	Resident	Nonresident
Duplicate License Fee, in the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.	$8	$8
Application Fee	$13	$15

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 (Supp. 78-6). Amended effective June 4,

1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987; Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp. 89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 27 A.A.R. 400, effective July 1, 2021 (Supp. 21-1). Amended by final exempt rulemaking at 27 A.A.R. 1076, effective August 21, 2021 (Supp. 21-2). Amended by final exempt rulemaking at 27 A.A.R. 2916 (December 17, 2021), effective February 7, 2022 (Supp. 21-4). Amended by final exempt rulemaking at 28 A.A.R. 3355 (October 21, 2022), effective September 26, 2022 (Supp. 22-3).

R12-4-103. Duplicate Tags and Licenses

A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.

B. The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
   a. Name;
   b. Department identification number, when applicable;
   c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
   a. Type of license or tag;
   b. Place of purchase;
   c. Purchase date, when available; and
3. Disposition of the original tag for which a duplicate is being purchased:
   a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
   b. The tag was attached to a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.

C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

Historical Note

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). 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 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022 (Supp. 21-4).

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points

A. For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.

B. A person is eligible to apply:
1. For a hunt permit-tag if the person:
   a. Is at least 10 years of age at the start of the hunt for which the person is applying;
   b. Has successfully completed a Department-sanctioned hunter education course by the start date of the hunt for which the person is applying, when the person is between 9 and 14 years of age;

c. Has not reached the bag limit established under subsection (J) for that genus; and
d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

2. For a bonus point if the person:
a. Is at least 10 years of age by the application deadline date; and
b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

C. An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.

1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.

D. An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or on the Department's website.

E. An applicant shall provide the following information on the Hunt Permit-tag Application:

1. The applicant's personal information:
a. Name;
b. Date of birth,
c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
d. Department identification number, when applicable;
e. Residency status and number of years of residency immediately preceding application, when applicable;
f. Mailing address, when applicable;
g. Physical address;
h. Telephone number, when available; and
i. E-mail address, when available;
2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (K). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
a. Physical description, to include the applicant's eye color, hair color, height, and weight;
b. Residency status and number of years of residency immediately preceding application, when applicable;
c. Type of license for which the person is applying; and
4. Certify the information provided on the application is true and accurate;
5. An applicant who is:
a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application Form or purchase a license at the time of application, as applicable.

F. In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:

1. When applying electronically:
a. The permit application fee; and
b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.
c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.
2. When applying manually:
a. The fee for the applicable hunt permit-tag;
b. The permit application fee; and
c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.

G. An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.

1. An applicant shall make all hunt choices for the same genus within one application.
2. An applicant shall not include applications for different genera of wildlife in the same envelope.

H. An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:

1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.

I. All members of a group shall apply for the same hunt numbers and in the same order of preference.
1. No more than four persons may apply as a group.
2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.

J. A person shall not apply for a hunt permit-tag for:
1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
2. Bison if the person has met the lifetime bag limit for that species.
3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.

K. To participate in:
1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
   a. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
   b. On the last day of an extended deadline date, as authorized under subsection (C)(2).
   c. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.

L. The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.

M. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.

N. The Department or its authorized agent shall deliver hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:
1. A permit application fee.
2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.

O. The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.

P. When the Department determines a Department error, as defined under subsection (P)(3), caused the rejection or denial of a valid application:
1. The Director may authorize either:
   a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
   b. The awarding of a bonus point when a hunt permit-tag is not issued.
2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
3. For the purposes of this subsection, "Department error" means an internal processing error that:
   a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
   b. Caused a person to submit an invalid application for a hunt permit-tag,
   c. Caused the rejection of an application for a hunt permit-tag,
   d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
   e. Caused the denial of a hunt permit-tag.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 28, 1977 (Supp. 77-3). Amended effective July 24, 1978 (Supp. 78-4). Former Section R12-4-06 renumbered as Section R12-4-104 without change effective August 13, 1981. Amended subsections (N), (O), and (P) effective August 31, 1981 (Supp. 81-4). Former Section R12-4-104 repealed, new Section R12-4-104 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (D) as an emergency effective December 27, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Emergency expired. Amended effective June 20, 1983 (Supp. 83-3). Amended subsection (F)(3) effective September 12, 1984. Amended subsection (F)(9) and added subsections (F)(10) and (G)(3) effective October 31, 1984 (Supp. 84-5). Amended effective May 5, 1986 (Supp. 86-3). Amended effective June 4, 1987 (Supp. 87-2). Section R12-4-104 repealed, new Section R12-4-104 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). 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 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Subsection (E)(3) contained a clerical error to a subsection label; "established under subsection (L)" corrected to "established under subsection (K)" file number R22-77 (Supp. 22-2).

R12-4-105. License Dealer's License

A. For the purposes of this Section, unless the context otherwise requires:

"Dealer number" means the unique number assigned by the Department to a dealer outlet.

"Dealer outlet" means a specified location authorized to sell licenses under a license dealer's license.

"License" means any hunting or fishing license, permit, stamp, or tag that may be sold by a dealer or dealer outlet under this Section.

"License dealer" means a business licensed by the Department to sell licenses from one or more dealer outlets.

"License Dealer Portal" means the secure website provided by the Department for issuing licenses and permits and accessing a license dealer's account.

B. A person shall not sell or issue licenses without authorization from the Department. A license dealer's license authorizes a person to issue licenses on behalf of the Department. A person is eligible to apply for a license dealer's license, provided all of the following criteria are met:
1. The person's privilege to sell licenses for the Department has not been revoked or canceled under A.R.S. §§ 17-334, 17-338, or 17-339 within the two calendar years immediately preceding the date of application;
2. The person's credit record or assets assure the Department that the value of the licenses shall be adequately protected;
3. The person agrees to assume financial responsibility for licenses provided by the Department at the maximum value established under R12-4-102.

C. A person shall apply for a license dealer's license by submitting an application to any Department office. The application is furnished by the Department and is available at any Department office. A license dealer license applicant shall provide all of the following information on the application:
1. The principal business or corporation information:
   a. Name,
   b. Physical address, and
   c. Telephone number;
   d. If not a corporation, the applicant shall provide the information required under subsections (C)(1)(a), (b), and (c) for each owner;
2. The contact information for the person responsible for ensuring compliance with this Section:
   a. Name,
   b. Business address, and
   c. Business telephone number;
3. Whether the applicant has previously sold licenses under A.R.S. § 17-334;
4. Whether the applicant is seeking renewal of an existing license dealer's license;
5. Credit references and a statement of assets and liabilities; and
6. Dealer outlet information:
   a. Name,
   b. Physical address,
   c. Telephone number, and
   d. Name of the person responsible for ensuring compliance with this Section at each dealer outlet.

D. A license dealer may request to add dealer outlets to the license dealer's license, at any time during the license year, by submitting the application form containing the information required under subsection (C) to the Department and paying the fee established under R12-4-102.

E. An applicant who is denied a license dealer's license under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

F. The Department shall:
1. Provide to the license dealer all licenses that the license dealer will make available to the public for sale,
2. Authorize the license dealer to use the dealer's own license stock, or
3. Authorize the license dealer to issue licenses and permits online via the Department's License Dealer Portal.

G. Upon receipt of licenses provided by the Department, the license dealer shall verify the licenses received are the licenses identified on the shipment inventory provided by the Department with the shipment.
1. Within five working days from receipt of shipment, the person performing the verification shall:
   a. Clearly designate any discrepancies on the shipment inventory,
   b. Sign and date the shipping inventory, and
   c. Return the signed shipping inventory to the Department.
2. The Department shall verify any discrepancies identified by the license dealer and credit or debit the license dealer's inventory accordingly.

H. A license dealer shall maintain an inventory of licenses for sale to the public at each outlet.

I. A license dealer's license holder shall transmit to the Department all collected license or permit fees established under R12-4-102.
1. A license dealer's license holder may collect and retain a reasonable and commensurate fee for its services.
2. Each license dealer's license holder shall identify to the public the Department's license fees separately from any other costs.

J. A license dealer may request additional licenses in writing or verbally.
1. The request shall include:
   a. The name of the license dealer,
   b. The assigned dealer number,
   c. A list of the licenses needed, and
   d. The name of the person making the request.
2. Within 10 calendar days from receipt of a request, the Department shall provide the licenses requested, unless:
   a. The license dealer failed to acknowledge licenses previously provided to the license dealer, as required under subsection (G);
   b. The license dealer failed to transmit license fees, as required under subsection (J); or
   c. The license dealer is not in compliance with this Section and all applicable statutes and rules.

K. A license dealer shall transmit to the Department all license fees collected by the tenth day of each month, prescribed under A.R.S. § 17-338(A). Failure to comply with the requirements of this subsection shall result in the cancellation of the license dealer's license, as authorized under A.R.S. § 17-338(A).

L. A license dealer shall submit a monthly report to the Department by the tenth day of each month, as prescribed under A.R.S. § 17-339.
1. The monthly report form is furnished by the Department.
2. A monthly report is required regardless of whether or not activities were performed.
3. Failure to submit the monthly report in compliance with this subsection shall be cause to cancel the license dealer's license.
4. The license dealer shall include in the monthly report all of the following information for each outlet:
   a. Name of the dealer;
   b. The assigned dealer number;
   c. Reporting period;

d. Number of sales and dollar amount of sales for reporting period, by type of license sold;
e. Debit and credit adjustments for previous reporting periods, if any;
f. Number of affidavits received for which a duplicate license was issued under R12-4-103;
g. List of lost or missing licenses; and
h. Printed name and signature of the preparer.

5. In addition to the information required under subsection (L), the license dealer shall also provide the affidavit for each duplicate license issued by the dealer during the reporting period.
   a. The affidavit is furnished by the Department and is included in the license book.
   b. A license dealer who fails to submit the affidavit for a duplicate license issued by the license dealer shall remit to the Department the actual cash value of the original license replaced.

L. The Department shall provide written notice of suspension and demand the return of all inventory within five calendar days from any license dealer who:
1. Fails to transmit monies due the Department under A.R.S. § 17-338 by the deadline established under subsection (J);
2. Issues to the Department more than one check with insufficient funds during a calendar year; or
3. Otherwise fails to comply with this Section and all applicable statutes and rules.

M. As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.

N. In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.

Historical Note

Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). 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 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-106. Special Licenses Licensing Time-frames

A. For the purposes of this Section, the following definitions apply:

"Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).

"License" means any permit or authorization issued by the Department and listed under subsection (H).

"Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).

"Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).

B. As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the Table 1. Time-Frames, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
   a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
   b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
   c. The written denial notice shall provide:
      i. The Department's justification for the denial, and
      ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.

C. During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.

D. An applicant may withdraw an application at any time.

E. The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to provide the missing information.
2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.

F. The substantive review time-frame shall begin when the Department determines an application is complete.

1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
   a. Identify the additional information, and
   b. Indicate the applicant has 30 days in which to submit the additional information.
   c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
   d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.

G. If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
2. Maximum time periods.

H. The Department may grant or deny a license in less time than specified in Table 1. Time-Frames.

Table 1. Time-Frames

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Review Time-frame	Overall Time-frame
Aquatic Wildlife Stocking License	R12-4-410	10 days	170 days	180 days
Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days	90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days	30 days
Crossbow Permit	R12-4-216	1 day	29 days	30 days
Disabled Veteran's License	R12-4-202	1 day	29 days	30 days
Fishing Permits	R12-4-310	10 days	20 days	30 days
Game Bird License	R12-4-414	10 days	20 days	30 days
Guide License	R12-4-208	10 days	20 days	30 days
License Dealer's License	R12-4-105	10 days	20 days	30 days
Live Bait Dealer's License	R12-4-411	10 days	20 days	30 days
Pioneer License	R12-4-201	1 day	29 days	30 days
Private Game Farm License	R12-4-413	10 days	20 days	30 days
Scientific Activity License	R12-4-418	10 days	20 days	30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days	30 days
Sport Falconry License	R12-4-422	10 days	20 days	30 days
Taxidermy Registration	R12-4-204	10 days	20 days	30 days
Watercraft Agents	R12-4-509	10 days	20 days	30 days
White Amur Stocking License	R12-4-424	10 days	20 days	30 days
Wildlife Holding License	R12-4-417	10 days	20 days	30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days	60 days
Wildlife Service License	R12-4-421	10 days	50 days	60 days
Zoo License	R12-4-420	10 days	20 days	30 days

Historical Note

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-107. Bonus Point System

A. For the purpose of this Section, the following definitions apply:

"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

B. The bonus point system grants a person one random number entry in each computer draw for bear, bighorn sheep, bison, deer, elk, javelina, pronghorn, Sandhill crane, or turkey for each bonus point that person has accumulated under this Section.
1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.
4. The Department shall not transfer bonus points between persons or genera.

C. The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:
1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
3. The applicant either provides the appropriate hunting license number on the application, or submits an application and fees for the applicable license with the Hunt Permit-tag Application Form, as applicable.

D. An applicant who purchases a bonus point only shall:
1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104 at the times, locations, and in the manner and method established by the schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
   a. When the application is submitted for a hunt permit-tag or bonus point, the Department shall reject any application that:
      i. Indicates the bonus point only hunt number as any choice other than the first-choice,
      ii. Includes any other hunt number on the application,
      iii. Includes more than one Hunt Permit-tag Application per genus per computer draw, or
      iv. Is submitted after the application deadline for that specific computer draw.
2. When the application is submitted for a bonus point during the extended bonus point period, the Department shall reject any application that:
      i. Includes more than one Hunt Permit-tag Application per genus, or
      ii. Is submitted after the application deadline for that extended bonus point period.
3. Include the applicable fees:
   a. Application fee, and
   b. Applicable license fee, required when the applicant does not possess a valid license at the time of application and the applicant is applying for a hunt permit-tag.

E. With the exception of the conservation education and hunter education bonus points, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.

F. With the exception of a permanent bonus point awarded for conservation education or hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:
1. The person is issued a hunt permit-tag for that genus in a computer draw;
2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).

G. Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.

H. An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.

I. An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.

J. The Department shall award one permanent bonus point for each genus upon a person's first graduation from either:
1. A Department-sanctioned Arizona Hunter Education Course completed after January 1, 1980, or
2. The Department's Arizona Conservation Education Course completed after January 1, 2021.
   a. Course participants are required to provide the following information upon registration, the participants:
      i. Name;
      ii. Mailing address;
      iii. Telephone number;
      iv. E-mail address, when available;
      v. Date of birth; and
      vi. Department ID number, when applicable.
   b. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
   c. Any person who is nine years of age or older may participate in a hunter education course or the Department's conservation education course. When the person is under 10 years of age, the hunter education completion card and certificate shall become valid on the person's 10th birthday.
   d. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
      i. Bowhunter Education,
      ii. Trapper Education, or
      iii. Advanced Hunter Education.

K. The Department provides an applicant's total number of accumulated bonus points on the Department's application website or IVR telephone system.
1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
2. In the event of an error, the Department shall correct the person's record.

L. The following provisions apply to the loyalty bonus point program:
1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the

loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.

4. A loyalty bonus point is accrued in addition to all other bonus points.

M. A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.

1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:
   a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or
   b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
   c. The valid, unused hunt permit-tag.
2. The Department shall deny requests post-marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.
3. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.
4. Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.

N. It is unlawful for a person to purchase or accrue a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

Historical Note

Former Section R12-4-03 renumbered as Section R12-4-107 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-107 repealed, new Section R12-4-107 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective July 29, 1992 (Supp. 92-3). Section R12-4-107 repealed, new Section R12-4-107 adopted effective January 1, 1999; filed with the Office of the Secretary of State February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-108. Management Unit Boundaries

A. For the purpose of this Section, parentheses mean "also known as," and the following definitions shall apply:

"FH" means forest highway.

"FR" means forest road.

"Hwy" means Highway.

"I-8" means Interstate Highway 8.

"I-10" means Interstate Highway 10.

"I-15" means Interstate Highway 15.

"I-17" means Interstate Highway 17.

"I-19" means Interstate Highway 19.

"I-40" means Interstate Highway 40.

"mp" means "milepost."

B. The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

C. Management unit descriptions are as follows:

Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; southerly on the Vernon-McNary road (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit 292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwesterly along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy 180A; northerly on AZ Hwy 180A to Concho-Snowflake Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack's Canyon Rd. (FR 69) to AZ Hwy 87; southwesterly along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B -- Beginning at Lake Mary-Clint's Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeasterly on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit 233); west on I-40 to Walnut Canyon (mp 210.2); southwesterly along the bottom of Walnut Canyon to Walnut Canyon National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A - Beginning at the junction of AZ Hwy 89A and FR 237; southwesterly on AZ Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountainaire Rd.; west on Mountainaire Rd. to FR 237; westerly on FR 237 to AZ Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to AZ Hwy 89A; southerly on AZ Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4;

north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and AZ Hwy 89 (in Ash Fork, Exit 146); south on AZ Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the west boundary of Camp Navajo; north along the boundary to a point directly north of I-40; west on I-40 to AZ Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airpark Rd.; west and north along Airpark Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airpark Rd.; south and east along Airpark Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake Mary-Clint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; northeasterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to U.S. Hwy 89; across U.S. Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to FR 237; northeasterly on FR 237 to Mountainaire Rd; easterly on Mountainaire Rd to FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon National Recreation area; easterly along the recreation area boundary to the Colorado River; northeasterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the

Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to I-40; west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County Road 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County Road 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to I-40; west along I-40 to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and AZ Hwy 89 (in Prescott); northerly on AZ Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwesterly on the southbound lane of I-17 to AZ Hwy 69; northwesterly on AZ Hwy 69 to AZ Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Valley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to AZ Hwy 89; south on AZ Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd., northwest on the Miller Valley Rd. to Iron Springs Rd., west and south on Iron Springs Rd. (County Road 10) to Kirkland; south and east on AZ Hwy 96 to Kirkland Junction (U.S. Hwy 89); southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to the intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); north on the south-

bound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of AZ Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (at Wickenburg), northeasterly along the Hassayampa River to Wagoner (County Road 60, mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); south on the southbound lane of I-17 to New River Road (Exit 232); west on New River Road to SR 74; west on AZ Hwy 74 to junction of U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Hassayampa River (at Wickenburg).

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland Junction (AZ. Hwy 89); south along AZ Hwy 89 to Wagoner Rd.; southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner southwesterly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River Road (Exit 232); east on New River Road to Fig Springs Road; northeasterly on Fig Springs Road to Mingus Rd.; Mingus Rd. to the Tonto National Forest boundary; southeasterly along this boundary to the Verde River; north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; southerly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; northeasterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; southwesterly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwesterly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; northeasterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwesterly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; easterly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwesterly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwesterly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93; southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwesterly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ Hwy 85; south on AZ Hwy 85 to the Gila River; northeasterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Mingus Rd.; Mingus Rd. to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on

New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit 289); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Compound St.; northeast on Grand Avenue to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita Rd. alignment; west along the Sahuarita Rd. alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281.

Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue Hwy 89 at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin

Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwesterly on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario road alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Compound St.; southeasterly on Compound St. to Sonoita Ave.; north on Sonoita Ave. to Crawford St.; southeasterly on Crawford St. to Grand Avenue in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue.

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy 287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit 289); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cocklebur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (AZ 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School road; east along Indian School Rd. to the Beards-

ley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S. Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome road; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill Rd. (Blevens Rd.) to the Kofa National Wildlife Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 45C – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge; south, east, and north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); north and west on the Stone Cabin-King Valley Rd. (King Rd.) to the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective March 5, 1976 (Supp. 76-2). Amended effective May 17, 1977 (Supp. 77-3). Amended effective September 7, 1978 (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-10 renumbered as Section R12-4-108 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective February 4, 1993 (Supp. 93-1). 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 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 865, effective July 1, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-109. Approved Trapping Education Course Fee

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed $25.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Editorial correction paragraph (14) (Supp. 78-5). Former Section R12-4-11 renumbered as Section R12-4-109 without change effective August 13, 1981 (Supp. 81-4). Amended by adding paragraphs (2) and (3) and renumbering former paragraphs (2) through (17) as paragraphs (4) through (19) effective May 12, 1982 (Supp. 82-3). Amended effective March 1, 1991; filed February 28,

1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 211, effective May 1, 2000 (Supp. 99-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-110. Posting and Access to State Land

A. For the purpose of this Section:

"Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing.

"Existing road" means any maintained or unmaintained road, way, highway, trail, or path that has been used for motorized vehicular travel, and clearly shows or has a history of established vehicle use, and is not currently closed by the Commission.

"State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.

B. In addition to the prohibition against posting proscribed under A.R.S. § 17-304, a person shall not lock a gate, construct a fence, place an obstacle, or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.
1. A person in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle unlawfully preventing access to state lands.
2. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully prevents access to state lands.
3. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that prevented access to state land.

C. The provisions of this Section do not allow any person to trespass upon private land to gain access to any state land.

D. A person may post state lands as closed to hunting, fishing, or trapping without further action by the Commission when the state land is within one-quarter mile of any:
1. Occupied residence, cabin, lodge, or other building; or
2. Corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes.
3. Subsection (D) does not authorize any person to deny lawful access to state land in any way.

E. The Commission may grant permission to lock, tear down, or remove a gate or close a road or trail that provides legally available access to state lands for persons lawfully taking wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing if access to such lands is provided by a reasonable alternate route.
1. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days.
2. Applications for permits for more than 30 days shall be submitted to the Commission for approval.
3. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.

F. A person may post state lands other than those referenced under subsection (D) as closed to hunting, fishing, or trapping, provided the person has obtained a permit from the Commission authorizing the closure. A person possessing a permit authorizing the closure of state lands shall post signs in compliance with A.R.S. 17-304(C). The Commission may permit the closure of state land when it is necessary:
1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
2. To prevent unreasonable destruction of plant life or habitat; or
3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.

G. A person shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (F), or to close an existing road under subsection (E), as required under R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by a person other than the state land lessee, the Department shall provide notice to the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections with the Department, in writing, within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.

H. A person may use a vehicle on or off a road to pick up lawfully taken big game.

I. The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.

J. State trust land may be posted with signs that read "State Land No Trespassing," but such posting shall not prohibit access to such land by any person lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.

K. When hunting, fishing, or trapping on state land, a license holder shall not:
1. Break or remove any lock or cut any fence to gain access to state land;
2. Open and not immediately close a gate;
3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
5. Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
6. Dig, remove, or destroy any tree or shrub;
7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;
8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means; or
9. Operate a motor vehicle off road or on any road closed to the public by the Commission or landowner, except to retrieve a lawfully taken big game.

Historical Note

Adopted effective June 1, 1977 (Supp. 77-3). Editorial correction subsection (F) (Supp. 78-5). Former Section R12-4-13 renumbered as Section R12-4-110 without change effective August 13, 1981 (Supp. 81-4). Amended

effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-111. Repealed

Historical Note

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Repealed by final rulemaking at 27 A.A.R. 1368 (September 3, 2021), effective January 1, 2022 (Supp. 21-4).

R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife

A. A person who lawfully takes and possesses wildlife believed to be diseased, injured, or chemically-immobilized may request an inspection of the wildlife carcass provided:
1. The wildlife was lawfully taken and possessed under a valid hunt permit- or nonpermit-tag, and
2. The person who took the wildlife did not create the condition.

B. The Department, after inspection, may condemn the carcass if it is determined the wildlife is unfit for human consumption. The Department shall condemn chemically-immobilized wildlife only when the wildlife was taken during the immobilizing drug's established withdrawal period.

C. The person shall surrender the entire condemned wildlife carcass and any parts thereof to the Department.
1. Upon surrender of the condemned wildlife, the Department shall provide to the person written authorization allowing the person to purchase a duplicate hunt permit- or nonpermit-tag.
2. The person may purchase a duplicate tag from any Department office or license dealer where the permit-tag is available.

D. If the duplicate tag is issued by a license dealer, the license dealer shall forward the written authorization to the Department with the report required under R12-4-105(K).

Historical Note

Former Section R12-4-04 renumbered as Section R12-4-112 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-113. Small Game Depredation Permit

A. The Department shall issue a small game depredation permit authorizing the take of small game and the allowable methods of take only after the Department has determined all other remedies prescribed under A.R.S. § 17-239(A), (B), and (C) have been exhausted and the take of the small game is necessary to alleviate the property damage. A small game depredation permit is:
1. A complimentary permit.
2. Not valid for the take of migratory birds unless the permit holder:
   a. Obtains and possesses a federal special purpose permit under 50 CFR 21.41, revised October 1, 2014, which is incorporated by reference; or
   b. Is exempt from permitting requirements under 50 CFR 21.43, revised October 1, 2014, which is incorporated by reference.
   c. For subsections (A)(2)(a) and (b), the incorporated material is available at any Department office, online at www.gpoaccess.gov, or it may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

B. A person desiring a small game depredation permit shall submit to the Department an application requesting the permit. The application form is furnished by the Department and is available at any Department office and on the Department's website. The person shall provide all of the following information on the form:
1. Full name or, when submitted by a municipality, the name of the agency and agency contact;
2. Mailing address;
3. Telephone number or, when submitted by a municipality, agency contact number;
4. E-mail address, when available, or, when submitted by a municipality, agency contact e-mail address;
5. Description of property damage suffered;
6. Species of wildlife causing the property damage; and
7. Area the permit would be valid for.

C. Within 30 days of completion of the activities authorized by the small game depredation permit, the permit holder shall submit a report to the Department providing all of the following:
1. The number of individuals removed;
2. The location the individuals were removed from;
3. The date of the removal; and
4. The method of removal.

Historical Note

Adopted effective August 5, 1976 (Supp. 76-4). Former Section R12-4-12 renumbered as Section R12-4-113 without change effective August 13, 1981 (Supp. 81-4). Amended as an emergency effective September 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Amended effective May 5, 1986 (Supp. 86-3). Section R12-4-113 repealed, new Section R12-4-113 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

A. The Department provides numbered tags for sale to the public. The Department shall ensure each tag:
1. Includes a transportation and shipping permit as prescribed under A.R.S. §§ 17-332 and 17-371, and

2. Clearly identifies the wildlife for which the tag is valid.

B. If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its authorized agent, or both, shall sell nonpermit-tags.
1. A person purchasing a nonpermit-tag shall provide all of the following information to a Department office or license dealer at the time of purchase; the applicant's:
   a. Name,
   b. Mailing address, and
   c. Department identification number.
2. An applicant shall not obtain nonpermit-tags in excess of the bag limit established by Commission Order when it established the season for which the nonpermit-tags are valid.

C. If the number of hunt permits for a species in a particular hunt area must be limited, a Commission Order establishes a hunt number for that hunt area and a hunt permit-tag is required to take the species in that hunt area.
1. A person applying for a hunt permit-tag shall submit an application as described under R12-4-104.
2. The Department shall determine whether a hunt permit-tag will be issued to an applicant as follows:
   a. The Department shall reserve a maximum of 20% of the hunt permit-tags for each hunt number, except as established under subsection (C)(2)(b), for bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey and reserve a maximum of 20% of the hunt permit-tags for all hunt numbers combined statewide for bighorn sheep and bison to issue to persons who have bonus points and shall issue the hunt permit-tags as established under subsection (C)(2)(c).
   b. For bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey, the Department shall reserve one hunt permit-tag for any hunt number with fewer than five, but more than one, hunt permit-tags and shall issue the tag as established under subsection (C)(2)(c). When this occurs, the Department shall adjust the number of available hunt permit-tags in order to ensure the total number of hunt permit-tags available does not exceed the 20% maximum specified in subsection (C)(2)(a).
   c. The Department shall issue the reserved hunt permit-tags for hunt numbers that eligible applicants designate as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
      i. First, to eligible applicants with the highest number of bonus points for that genus;
      ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next highest number of bonus points for that genus; and
      iii. If there are still tags remaining, to the next eligible applicants with the next highest number of bonus points; continuing in the same manner until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
   d. The Department shall ensure that all unreserved hunt permit-tags are issued by random selection:
      i. First, to hunt numbers designated by eligible applicants as their first or second choices; and
      ii. Next, to hunt numbers designated by eligible applicants as their third, fourth, or fifth choices.
   e. Before each of the three passes listed under (C)(2)(c)(i), (ii), and (iii), each application is processed through the Department's random number generator program. A random number is assigned to each application; an additional random number is assigned to each application for each group bonus point, including the Education and Loyalty bonus points. Only the lowest random number generated for an application is used in the computer draw process. A new random number is generated for each application for each pass of the computer draw.
   f. If the bag limit is more than one per calendar year, or if there are unissued hunt permit-tags remaining after the random computer draw, the Department shall ensure these hunt permit-tags are available on a first-come, first-served basis as specified in the annual hunt permit-tag application schedule.

D. A person may purchase hunt permit-tags equal to the bag limit for a genus.
1. A person shall not exceed the established bag limit for that genus.
2. A person shall not apply for any additional hunt-permit-tags if the person has reached the bag limit for that genus during the same calendar year.
3. A person who surrenders a tag in compliance with R12-4-118 is eligible to apply for another hunt permit-tag for the same genus during the same calendar year, provided the person has not reached the bag limit for that genus.

E. The Department shall make available to nonresidents:
1. For bighorn sheep and bison, no more than one hunt permit-tag or 10% of the total hunt permit-tags, whichever is greater, for bighorn sheep or bison in any computer draw. The Department shall not make available more than 50% nor more than two bighorn sheep or bison hunt permit-tags of the total in any hunt number.
2. For antlered deer, bull elk, pronghorn, Sandhill crane, or turkey, no more than 10%, rounded down to the next lowest number, of the total hunt permit-tags in any hunt number. If a hunt number for antlered deer, bull elk, pronghorn, Sandhill crane, or turkey has 10 or fewer hunt permit-tags, no more than one hunt permit-tag will be made available unless the hunt number has only one hunt permit-tag, then that tag shall only be available to a resident.

F. The Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives.

G. The Department shall not issue under subsection (C)(2)(c), more than half of the hunt permit-tags made available to nonresidents under subsection (E).

H. A nonresident cap established under this Section applies to:
1. Hunt permit-tags issued by computer draw under subsections (C)(2)(c) and (d), and
2. Archery deer nonpermit-tags.
   a. The number of archery deer nonpermit-tags made available to nonresidents shall be set annually at 10% of the average total archery deer nonpermit-tag sales for the preceding five years, rounded down to the nearest increment of five.
   b. The Commission, through the nonpermit-tag first-come schedule published by the Department, shall designate the manner and method of purchasing a nonresident archery deer nonpermit-tag, which may require an applicant to apply online only.

c. If the Commission requires applicants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure. The Director has the authority to extend the nonpermit-tag first-come schedule if a problem occurs that prevents the public from purchasing a nonpermit-tag within the deadlines set by the Commission.

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 1183, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Amended by final exempt rulemaking at 28 A.A.R. 3360 (October 21, 2022), effective November 26, 2022 (Supp. 22-3).

R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool

A. For the purposes of this Section, the following definitions apply:

"Companion tag" means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.

"Emergency season" means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.

"Management objectives" means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations.

"Hunter pool" means all persons who have submitted an application for a supplemental hunt.

"Restricted nonpermit-tag" means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:

Take of depredating wildlife as authorized under A.R.S. § 17-239;

Take of wildlife under an Emergency Season; or

Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

B. The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.

C. The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:
1. Regular seasons have not met or will not meet management objectives;
2. Take of wildlife is necessary to meet management objectives; and
3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.

D. To implement a population management hunt established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
   a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
   b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.

E. The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.

F. If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).

G. A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.
1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit established by Commission Order.
3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.

H. To participate in a supplemental hunt, a person shall:
1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.

I. The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.
1. The Department shall purge and renew the hunter pool on an annual basis.
2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department for each desired species. The application is available at any Department office, an authorized agent, or on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's:

i. Name;
ii. Department identification number, when applicable;
iii. Mailing address;
iv. Number of years of residency immediately preceding application;
v. Date of birth;
vi. Social Security Number, as required under A.R.S. §§ 25-320(P) and 25-502(K); and
vii. Daytime and evening telephone numbers,

b. The species that the applicant would like to hunt, if selected, and
c. The applicant's hunting license number.

3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee is required for each species the applicant submits an application for.
4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
   a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant at least three times within a 24-hour period.
   b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
   c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags establish by Commission Order are issued.
5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
   a. Remove the person's application from the hunter pool, and
   b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.
6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
   a. The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and
   b. The applicant's hunting license number. The applicant shall possess an appropriate license that is valid at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:
      i. The applicant does not possess a valid license, or
      ii. The applicant's license will expire before the supplemental hunt.
7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.

J. The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).
1. The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
2. To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application, the applicant's:
   a. Name,
   b. Mailing address,
   c. Department identification number, and
   d. Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.
3. In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
   a. Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
   b. Submit all applicable fees required under R12-4-102.

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered as Section R12-4-607 without change effective December 22, 1987 (Supp. 87-4). New Section R12-4-115 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-116. Issuance of Limited-Entry Permit-tag

A. For the purposes of this Section, limited-entry permit-tags may be for terrestrial or aquatics species, or specific areas for terrestrial or aquatic species.

B. The Commission may, by Commission Order, open a limited-entry season or seasons and prescribe a maximum number of limited-entry permit-tags to be made available under this Section.

C. The Department may implement limited-entry permit-tags under the open season or seasons established in subsection (B) if the Department determines:
1. A season for a specific terrestrial or aquatic wildlife species, or specific area of the state, is in high demand;
2. Issuance of a specific number of limited-entry permit-tags will not adversely affect management objectives for a species or area;

3. Surrendered hunt permit-tags, already approved by Commission Order, are available from hunts with high demand.

D. To implement a limited-entry season established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific areas, within the range of areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of limited-entry permit-tags that will be issued from the maximum number authorized in the Commission Order.
   a. The Department shall not issue more limited-entry permit-tags than the maximum number prescribed by Commission Order.
   b. A limited-entry permit-tag is valid only for the limited-entry season for which it is issued.

E. The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to limited-entry seasons.

F. A limited-entry permit-tag application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.

G. The Department shall not accept a group application, as defined under R12-4-104, for a limited-entry season.

H. To participate in a limited-entry season, a person shall:
1. Obtain a limited-entry permit-tag as prescribed under this Section, and
2. Possess a valid hunting, fishing or combination license at the time the limited-entry permit-tag is awarded. If the applicant does not possess a valid license or the license will expire before the limited-entry season, the applicant shall purchase an appropriate license. A valid hunting, fishing or combination license is not required at the time of application.

I. A limited-entry permit-tag is valid only for the person named on the permit-tag, for the season dates on the permit-tag, and the species for which the permit-tag is issued.
1. Possession of a limited-entry permit-tag shall not invalidate any other hunt permit-tag for that species.
2. Big game taken under the authority of this limited-entry permit-tag shall not count towards the established bag limit for that species.

J. The Department shall maintain the applications submitted for limited-entry permit-tags.
1. An applicant for a limited-entry season under this subsection shall submit a limited-entry permit-tag application to the Department for each limited-entry season established. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's personal information:
      i. Name,
      ii. Date of birth,
      iii. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K), when applicable;
      iv. Department identification number, when applicable;
      v. Residency status and number of years of residency immediately preceding application, when applicable;
      vi. Mailing address, when applicable;
      vii. Physical address;
      viii. Telephone number, when available; and
      ix. Email address, when available;
   b. The limited-entry season the applicant would like to participate in, and
   c. Certify the information provided on the application is true and accurate.
2. In addition to the requirements established under subsection (J)(1), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee are required for each limited-entry season an applicant submits an application.
3. When issuing a limited-entry permit-tag for a terrestrial or aquatic wildlife species, the Department shall randomly select applicants for each designated limited-entry season.
4. When issuing a limited-entry permit-tag for a particular water, the Department shall randomly select applicants for each date limited-entry permit-tags are available until no more are available for that date.
5. In compliance with subsection (D)(4), the Department shall select no more applications after the number of limited-entry permits establish by Commission Order are issued.

Historical Note

Adopted effective January 10, 1979 (Supp. 79-1). Former Section R12-4-15 renumbered as Section R12-4-116 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 18, 1985 (Supp. 85-6). Section R12-4-116 repealed, new Section R12-4-116 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). R12-4-116 renumbered to R12-4-126; new Section R12-4-116 made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-117. Indian Reservations

A state license, permit, or tag is not required to hunt or fish on any Indian reservation in this State. Wildlife lawfully taken on an Indian reservation may be transported or processed anywhere in the State if it can be identified as to species and legality as provided in A.R.S. § 17-309(A)(19). All wildlife transported anywhere in this State is subject to inspection under the provisions of A.R.S. § 17-211(E)(4).

Historical Note

Former Section R12-4-02 renumbered as Section R12-4-117 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-117 repealed, new Section R12-4-117 adopted effective April 10, 1984 (Supp. 84-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-118. Hunt Permit-tag Surrender

A. The Commission authorizes the Department to implement a tag surrender program if the Director finds:
1. The Department has the administrative capacity to implement the program;

2. There is public interest in such a program; or
3. The tag surrender program is likely to meet the Department's revenue objectives.

B. The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.
1. The Department may establish a membership program that offers a person various products and services.
2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
   a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
   b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
3. The Department may establish terms and conditions for the membership program in addition to the following:
   a. Products and services to be included with each membership level.
   b. Membership enrollment is available online only and requires a person to create a portal account.
   c. Membership is not transferable.
   d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.

C. The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.
1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
   a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
   b. At the time of tag surrender.
2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.
3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.

D. A person who wants to surrender an original, unused hunt permit-tag or an authorized nonprofit organization that wants to return a donated original, unused hunt permit-tag shall comply with all of the following conditions:
1. Submit a completed application form to any Department office. The application form is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application form:
   a. The applicant's:
      i. Name,
      ii. Mailing address,
      iii. Department identification number,
      iv. Membership number,
   b. Applicable hunt number,
   c. Applicable hunt permit-tag number, and
   d. Any other information required by the Department.
2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.

E. Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:
1. Restore the person's bonus points that were expended for the surrendered tag, and
2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E).

F. The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:
1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process; or
4. Offering the surrendered tag through the first-come, first-served process.

G. For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For the purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.

H. When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.
1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.

I. A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.
1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all

bonus points accrued for that genus, except any accrued Education and loyalty bonus points.

2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.

J. A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under R12-4-107(M).

K. For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

Historical Note

Adopted effective April 8, 1983 (Supp. 83-2). Section R12-4-118 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-119. Arizona Game and Fish Department Reserve

A. The Commission shall establish an Arizona Game and Fish Department Reserve under A.R.S. § 17-214, consisting of commissioned reserve officers and noncommissioned reserve volunteers.

B. Commissioned reserve officers shall:

1. Meet and maintain the minimum qualifications and training requirements necessary for peace officer certification by the Arizona Peace Officer Standards and Training Board as prescribed under 13 A.A.C. 4, and
2. Assist with wildlife enforcement patrols, boating enforcement patrols, off-highway vehicle enforcement patrols, special investigations, and other enforcement and related non-enforcement duties as the Director designates.

C. Noncommissioned reserve volunteers shall:

1. Meet qualifications that the Director determines are related to the services to be performed by the volunteer and the success or safety of the program mission, and
2. Perform any non-enforcement duties designated by the Director for the purposes of conservation and education to maximize paid staff time.

Historical Note

Adopted effective September 29, 1983 (Supp. 83-5). Section R12-4-119 repealed, new Section R12-4-119 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags

A. An incorporated nonprofit organization that is tax exempt under Section 501(c) seeking special big game license-tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:

1. The name of the organization making the proposal and the:
   a. Name;
   b. Mailing address;
   c. E-mail address, when available; and
   d. Telephone number;
2. Organization's previous involvement with wildlife management;
3. Organization's conservation objectives;
4. Number of special big game license-tags and the species requested;
5. Purpose to be served by the issuance of these tags;
6. Method or methods by which the tags will be marketed and sold;
7. Proposed fund raising plan;
8. Estimated amount of money to be raised and the rationale for that estimate;
9. Any special needs or particulars relevant to the marketing of the tags;
10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
13. Date of signing.

B. The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.

C. The Director shall submit all timely and valid proposals to the Commission for consideration.

1. In selecting an organization, the Commission shall consider the:
   a. Written proposal;
   b. Proposed uses for tag proceeds;
   c. Qualifications of the organization as a fund raiser;
   d. Proposed fund raising plan;
   e. Organization's previous involvement with wildlife management; and
   f. Organization's conservation objectives.
2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.

D. A successful organization shall agree in writing to all of the following:

1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;

2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
3. To sell and transfer each special big game license-tag as described in the proposal; and
4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is to be issued within 60 days of the sale.

E. The Department and the successful organization shall coordinate on:
1. The specific projects or purposes identified in the proposal;
2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
3. The dates when the wildlife project or purpose will be accomplished.

F. The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.
1. A special license-tag shall not be issued until the Department receives all proceeds from the sale of license-tags.
2. The Department shall not refund proceeds.

G. A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.
1. A hunting license is required for the tag to be valid.
2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.

H. A person who wins the special big game license-tag through auction or raffle is prohibited from selling the special big game license-tag to another person.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Amended effective April 7, 1987 (Supp. 87-2). Correction, balance of language in subsection (I) is deleted as certified effective April 7, 1987 (Supp. 87-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-121. Tag Transfer

A. For the purposes of this Section:

"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.

"Unused tag" means a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag that has not been attached to any wildlife.

B. A parent, grandparent, or guardian issued a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
   a. Proof of ownership of the unused tag to be transferred,
   b. The unused tag, and
   c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
   a. The deceased person's death certificate, and
   b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

C. A person issued a tag or the person's legal representative may donate the unused tag to a an authorized nonprofit organization for use by a minor child with a life threatening medical condition or permanent physical disability or a veteran of the Armed Forces of the United States with a service-connected disability.
1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
   a. To obtain a transfer, the nonprofit organization shall:
      i. Provide proof of donation of the unused tag to be transferred;
      ii. Provide the unused tag;
      iii. Provide proof of the minor child's or veteran's valid hunting license.
   b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:
   a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
   b. The person submits a completed application form as described under R12-4-118;
   c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
   d. The person submits the request to the Department:

i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and

ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.

D. To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:

1. Possess a valid hunting license,
2. Has not reached the applicable annual or lifetime bag limit for that genus, and
3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.

E. To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:

1. Possess a valid hunting license, and
2. Has not reached the applicable annual or lifetime bag limit for that genus.

F. A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:

1. Is qualified under Section 501(c)(3) of the United States Internal Revenue Code, and
2. Affords opportunities and experiences to:
   a. Children with life-threatening medical conditions or physical disabilities, or
   b. Veterans with service-connected disabilities.
3. This authorization shall remain in effect unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
   a. Nonprofit organization's information:
      i. Name,
      ii. Physical address,
      iii. Telephone number;
   b. Contact information for the person responsible for ensuring compliance with this Section:
      i. Name,
      ii. Address,
      iii. Telephone number;
   c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
   d. Date of signing.
5. In addition to the application, a nonprofit organization shall provide all of the following:
   a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
   b. Document identifying the organization's mission;
   c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
   d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective October 10, 1986, filed September 25, 1986 (Supp. 86-5). Rule expired one year from effective date of October 10, 1986. Rule readopted without change for one year effective January 22, 1988, filed January 7, 1988 (Supp. 88-1). Rule expired effective January 22, 1989 (Supp. 89-1). New Section R12-4-121 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Repealed effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1195, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations

A. Under A.R.S. § 17-240 and this Section, the Department may donate the following wildlife, except that the Department shall not donate any portion of wildlife killed in a collision with a motor vehicle or wildlife that died subsequent to immobilization by any chemical agent:

1. Big game;
2. Upland game birds;
3. Migratory game birds;
4. Game fish.

B. The Director shall not authorize an employee to handle game meat for the purpose of this Section until the employee has satisfactorily completed a course designed to give the employee the expertise necessary to protect game meat recipients from diseased or unwholesome meat products. A Department employee shall complete a course that is either conducted or approved by the State Veterinarian. The employee shall provide a copy of a certificate that demonstrates satisfactory completion of the course to the Director.

C. Only an employee authorized by the Director shall determine if game meat is safe and appropriate for donation. An authorized Department employee shall inspect and field dress each donated carcass before transporting it. The Department shall not retain the game meat in storage for more than 48 continuous hours before transporting it, and shall reinspect the game meat for wholesomeness before final delivery to the recipient.

D. Final processing and storage is the responsibility of the recipient.

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-123. Expenditure of Funds

A. The Director may expend funds available through appropriations, licenses, gifts, or other sources, in compliance with applicable laws and rules, and:

1. For purposes designated by lawful Commission agreements and Department guidelines;
2. In agreement with budgets approved by the Commission;
3. In agreement with budgets appropriated by the legislature;
4. With regard to a gift, for purposes designated by the donor, the Director shall expend undesignated donations for a public purpose in furtherance of the Department's responsibilities and duties.

B. The Director shall ensure that the Department implements internal management controls to comply with subsection (A) and to deter unlawful use or expenditure of funds.

Historical Note
Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1).

R12-4-124. Proof of Domicile

A. An applicant may be required to present acceptable proof of domicile in Arizona to the Department upon request. For the purposes of this rule, "current address" means the address an applicant inhabits at the time of application for any license, permit, stamp, or tag offered by the Department.

B. Acceptable proof of domicile establishes a person's true, fixed, and permanent home and principal residence. Acceptable proof to aid in establishing a person's domicile in Arizona may include, but is not limited to, one or more of the following lawfully obtained documents:
1. Arizona Driver's License displaying a current address;
2. Arizona Resident State Income Tax Return filing;
3. Arizona school records containing satisfactory proof of identity and relationship of the parent or guardian to the minor child, when applicable;
4. Arizona Voter Registration Card displaying a current address;
5. Selective Service Registration Acknowledgement Card displaying a current address in Arizona;
6. Social Security Administration document indicating an address in Arizona; or
7. Current document or order issued by the U.S. military to an active-duty military service member identifying Arizona as state of legal residence or duty station.

C. In the event one of the documents listed under subsection (B) alone is not sufficient proof of domicile, additional documents may be required.

Historical Note
New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-125. Public Solicitation or Event on Department Property

A. All Department buildings, properties, and wildlife areas are designated non-public forums and are closed to all solicitations and events unless permitted by the Department.

B. A solicitation or event on Department property shall not:
1. Conflict with the Department's mission; or
2. Constitute partisan political activity, the activity of a political campaign, or influence in any way an election or the results thereof.

C. A request for permission to conduct a solicitation or event on Department property shall be directed to the responsible Regional Supervisor or Branch Chief who shall initially determine whether an application is required for the solicitation or event.

D. If it is determined that an application is required, the person may apply for a solicitation or event permit by submitting a completed solicitation or event application to any Department office or Department Headquarters, Director's Office, at 5000 W. Carefree Hwy, Phoenix, AZ 85086. The application form is furnished by the Department and available at all Department offices.
1. An applicant shall submit an application:
   a. Not more than six months prior to the solicitation or event; and
   b. Not less than 14 days prior to the desired date of the solicitation or event for solicitations other than the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials; or
   c. Not less than 10 days prior to the desired date of the solicitation or event for solicitations involving only the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials.
2. An applicant shall provide all of the following information on the application:
   a. Sponsor's name, address, and telephone number;
   b. Sponsor's e-mail address, when available;
   c. Contact person's name and telephone number, when the sponsor is an organization;
   d. Proposed date of the solicitation or event;
   e. Specific, proposed location for the solicitation or event;
   f. Starting and approximate concluding times;
   g. General description of the solicitation or event's purpose;
   h. Anticipated number of attendees, when applicable;
   i. Amount of fees to be charged to attendees, when applicable;
   j. Detailed description of any activity that will occur at the solicitation or event, including a detailed map of the solicitation or event and any equipment that will be used, e.g., tents, tables, etc.;
   k. Copies of any solicitation materials to be distributed to the public or to be posted on Department property;
   l. Copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control, required when the applicant intends to sell alcohol at the solicitation or event; and
   m. The contact person's signature and date. The person's signature on the application certifies that the sponsor:
      i. Assumes risk of injury to persons or property;
      ii. Agrees to hold harmless the state of Arizona, its officials, Departments, employees, and agents against all claims arising from the use of Department facilities;
      iii. Assumes responsibility for any damages or clean-up costs due to the solicitation or event, solicitation or event cleanup, or solicitation or event damage repair; and
      iv. Agrees to surrender the premises in a clean and orderly condition.

E. The Department may take any of the following actions to the extent necessary and in the best interest of the State:
1. Require the sponsor to furnish all necessary labor, material, and equipment for the solicitation or event;

2. Require the sponsor to post a deposit against damage and cleanup expense;
3. Require indemnification of the state of Arizona, its Departments, agencies, officers, and employees;
4. Require the sponsor to carry adequate insurance and provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
5. Require the sponsor to enter into written agreements with any vendors and subcontractors and require vendors and subcontractors to provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
6. Require the sponsor to provide medical support, security, and sanitary services, including public restrooms; and
7. Impose additional conditions not otherwise specified under this Section on the conduct of the solicitation or event.

F. The Department may consider the following criteria when determining whether any of the actions in subsection (E) are necessary and in the best interest of the state:
1. Previous experience with similar solicitations or events;
2. Deposits required for similar solicitations or events in Arizona;
3. Risk data; and
4. Medical, sanitary, and security services required for similar solicitations or events in Arizona and the cost of those services.

G. The Department shall designate the hours of use for Department property.

H. The Department shall inspect the solicitation or event site at the conclusion of activities and document any damage or cleanup costs incurred because of the solicitation or event. The sponsor shall be responsible for any cleanup or damage costs associated with the solicitation or event.

I. The sponsor shall not allow, without the express written permission of the Department, the possession, use, or consumption of alcoholic beverages at the solicitation or event site. When the Department provides written permission for the possession, use, or consumption of alcoholic beverages at the solicitation or event site, the sponsor shall provide to the Department:
1. A copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, required when the applicant intends to sell alcohol at the solicitation or event; and
2. A liquor liability rider, included with the insurance certificate required under subsection (E)(4).

J. The sponsor shall not allow unlawful possession or use of drugs at the solicitation or event site.

K. The Department shall deny an application for any of the following reasons:
1. The solicitation or event interferes with the work of an employee or the daily business of the Department;
2. The solicitation or event conflicts with the time, place, manner, or duration of other approved or pending solicitations or events;
3. The content of the solicitation or event conflicts with or is unrelated to the Department's activities or its mission;
4. The solicitation or event presents a risk of injury or illness to persons or risk of damage to property;
5. The sponsor cannot demonstrate adequate compliance with applicable local, state, or federal laws, ordinances, codes, or regulations, or
6. The sponsor has not complied with the requirements of the application process or this Section.

L. At all times, the Department reserves the right to immediately remove or cause to be removed all obstructions or other hazards of the solicitation or event that could damage state property, inhibit egress, or poses a safety risk. The Department also reserves the right to immediately remove or cause to be removed any person damaging state property, inhibiting egress, or posing a threat to public health and safety.

M. The Department may revoke approval of a solicitation or event due to emergency circumstances or for failure to comply with this Section.

N. The Department shall send written notice of the denial or revocation of an approved permit. The notice shall contain the reason for the denial or revocation.

O. A sponsor:
1. Is liable to the Department for damage to Department property and any expense arising out of the sponsor's use of Department property.
2. Shall post solicitation material only in designated posting areas.
3. Shall ensure that a solicitation or event on Department property causes the minimum infringement of use to the public and government operation.
4. Shall modify or terminate a solicitation or event, upon request by the Department, if the Department determines that the solicitation or event unacceptably infringes on the Department's operations or causes an unacceptable risk of liability exposure to the State.

P. When conducting an event on Department property, a sponsor shall:
1. Park or direct vehicles in designated parking areas.
2. Obey all posted requirements and restrictions.
3. Designate one person to act as a monitor for every 50 persons anticipated to attend the solicitation or event. The monitor shall act as a contact person for the Department for the purposes of the solicitation or event.
4. Ensure that all safety standards, guidelines, and requirements are followed.
5. Implement additional safety requirements upon request by the Department.
6. Ensure all obstructions and hazards are eliminated.
7. Ensure trash and waste is properly disposed of throughout the solicitation or event.

Q. The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes, statues, rules, and regulations.
2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
3. The Department may conduct periodic safety checks throughout the solicitation or event.

R. This Section does not apply to government agencies.

Historical Note
New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-126. Reward Payments

A. Subject to the restrictions prescribed under A.R.S. § 17-315, a person may claim a reward from the Department when the person provides information that leads to an arrest through the Operation Game Thief Program. The person who reports the unlawful activity will then become eligible to receive a reward as established under subsections (C) and (D), provided funds are available in the Wildlife Theft Prevention Fund and:
1. The person who reported the violation provides the Operation Game Thief control number issued by Department law enforcement personnel, as established under subsection (B);
2. The information provided relates to a violation of any provisions of A.R.S. Title 17, A.A.C. Title 12, Chapter 4, or federal wildlife laws enforced by and under the jurisdiction of the Department, but not on Indian Reservations;
3. The person did not first provide information during a criminal investigation or judicial proceeding; and
4. The person who reports the violation is not:
   a. The person who committed the violation;
   b. A peace officer, including wildlife managers and game rangers;
   c. A Department employee; or
   d. An immediate family member of a Department employee.

B. The Department shall inform the person providing information regarding a wildlife violation of the procedure for claiming a reward if the information results in an arrest. The Department shall also provide the person with the control number assigned to the reported violation.

C. Reward payments for information that results in an arrest for the reported violation are as follows:
1. For cases that involve eagles, bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, pronghorn, turkey, or endangered or threatened wildlife as defined under R12-4-401, $500, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved;
2. For cases that involve wildlife that are not listed under subsection (C)(1), a minimum of $50, not to exceed $150, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved; and
3. For cases that involve any wildlife and damage to wildlife habitat, an additional $1,000 may be made available based on:
   a. The value of the information;
   b. The unusual value of the wildlife;
   c. The number of individuals taken;
   d. Whether or not the person who committed the unlawful act was arrested for commercialization of wildlife; and
   e. Whether or not the person who committed the unlawful act is a repeat offender.

D. If more than one person independently provides information or evidence that leads to an arrest for a violation, the Department may divide the reward payment among the persons who provided the information if the total amount of the reward payment does not exceed the maximum amount of a monetary reward established under subsections (C) or (E);

E. Notwithstanding subsection (C), the Department may offer and pay a reward up to the minimum civil damage value of the wildlife unlawfully taken, wounded or killed, or unlawfully possessed as prescribed under A.R.S. § 17-314, if the Department believes that an enhanced reward offer is merited due to the specific circumstances of the case.

Historical Note
New Section R12-4-126 renumbered from R12-4-116 and amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

R12-4-127. Civil Liability for Loss of Wildlife

A. In order to compensate the state for the value of lost or injured wildlife, the Commission may, pursuant to A.R.S. § 17-314, impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing wildlife. Any civil penalties so imposed shall be equal to or greater than the applicable statutory-minimum sums found in A.R.S. § 17-314(A). The Commission may impose a civil penalty above the statutory-minimum sums where it has determined that the value of the lost or injured wildlife exceeds the statutory-minimum sums.

B. The Commission shall annually establish the value of lost or injured wildlife using objective and measurable economic criteria. When doing so, the Commission may consider objective economic criteria recommended by the Department or any other person.

C. The Department shall recommend the value of lost or injured wildlife to the Commission by aggregating the following objective and measurable economic factors:
1. The average dollar amount spent by an individual hunter in pursuit of the same species. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures hunting and fishing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
2. The average dollar amount spent by an individual in an effort to view wildlife. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures wildlife viewing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
3. The average body weight in pounds of meat for the unlawfully taken or possessed species multiplied by the average price per pound of ground meat for that same species or a similar species. Average body weight in pounds of meat shall be calculated using the average body weight for the wildlife taken, minus 30% of the average weight to account for the weight of the head, hide, offal, and bone.
4. When new data is not available, the Department may use Consumer Price Index (CPI) calculations to update the above factors in terms of U.S. dollars.

D. The most recent wildlife values established by the Commission shall be available on the Department's website.

Historical Note

New Section made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

R12-4-201. Pioneer License

A. A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.

B. The pioneer license is a complimentary license and is valid for the license holder's lifetime. The license remains valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
2. Limits established under R12-4-114 for nonresident hunt permit-tags and nonpermit-tags do not apply to a pioneer license holder.

C. A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and on the Department's website. A pioneer license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
   a. Name;
   b. Date of birth;
   c. Physical description, to include the applicant's eye color, hair color, height, and weight;
   d. Department identification number, when applicable;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available;
2. Affirmation that:
   a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
   b. The information provided on the application is true and accurate.
3. Applicant's signature and date.

D. In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit a copy of any one of the following documents at the time of application:
1. Valid U.S. passport;
2. Applicant's birth certificate;
3. Valid government-issued driver's license; or
4. Valid government-issued identification card.

E. All information and documentation provided by the applicant is subject to Department verification.

F. The Department shall deny a pioneer license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
2. Fails to comply with this Section, or
3. Provides false information on the application.

G. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.

H. A pioneer license holder may request a no-fee duplicate of the paper license provided:
1. The license was lost or destroyed;
2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
3. The Department's records indicate a pioneer license was previously issued to that person.

I. A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

Historical Note

Former Section R12-4-31 renumbered as Section R12-4-201 without change effective August 13, 1981. New Section R12-4-201 amended effective August 31, 1981 (Supp. 81-4). Amended subsection (B) effective December 9, 1985 (Supp. 85-6). Amended subsections (D) and (E), and changed application for a Pioneer License effective September 24, 1986 (Supp. 86-5). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4). Amended by final exempt rulemaking at 28 A.A.R. 3360 (October 21, 2022), effective November 26, 2022 (Supp. 22-3).

R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License

A. The complimentary and reduced-fee disabled veteran's licenses and Purple Heart Medal license grant all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's and Purple Heart Medal license are only available at a Department office.

B. The Department offers three types of veteran's licenses:
1. A complimentary license to a disabled veteran who receives compensation from the U.S. government for a permanent service-connected disability rated as 100% disabling.
   a. The complimentary license is valid for either a three-year period from the issue date or the license holder's lifetime.
   b. If the certification or benefits letter required under subsection (D)(1) indicate the applicant's disability rating of 100% is permanent and:
      i. Will not be reevaluated, the disabled veteran's license shall be valid for the license holder's lifetime.
      ii. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.
   c. Eligibility for the complimentary disabled veteran's license is based on the disability rating, not on the compensation received by the veteran.

(Supp. 87-2). Repealed effective May 27, 1992 (Supp. 92-2).

R12-4-545. Repealed

Historical Note
Adopted effective April 5, 1985 (Supp. 85-2). Amended by emergency effective May 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted effective August 28, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Repealed effective May 27, 1992 (Supp. 92-2).

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions
The following definitions apply to this Article unless otherwise specified:

"Appealable agency action" has the same meaning as provided under A.R.S. § 41-1092.

"Business day" means any day other than a furlough day, Saturday, Sunday, or holiday.

"Commission Chair" means the person who presides over the Arizona Game and Fish Commission.

"Contested case" has the same meaning as provided under A.R.S. § 41-1001.

"Ex parte communication" means any oral or written communication with a Commissioner by a party concerning a substantive issue in a contested proceeding that is not part of the public record.

"Party" has the same meaning as provided under A.R.S. § 41-1001.

"Respondent" means the person named as the respondent in a notice of hearing issued by the Department.

Historical Note
Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Section R12-4-601 renumbered to R12-4-602; new Section R12-4-601 made by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-602. Petition for Rule or Review of Practice or Policy

A. A person may petition the Commission under A.R.S. § 41-1033 for a:
1. Rulemaking action relating to a Commission rule, including making a new rule or amending or repealing an existing rule; or
2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.

B. To act under A.R.S. § 41-1033 and this Section, a person shall submit a petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The form is available at any Department office and on the Department's website.

C. A petitioner shall address only one rule, practice, or substantive policy in the petition.

D. A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. A petitioner shall provide all of the following information:
1. Petitioner identification:
   a. When the petition is submitted by a private person, the person's:
      i. Name;
      ii. Physical and mailing address, if different from the physical address;
      iii. Contact telephone number; and
      iv. Email, when available;
   b. When the petition is submitted by an organization or private group;
      i. Name of organization or group;
      ii. Name and title of the organization's or group's representative;
      iii. Physical and mailing address, if different from the physical address;
      iv. Representative's contact telephone number; and
      v. Email, when available;
   c. When the petition is submitted by a public agency;
      i. Name of the public agency;
      ii. Name and title of the agency's representative;
      iii. Physical and mailing address if different from the physical address;
      iv. Representative's contact telephone number; and
      v. Email, when available;
2. Type of request:
   a. Adopt, amend, or repeal a rule, or
   b. Review of a practice or substantive policy statement;
3. When the petition is for rulemaking action:
   a. Statement of the rulemaking action sought, including the *Arizona Administrative Code* citation of all existing rules, and the specific language of a new rule or rule amendment; and
   b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
4. When the petition is for a review of an existing practice or substantive policy statement:
   a. Subject matter of the existing practice or substantive policy statement, and
   b. Reasons why the existing practice or substantive policy statement constitutes a rule;
5. When the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition or any written comments offered by the public.
6. Any other information required by the Department;
7. Petitioner's signature; and
8. Date on which the petition was signed.

E. In addition to the requirements listed under subsection (D), a person may submit supporting information with a petition, including:
1. Statistical data; and
2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.

F. When a petitioner submits a petition that addresses the same substantive issue considered by the Commission within the previous year, the petitioner shall also provide an additional

written statement that includes rationale not previously considered by the Commission in making the previous decision.

G. The Department shall determine whether the petition complies with this Section within 15 business days after the date on which the petition was received.

1. If the petition complies with this Section:
   a. The Department shall place the petition on a Commission open meeting agenda.
   b. The petitioner may present oral testimony at that open meeting under R12-4-604.
   c. The Commission shall render a final decision on the petition as prescribed under A.R.S. § 41-1033.
2. If a petition does not comply with this Section:
   a. The Director shall return the petition to the petitioner, and
   b. Indicate in writing why the petition does not comply with this Section. The petitioner shall be afforded the opportunity to resubmit a corrected petition.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-602 renumbered to R12-4-603; new Section R12-4-602 renumbered from R12-4-601 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-603. Written Comments on Proposed Rules

A. Under A.R.S. § 41-1023, a person may submit written statements, arguments, data, and views on a proposed rulemaking published by the Secretary of State in the Arizona Administrative Register.

B. A person submitting a written comment to the Commission for consideration in a final decision on the rulemaking may voluntarily provide their name and mailing address. The Commission may only consider written comments that:

1. Are received on or before the close of record date, as published by the Secretary of State in the Arizona Administrative Register; and
2. Are submitted to the agency contact identified in the Department's notice of proposed rulemaking as published by the Secretary of State in the Arizona Administrative Register.
3. In addition, a person submitting a comment submitted on behalf of a group or organization shall include a statement that the comment represents the official position of the group or organization. A comment submitted on behalf of a group or organization that does not contain this statement shall be considered the comment of the person submitting the comment, and not that of the group or organization.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-603 renumbered to R12-4-604; new Section R12-4-603 renumbered from R12-4-602 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-604. Oral Proceedings Before the Commission

A. The Commission may allow an oral proceeding on any matter on the Commission's agenda. At an oral proceeding, the Commission Chair:

1. Is responsible for conducting the proceeding.
2. May administer an oath to a witness before receiving testimony.
3. May order the removal of any person who is disrupting a proceeding.
4. May limit the number of presentations or the time for testimony regarding a particular issue.

B. A person desiring to speak at an oral proceeding shall first request permission to speak from the Commission Chair.

C. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.

D. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking.

E. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-604 renumbered to R12-4-605; new Section R12-4-604 renumbered from R12-4-603 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-605. Ex Parte Communication

A. A party shall not communicate, either directly or indirectly, with a Commissioner about any substantive issue in a pending contested case or appealable agency action, unless:

1. All parties are present;
2. The communication occurs during the scheduled proceeding, where an absent party failed to appear after proper notice; or
3. It is by written motion with a copy provided to all parties.

B. A Commissioner who receives an ex parte communication shall place on the public record of the proceeding:

1. A copy of the written communication;
2. A summary of the oral communication; and
3. The Commissioner's response to any such ex parte communication.

C. The provisions of this Section apply from the date that a notice of hearing for a contested case or an appealable agency action is served on the parties.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-605 renumbered to R12-4-606; new Section R12-4-605 renumbered from R12-4-604 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-606. Standards for Revocation, Suspension, or Denial

of a License

A. Under A.R.S. § 17-340, when the Department makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for a person convicted of any of the following offenses:
1. Killing or wounding a big game animal during a closed season.
2. Possessing a big game animal taken during a closed season.
3. Destroying, injuring, or molesting livestock while hunting, fishing, or trapping.
4. Damaging or destroying personal property, growing crops, notices or signboards, or other improvements while hunting, fishing, or trapping.
5. Bartering, selling, or offering to sell unlawfully taken wildlife or wildlife parts.
6. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person.
7. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
8. Knowingly allowing another person to use the person's big game tag, except as provided under A.R.S. § 17-332(D).
9. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
10. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
11. Unlawfully using aircraft to take, assist in taking, harass, chase, drive, locate, or assist in locating wildlife in violation of A.R.S. § 17-340(A)(8).
12. Unlawfully taking or possessing big game.
13. Unlawfully taking or possessing small game or fish.
14. Unlawfully taking or possessing wildlife species.
15. Unlawful take of any bird or the removal of its nest or eggs.
16. Littering a public hunting or fishing area while taking wildlife.
17. Waste of edible portions of a game species under A.R.S. § 17-309, in violation of A.R.S. § 17-309(A)(5).
18. Any violation for which a license can be revoked under A.R.S. § 17-340.
19. Any violation of A.R.S. § 17-306.

B. Under A.R.S. §§ 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, when the Department makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, license dealers license, or special license (as defined under R12-4-401) in any case where license revocation is authorized by law.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-606 renumbered to R12-4-607; new Section R12-4-606 renumbered from R12-4-605 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-236, 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364. The Director may also commence a proceeding for the Commission to impose a civil penalty under A.R.S. § 17-314.

B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. In a proceeding conducted under A.R.S. § 17-340, a respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to impose a civil penalty or order a civil action for the recovery of wildlife parts.

C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard shall be provided, unless a rehearing or review is granted under R12-4-608. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing. The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.

D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. The Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.

E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any Commission hearing. No less than 10 calendar days before the hearing, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing. The Commission Chair has the authority to issue the subpoenas.
1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission Chair.
2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).

F. The Commission may vote to use the services of the office of administrative hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license and to make a recommendation to the Commission, which shall review and accept, reject or modify the recommendation and issue its decision in an open meeting. When the Department receives a recommendation from the administrative law judge at least 30 days prior to the next regularly scheduled Commission meeting, the Department shall place the recommendation on the agenda for that meeting. A recommendation from the administrative law judge received after this time shall be considered at the next regularly scheduled open meeting.

G. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the

Commission's order revoking a license, the license is revoked after all appeals have been exhausted. A denial of the right to obtain a license is effective for a period determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

H. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been exhausted. The suspension of a license is effective for a period determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-607 renumbered to R12-4-608; new Section R12-4-607 renumbered from R12-4-606 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-608. Rehearing or Review of Commission Decisions

A. A party shall exhaust the party's administrative remedies by filing a motion for rehearing or review as provided in this Section. Failure to file a motion for rehearing or review within 30 days of service of the Commission's decision has the effect of prohibiting the party from seeking judicial review of the Commission's decision.

B. A party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review of a Commission decision, specifying the grounds upon which the motion is based. The motion for rehearing or review shall be filed within 30 calendar days after service of the Commission's decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business.

C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Commission may require that the parties file supplemental memoranda on any issue raised in a motion or response, and allow for oral argument.

D. The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the proceeding; or
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Commission may either deny the motion for rehearing or review or grant a rehearing or review for any of the reasons listed under subsection (E). The Commission's order granting a rehearing or review shall specify the grounds for the order, and any rehearing shall cover only those grounds upon which the rehearing or review was granted.

F. After giving the party notice and an opportunity to be heard, the Commission may grant a motion for a rehearing or review for a reason not stated in the motion.

G. Within the time-frame for filing the motion for rehearing or review, the Commission may grant a rehearing or review on its own initiative for any reason for which the Commission may have granted relief on motion of a party.

H. When the Commission grants a rehearing or review, the Commission shall hold the rehearing or review at its next regularly scheduled meeting or within 90 days of issuance of the order granting the rehearing or review. With the consent of the parties, the Commission may proceed to conduct the rehearing or review in the same meeting in which the Commission granted the rehearing or review.

I. The Commission may take additional testimony, amend findings of fact and conclusions of law, and affirm, modify or reverse the original decision.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1). New Section R12-4-608 renumbered from R12-4-607 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-609. Commission Orders

A. Except as provided under subsection (B):

1. At least 14 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall:
   a. Post a public meeting notice and agenda in accordance with A.R.S. § 38-431.02; and
   b. Issue a public notice of the recommended Commission Order in print and electronic media.
2. The Department shall ensure the public meeting notice and agenda includes:
   a. The date, time, and location of the Commission meeting where the Commission Order will be considered;
   b. A statement that the public may attend and present written comments at or before the meeting; and
   c. A statement that a copy of the proposed Commission Order shall be made available to the public 10 calendar days before the meeting. Copies are available for public inspection on the Department's website and at Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa.
3. The Commission may make changes to the recommended Commission Order at the Commission meeting.

B. The requirements of subsection (A) do not apply to a Commission Order that establishes:
1. A supplemental hunt as authorized under R12-4-115;
2. A special season for persons who possess a special license tag issued under A.R.S. § 17-346 and R12-4-120, and
3. A special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent as established under R12-4-317(C).

C. The Department shall publish the content of all Commission orders and make them available to the public free of charge.

Historical Note
Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

A. A person requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110, or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.

B. A petitioner shall not address more than one contiguous closure request in a petition.

C. A petitioner submitting a petition that addresses the same contiguous closure request previously considered and denied by the Commission shall provide an additional written statement that includes rationale not previously considered by the Commission.

D. A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:
1. Petitioner identification:
   a. When the petitioner is the leaseholder of the area proposed for closure:
      i. Name of person;
      ii. Lease number;
      iii. Physical and mailing address, if different from the physical address;
      iv. Contact telephone number; and
      v. Email, when available;
   b. When the petitioner is anyone other than the leaseholder of the area proposed for closure:
      i. Name of person;
      ii. Lease number;
      iii. Physical and mailing address, if different from the physical address;
      iv. Contact telephone number;
      v. Email, when available; and
      vi. Name of each group or organization or organizations that the petitioner represents; or
   c. When the petitioner is a public agency:
      i. Name of person;
      ii. Name of agency;
      iii. Petitioner's title;
      iv. Lease number;
      v. Agency's physical and mailing address, if different from the physical address;
      vi. Contact telephone number; and
      vii. Email, when available;
2. Type of closure requested:
   a. Hunting,
   b. Fishing,
   c. Trapping, or
   d. Operation of motor vehicles.
3. Reason for petition:
   a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
   b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
   c. Each person or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
   d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of written comments received by the petitioning agency; and
   e. A proposed alternate access route, under R12-4-110.
4. A concise map identifying the specific location of the proposed closure;
5. Petitioner's signature;
6. Date on which the petition was signed; and
7. Any other information required by the Department.

E. The Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section within 15 business days after receiving the petition.
1. If the petition meets these requirements, and provided the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (F), shall place the petition on the agenda for the Commission's next regularly scheduled open meeting and provide written notice to the petitioner of the meeting date.
2. If a petition does not comply with the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section:
   a. The Department shall return the petition to the petitioner, and
   b. Indicate in writing why the petition does not comply with this Section.
3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.

F. When the Department receives a petition not less than 60 calendar days before a regularly scheduled Commission meeting, the Department shall place the petition on the agenda for that meeting. A petition received after this time will be considered at the next regularly scheduled open meeting.

G. The petitioner may:

1. Present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-604.
2. Withdraw the petition or request a continuance to a later regularly scheduled open meeting at any time.

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

A. A person may request a hearing before the Commission when an administrative remedy does not exist under statute, rule, or policy by submitting a petition as prescribed by this Section.

B. A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:

1. Petitioner identification:
   a. When the petitioner is a private person:
      i. Name of person;
      ii. Physical and mailing address, if different from the physical address;
      iii. Contact telephone number; and
      iv. Email, when available;
   b. When the petitioner is a private group or organization:
      i. Name of the person designated as the contact for the group or organization;
      ii. Physical and mailing address, if different from the physical address;
      iii. Contact telephone number;
      iv. Email, when available; or
   c. When the petitioner is a public agency:
      i. Name of person,
      ii. Name of agency,
      iii. Petitioner's title,
      iv. Agency's physical and mailing address, if different from the physical address,
      v. Contact telephone number, and
      vi. Email, when available;
2. Statement of Facts and Issues:
   a. Description of issue to be resolved, and
   b. Any facts relevant to resolving the issue;
3. Specific proposed remedy;
4. Petitioner's signature;
5. Date on which the petition was signed; and
6. Any other information required by the Department.

C. If a petition does not comply with this Section, the Department shall:

1. Return the petition to the petitioner, and
2. Indicate in writing why the petition does not comply with this Section.

D. After the Department receives a petition that complies with this Section, the Department shall place the petition on the agenda of a regularly scheduled Commission meeting.

E. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.

F. This Section does not apply to the following:

1. An action related to a license revocation, suspension, denial, or civil penalty;
2. An unsuccessful hunt permit-tag draw application that did not involve an error on the part of the Department; or
3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

"Administrative subunit" means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

Administrative department, but not an entire city government;

Field office or project office, but not an entire agency; or

School, but not an entire school district.

"Eligible applicant" means any public agency, non-governmental organization, or nonprofit organization that meets the applicable requirements of this Article.

"Facilities" means any structure or site improvements.

"Fund" means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

"Grant agreement" means a document that details the terms and conditions of a grant project.

"Grant effective date" means the date the Department Director signs the Grant Agreement.

"In-kind" means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a public employee's salary, volunteer time, materials, supplies, space, or other donated goods and services.

"Participant" means an eligible applicant who has been awarded a grant from the Heritage Fund.

"Project" means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

"Project period" means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

"Public agency" means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties,

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.

2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.

3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.

4. Be responsible for the enforcement of laws for the protection of wildlife.

5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.

8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.

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

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.

2. Establish game management units or refuges for the preservation and management of wildlife.

3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.

4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.

5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.

6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; refunds; period of validity; definitions

A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission may limit the number or use of licenses that are issued to nonresidents or permits that are issued to nonresidents and that are not issued in a random drawing. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:

1. Support the finding of a specifically described extraordinary circumstance.

2. Adopt the increased number of nonresident permits for the hunt.

B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.

C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:

1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:

(a) A minor child who has a life-threatening medical condition or a permanent physical disability.

(b) A minor child whose parent was killed in action while serving in the armed forces of the United States.

(c) A minor child whose parent was killed in the course and scope of employment as a peace officer.

(d) A minor child whose parent was killed in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department.

(e) A veteran of the armed forces of the United States who has a service-connected disability.

2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:

(a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.

(b) The minor child must possess a valid hunting license.

(c) Any big game that is taken counts toward the minor child's bag limit.

E. A minor child who uses a big game permit or tag pursuant to subsection D of this section and is under fourteen years of age must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.

F. Refunds may not be made for the purchase of a license or permit, except that the commission may prescribe a manner of refunding the cost of a big game permit or tag to the following individuals:

1. An active duty member of the armed forces of the United States who is ordered to leave this state during the time period in which the big game permit or tag is valid for the taking of wildlife.

2. A peace officer who is assigned to special duty during the time period in which the big game permit or tag is valid for the taking of wildlife.

3. A professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department and who is assigned to special duty during the time period in which the big game permit or tag is valid for the taking of wildlife.

G. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

H. For the purposes of this section:

1. "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.

2. "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to minor children with life threatening medical conditions or with physical disabilities, minor children whose parents were killed in action while serving in the armed forces of the United States or in the course and scope of employment as peace officers or professional firefighters or to veterans with disabilities.

17-333. License classifications; fees; reduced fee and complimentary licenses; annual report; review

A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.

B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.

C. The commission may reduce the fees for licenses and issue complimentary licenses, including the following:

1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.

2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.

3. A license for a reduced fee of up to twenty-five percent less than the full license fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.

4. A license for a reduced fee that is one-half of the full license fee to a person who has been a resident of this state for one year or more immediately before applying for the license and who submits satisfactory proof to the department that the person is a veteran and a bona fide purple heart medal recipient.

5. A youth license for a reduced fee to a resident of this state who is either:

(a) A member of the boy scouts of America and who has attained the rank of eagle scout.

(b) A member of the girl scouts of the USA and who has received the gold award.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.

E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

41-1080.01. Licensing fees; waiver; annual report; definitions

A. Except for an individual who applies for a license pursuant to title 36, chapter 4, article 10 or chapter 28.1, an agency shall waive any fee charged for an initial license for any of the following individuals if the individual is applying for that specific license in this state for the first time:

1. Any individual applicant whose family income does not exceed two hundred percent of the federal poverty guidelines.

2. Any active duty military service member's spouse.

3. Any honorably discharged veteran who has been discharged not more than two years before application.

B. On or before March 1 of each year, the department of administration shall report to the president of the senate, the speaker of the house of representatives, the joint legislative budget committee and the governor's office of strategic planning and budgeting the total number of waived licensing fees by each agency. The report shall specify for which purpose the fee was waived pursuant to this section.

C. For the purposes of this section, "agency" and "license" have the same meanings prescribed in section 41-1080.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.

2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.

3. "Adversely affected party" means:

(a) An individual who both:

(i) Provides evidence of an actual injury or economic damage that the individual has suffered or will suffer as a direct result of the action and not due to being a competitor or a general taxpayer.

(ii) Timely submits comments on the license application that include, with sufficient specificity, the questions of law, if applicable, that are the basis for the appeal.

(b) A group or association that identifies, by name and physical address in the notice of appeal, a member of the group or association who would be an adversely affected party in the individual's own right.

4. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party, including the administrative completeness of an application other than an application submitted to the department of water resources pursuant to title 45, and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

5. "Director" means the director of the office of administrative hearings.

6. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.

7. "Licensee":

(a) Means any individual or business entity that has been issued a license by a state agency to engage in any business or activity in this state and that is subject to a licensing decision.

(b) Includes any individual or business entity that has applied for such a license and that appeals a licensing decision pursuant to section 41-1092.08 or 41-1092.12.

8. "Office" means the office of administrative hearings.

9. "Self-supporting regulatory board" means any one of the following:

(a) The Arizona state board of accountancy.

(b) The barbering and cosmetology board.

(c) The board of behavioral health examiners.

(d) The Arizona state boxing and mixed martial arts commission.

(e) The state board of chiropractic examiners.

(f) The state board of dental examiners.

(g) The state board of funeral directors and embalmers.

(h) The Arizona game and fish commission.

(i) The board of homeopathic and integrated medicine examiners.

(j) The Arizona medical board.

(k) The naturopathic physicians medical board.

(l) The Arizona state board of nursing.

(m) The board of examiners of nursing care institution administrators and assisted living facility managers.

(n) The board of occupational therapy examiners.

(o) The state board of dispensing opticians.

(p) The state board of optometry.

(q) The Arizona board of osteopathic examiners in medicine and surgery.

(r) The Arizona peace officer standards and training board.

(s) The Arizona state board of pharmacy.

(t) The board of physical therapy.

(u) The state board of podiatry examiners.

(v) The state board for private postsecondary education.

(w) The state board of psychologist examiners.

(x) The board of respiratory care examiners.

(y) The state board of technical registration.

(z) The Arizona state veterinary medical examining board.

(aa) The acupuncture board of examiners.

(bb) The Arizona regulatory board of physician assistants.

(cc) The board of athletic training.

(dd) The board of massage therapy.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.

2. The board of executive clemency.

3. The industrial commission of Arizona.

4. The Arizona corporation commission.

5. The Arizona board of regents and institutions under its jurisdiction.

6. The state personnel board.

7. The department of juvenile corrections.

8. The department of transportation, except as provided in title 28, chapter 30, article 2.

9. The department of economic security except as provided in section 46-458.

10. The department of revenue regarding:

(a) Income tax or withholding tax.

(b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.

11. The board of tax appeals.

12. The state board of equalization.

13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:

(a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.

(b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.

14. The board of fingerprinting.

15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.

2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly

to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.

2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.

3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.

4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain at least the following:

1. A concise statement of the reasons for the appeal or request for a hearing.

2. Detailed and complete information regarding all questions of law, if applicable, that are the basis for the appeal.

3. All relevant supporting documentation.

4. How the party is an adversely affected party, if applicable.

C. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

D. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

E. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.

2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.

2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.

2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.

2. Consider amendments to any pleadings.

3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.

4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.

5. Schedule deadlines, hearing dates and locations if not previously set.

6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, the parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence. An agency-issued license that substantially complied with the applicable licensing requirements establishes a prima facie demonstration that the license meets all state and federal legal and technical requirements and the license would protect public health, welfare and the environment. An adversely affected party may rebut a prima facie demonstration by presenting clear and convincing evidence demonstrating that one or more provisions in the license violate a specifically applicable state or federal requirement. If an adversely affected party rebuts a prima facie demonstration, the applicant or licensee and the agency director may present additional evidence to support issuing the license.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. The administrative law judge may order subpoenas for the production of documents if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to

testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review; exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on all parties to the contested case or appealable agency action. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless one of the following applies:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

3. The licensee accepts the administrative law judge's decision concerning the appeal of a licensing decision as final pursuant to subsection I of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review. The license is not stayed during the appeal unless the affected party that has appealed applies to the superior court for an order requiring a stay pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health or the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

I. Except for a licensing decision concerning the administrative completeness of an application submitted by a licensee or a licensing decision where the agency, executive director, board or commission has determined that the licensee poses a threat of grave harm or danger to the public or has acted with complete disregard for the well-being of the public in engaging or in being allowed to engage in the licensee's regulated business activity, for any appealable agency action or contested case involving a licensing decision, the licensee may accept the decision not more than ten days after receiving the administrative law judge's written decision. If the licensee accepts the administrative law judge's written decision, the decision shall be certified as the final decision by the office. If the licensee does not accept the administrative law judge's written decision as the final decision in the matter, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify the decision. If the head of the agency, executive director, board or commission intends to reject or modify the decision, the parties shall meet and confer, within thirty days after receiving the administrative law judge's decision pursuant to subsection A of this section, concerning the agency's proposed modifications to the findings of fact and conclusions of law. Within twenty days after conferring, the head of the agency, executive director, board or commission shall file its final decision in accordance with subsection B of this section. This subsection does not apply to any appealable agency actions of the department of water resources pursuant to title 45.

J. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after receiving notification of the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. Notwithstanding any other law, a licensee may forgo an administrative appeal and seek judicial review of an agency's grant, denial, modification or revocation of a permit issued pursuant to title 49.

F. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:

(a) A decision.

(b) An inspection.

(c) An investigation.

(d) The entry of private property.

(e) A notice of violation.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Notice of violation" means a written notice issued after an inspection or investigation pursuant to section 41-1009 that documents and communicates an alleged deficiency meeting one or more of the criteria listed in

section 41-1009, subsection E.

5. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

TITLE 17. GAME AND FISH

CHAPTER 1. GENERAL PROVISIONS

ART. 1. DEFINITIONS AND AUTHORITY OF THE STATE

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who meets any of the following:
    (a) Advertises for guiding services.
    (b) Holds himself out to the public for hire as a guide.
    (c) Is employed by a commercial enterprise as a guide.
    (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
    (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United

States or an alien who is not a resident.

15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
    (a) A member of the armed forces of the United States on active duty and who is stationed in:
        (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
        (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
    (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
    (c) A youth who resides with and is under the guardianship of a person who is a resident.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.
21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or preserving any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. "Aquatic wildlife" means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. "Big game" means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
3. "Fur-bearing animals" means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
4. "Game fish" means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
5. "Game mammals" means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.

6. "Migratory game birds" means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
7. "Nongame animals" means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
8. "Nongame birds" means all birds except upland game birds and migratory game birds.
9. "Nongame fish" means all the species of fish except game fish.
10. "Predatory animals" means foxes, skunks, coyotes and bobcats.
11. "Raptors" means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
12. "Small game" means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
13. "Trout" means all species of the family salmonidae, including grayling.
14. "Upland game birds" means quail, partridge, grouse and pheasants.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule

deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,

Set the number of permits available for limited hunts, or

Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

"Day-long" means the 24-hour period from one midnight to the following midnight.

"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.

"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

"Handgun" means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.

"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.

"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in

taking aquatic wildlife under R12-4-317.

"Management unit" means an area established by the Commission for management purposes.

"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

"Nonprofit organization" means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.

"Person" has the meaning as provided under A.R.S. § 1-215.

"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

"Pursue" means to chase, tree, corner or hold wildlife at bay.

"Pursuit-only" means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

"Pursuit-only permit" means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

"Validation code" means the unique code provided by the Department and associated with an electronic tag.

"Waterdog" means the larval or metamorphosing stage of a salamander.

"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.

"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.

"Buck pronghorn" means a male pronghorn.

"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during

an adult cow bison hunt.

"Bull elk" means an antlered elk.

"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. § 17-231(A)(1)

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (A) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). 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 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022; when amended the Commission inadvertently removed the definitions of "Arizona Conservation Education" and "Arizona Hunter Education." These definitions are included as originally published (Supp. 21-4).

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions

The following definitions apply to this Article unless otherwise specified:

"Appealable agency action" has the same meaning as provided under A.R.S. § 41-1092.

"Business day" means any day other than a furlough day, Saturday, Sunday, or holiday.

"Commission Chair" means the person who presides over the Arizona Game and Fish Commission.

"Contested case" has the same meaning as provided under A.R.S. § 41-1001.

"Ex parte communication" means any oral or written communication with a Commissioner by a party concerning a substantive issue in a contested proceeding that is not part of the public record.

"Party" has the same meaning as provided under A.R.S. § 41-1001.

"Respondent" means the person named as the respondent in a notice of hearing issued by the Department.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1), 41-1001, and 41-1092

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Section R12-4-601 renumbered to R12-4-602; new Section R12-4-601 made by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

BOARD OF PHARMACY
Title 4, Chapter 23

Amend: R4-23-204, R4-23-407.2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 8, 2023

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

FROM: Council Staff

DATE: **July 5, 2023**

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23

Amend: R4-23-204, R4-23-407.2

Summary:

This regular rulemaking from the Arizona Board of Pharmacy seeks to amend one (1) rule and add one (1) section to Title 4, Chapter 23 related to dispensing a self administered hormonal contraceptive. The purpose of the Board is to promote the safe and professional practice of pharmacy and establish the standards of practice for the profession of pharmacy in this state.

Laws 2021, Chapter 429, authorizes a pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription order to specific individuals. The standing order will specify conditions under which a pharmacist may dispense a hormonal contraceptive. When a pharmacist dispenses under a standing prescription order, the name of the health professional who issued the standing prescription order is recorded in the patient's record and written on the medication dispensed.The statute requires the Board, in conjunction with the Department of Health Services and in consultation with a national professional organization specializing in obstetrics and gynecology, to make rules establishing standard procedures for pharmacists to follow when dispensing the self-administered hormonal contraceptives.

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?

The Board indicates that 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?

The Board indicates that they referenced the following studies when the rules were reviewed: (1) "Unintended Pregnancies" by the CDC; "Pharmacists Prescribing: Hormonal Contraceptives" by the National Alliance of State Pharmacy Associates (NASPA); (2) "Association of Pharmacist Prescription with Dispensed Duration of Hormonal Contraception" by Maria I. Rodriguez, MD, MPH[1]; Alison B. Edelman, MD, MPH[1]; Megan Skye, MPH[1]; et al; (3) "Pharmacists Prescribing Hormonal Contraceptives: A Status Update" by Christine Chim, PharmD, BCACP and Pallak Sharma, PharmD Candidate 2022; and (4) "Access to Community Pharmacies: A Nationwide Geographic Information Systems Cross-Sectional Analysis" found on the Journal of American Pharmacists Association.

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

The rulemaking impacts pharmacists who will now be able to dispense self-administered hormonal contraceptives under a standing prescription order rather than patient-specific prescription orders. Pharmacists may see economic benefit by seeking reimbursement for time spent consulting individuals and from the hormonal contraceptive product. Pharmacists will see an economic cost due to recordkeeping requirements and hours spent in continuing education. The primary economic impact falls on individuals who can now receive hormonal contraceptives under a standing prescription order and will not need to repeatedly pay to see a primary care physician.

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 the standard procedures established in the rulemaking are the least intrusive and least costly procedures possible.

6. What are the economic impacts on stakeholders?

Licensed pharmacists who choose to dispense hormonal contraceptives under a standing prescription will incur the cost of obtaining and providing information about the drug, as well as the cost of maintaining records and continuing education related to self-administered hormonal contraceptives biennially. The rulemaking has no impact on public and private employment, private persons and consumers, and state revenues.

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

The Board indicates that the final rules are not 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 Board indicates that they adequately addressed the comments in the proposed rules. The Board received a comment from the American College of Obstetricians and Gynecologists with concerns that the term "prescribe" was not consistent with statute. Upon recommendation the Board changed the term to "dispense" which is found in statute. In addition, Albertsons Companies Inc. suggested additional flexibility by changing "nationally recognized self-screening risk assessment" to "self-screening risk assessment based on nationally recognized guidelines." The Board also made this change.

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

The Board indicates that the rules do not require a general permit pursuant to ARS § 41-1037 as the Pharmacists are issued a 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 Board indicates that although there are a number of federal laws regarding drugs, no federal law applies to this specific subject matter of this rule.

11. Conclusion

This regular rulemaking from the Arizona Board of Pharmacy seeks to amend 1 rule and add one section to Title 4, Chapter 23. As mentioned above, the Board is amending the rules to comply with Laws 20212, Chapter 429 and allow properly trained pharmacists to dispense a self-administered hormonal contraceptive under a standing prescription order to specific individuals.

The Board is requesting an immediate effective date as allowed under A.R.S. § 41-1032(A)(1) and (A)(4) because the rules preserve the public peace, health, or safety and they serve to provide a benefit to the public and a penalty is not associated with a violation of the rule. Council staff recommends approval of this rulemaking.

Arizona State Board of Pharmacy

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Mailing Address: P.O. Box 18520, Phoenix, AZ 85005
p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

May19, 2023

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 23. Board of Pharmacy

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 May16, 2023, 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).

   The exemption for rulemaking required under A.R.S. § 41-1039 was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated March 3, 2023. Approval to submit the rulemaking to the Council was provided by Ms. Dedolph, in an e-mail dated May 18, 2023.

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a 5YRR.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

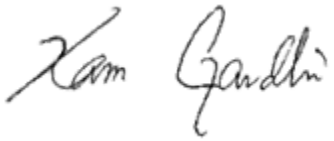
E. Immediate effective date: An immediate effective date is respectfully requested under A.R.S. § 41-1032(A)(1) and (A)(4) because the rules will have a significant positive effect on public health and provide an economic and social benefit to the public with no penalty associated with violation of the rules..

F. Certification regarding studies: I certify the preamble accurately discloses the studies the Board reviewed in its evaluation of or justification for the rules 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;
   4. Public comments

Sincerely,



Dr. Kamlesh Gandhi, PharmD, RPh
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-23-204	Amend
R4-23-407.2	New Section

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. § 32-1904(A)(1)

Implementing statute: A.R.S. §§ 32-1936 and 32-1979.01

3. The effective date for the rules:

The Board respectfully requests under A.R.S. § 41-1032(A)(1) and (A)(4) that the rules in this rule package become effective when 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):

The Board respectfully requests under A.R.S. § 41-1032(A)(1) and (A)(4) that the rules become effective when filed with the Office of the Secretary of State. The rules will have significant positive effect on public health by making hormonal contraceptives more readily available. Being able to obtain hormonal contraceptives easily is important to consistent use and prevention of unintended pregnancies. This provides an economic and social benefit to the public and there is no penalty associated with violation of the rules. The need for an immediate effective date was not caused by delay or inaction by the Board, which was required by statute to work cooperatively with DHS and consult with a national professional organization specializing in obstetrics and gynecology. Identifying and seeking consultation with The American College of Obstetricians and Gynecologists and coordinating with DHS required time because all entities involved were focused primarily on addressing the consequences of the COVID19 pandemic.

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: 29 A.A.R. 833, April 7, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 829, April 7, 2023

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

Name: Kamlesh Gandhi

Address: 1110 W. Washington Street, Suite 260
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.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:

Under Laws 2021, Chapter 429, the legislature enacted A.R.S. § 32-1979.01 authorizing a pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription order to specified individuals. The statute required the Board, in conjunction with the Department of Health Services and in consultation with a national professional organization specializing in obstetrics and gynecology, to make rules establishing standard procedures for pharmacists to follow when dispensing the self-administered hormonal contraceptives. This rulemaking establishes the required standard procedures.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. As required under A.R.S. § 41-1039(B), approval to submit these proposed rules to the Council was provided by Ms. Dedolph, in an e-mail dated May 18, 2023.

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:

Access to contraception influences public health and well-being. The most widely used form of contraception in the U.S. is the pill. However, in spite of the availability of contraceptive methods, more than 40 percent of U.S. pregnancies are unintended. Unintended pregnancies occur disproportionately among women who are young, less educated, poorer, and of a racial or ethnic minority. Most unintended pregnancies result from not using contraception or from not using it consistently or correctly. (See https://www.cdc.gov/reproductivehealth/contraception/unintendedpregnancy/index.htm) Clearly, many people could benefit from having access to contraceptives more easily available. A.R.S. § 32-1979.01 was a step in that direction.

In a September 1, 2022, report, the National Alliance of State Pharmacy Associations indicated that Arizona is one of 22 states with statutes or rules that allow pharmacists to prescribe hormonal contraceptives (See https://naspa.us/resource/contraceptives). The other states are Arkansas, California, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Maryland, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Utah, Vermont, Virginia, Washington, and West Virginia.

A report written by Maria I. Rodriguez and published in the JAMA Network Open (See https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766072) found that women receiving hormonal contraceptives from a pharmacist were those most at risk of an unintended pregnancy--younger, less educated, and more likely to be uninsured than women seeing a clinician. Unlike clinicians, pharmacists were more likely to prescribe a 6-month or greater supply of contraceptives, which improved contraceptive continuation by preventing breaks in coverage. Pharmacists have an advantage in making contraceptives more widely available due to the number of pharmacist locations, extended hours compared with clinics, and no appointment requirements. (See https://www.uspharmacist.com/article/pharmacists-prescribing-hormonal-contraceptives-a-status-update). Across the U.S., 48 percent of the population lives within one mile of a pharmacy. More than 96 percent of the population lives within 10 miles of a pharmacy. (See https://www.japha.org/article/S1544-3191(22)00233-3/fulltext#:~:text=Across%20the%20overall%20U.S.%20population,distance%20greater%20than%2010%20miles).

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

Not applicable

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

The rulemaking will have economic impact for pharmacists who will now be able to dispense self-administered hormonal contraceptives under a standing prescription order rather than patient-specific prescription orders. There will be economic benefit for pharmacists who may seek reimbursement for both the consulting they provide to individuals to whom they dispense and the hormonal contraceptive product. There will also be economic impact for pharmacists resulting from requirements regarding recordkeeping and redirecting some hours of continuing education. The primary economic impact, which results from statute rather than rule, will be on individuals who are able to obtain self-administered hormonal contraceptives under the standing prescription order rather than repeatedly paying to see a primary care physician to obtain a patient-specific prescription order.

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

Jessica Rainbow of the American College of Obstetricians and Gynecologists contacted the governor's office to call attention to a drafting error in the Notice of Proposed Rulemaking. In the NPR, the term "prescribe" was used rather than "dispense" to describe actions by a licensed pharmacist. This is inconsistent with statute (see A.R.S. § 32-1979.01(A)) and with the statutorily defined practice of pharmacy (See A.R.S. § 32-1901(79)).

The change from using "prescribe" in the NPR to using "dispense" in this NFR is not a substantial change under the terms of A.R.S. § 41-1025(B). Both the subject matter and persons affected by the rule remain the same. The effect also remains the same because a licensed pharmacist or pharmacy permittee would have known prescribing is outside the practice of pharmacy.

Rob Geddes, on behalf of Albertsons Companies, Inc., suggested additional flexibility by changing "nationally recognized self-screening risk assessment" to "self-screening risk assessment based on nationally recognized guidelines." The Board made the suggested

change in two places in R4-23-407.2. This change is not substantial under the terms of A.R.S. § 41-1025(B).

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

Jessica Rainbow of the American College of Obstetricians and Gynecologists contacted the governor's office to call attention to a drafting error in the Notice of Proposed Rulemaking. In the NPR, the term "prescribe" was used rather than "dispense" to describe actions by a licensed pharmacist. In a follow-up letter, Dr. Laura Mercer of the American College of Obstetricians and Gynecologist called the Board's attention to the same drafting error. This is inconsistent with statute (see A.R.S. § 32-1979.01(A)) and with the statutorily defined practice of pharmacy (See A.R.S. § 32-1901(79)). The Board thanks Ms. Rainbow and Dr. Mercer for their careful review of the NPR and changed "prescribe" to "dispense" throughout the rulemaking when used to refer to actions by a licensed pharmacist.

Rob Geddes, on behalf of Albertsons Companies, Inc., commented in support of the rulemaking but suggested additional flexibility by changing "nationally recognized self-screening risk assessment" to "self-screening risk assessment based on nationally recognized guidelines." The Board made the suggested change in two places in R4-23-407.2.

The Board received comments supporting the rulemaking from the Arizona Pharmacy Association, Planned Parenthood Arizona, and the March of Dimes.

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. § 32-1979.01(C) requires the Board to make rules in conjunction with the Department of Health Services and in consultation with a national professional organization specializing in obstetrics and gynecology. This was done. The national profession organization was The American College of Obstetricians and Gynecologists.

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:

Pharmacists are licensed by the Board however no rule in this rulemaking addresses licensure.

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

There are numerous federal laws regarding drugs but none is applicable to the specific subject matter 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:

Neither 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 23. BOARD OF PHARMACY

ARTICLE 2. PHARMACIST LICENSURE

Section

R4-23-204. Continuing Education Requirements

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-407.2. Dispensing a Self-administered Hormonal Contraceptive

ARTICLE 2. PHARMACIST LICENSURE

R4-23-204. Continuing Education Requirements

A. Under A.R.S. § 32-1936, continuing professional pharmacy education is mandatory for all licensees.

1. General continuing education requirement. In accordance with A.R.S. § 32-1925(F), the Board shall not renew a license unless the licensee has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 CEUs) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110.
2. Special continuing education requirement. The Board shall not renew a license unless:
   a. A licensee certified under R4-23-411 to administer immunizations, vaccines, and emergency medications has participated in at least two contact hours of continuing education activity related to administering immunizations, vaccines, and emergency medications; ~~and~~
   b. A licensee authorized to dispense controlled substances has participated in at least three contact hours of opioid-related, substance use disorder-related, or addiction-related continuing education activity; and
   c. A licensee who dispenses self-administered hormonal contraceptives under a standing prescription order has participated in at least three contact hours of continuing education activity related to self-administered hormonal contraceptives.
3. A pharmacist is exempt from the continuing education requirement in subsections (A)(1) and (2) between the time of initial licensure and first renewal.

B. Acceptance of continuing education units CEUs. The Board shall:

1. Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. Accept CEUs accrued only during the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attender of the continuing education activity; and

5. Not accept as CEUs the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.

C. Continuing education records and reporting CEUs. A pharmacist shall:

1. Maintain continuing education records that:
   a. Verify the continuing education activities the pharmacist participated in during the preceding five years; and
   b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the pharmacist participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

D. The Board may revoke, suspend, or place on probation the license of a pharmacist who fails to comply with continuing education participation, recording, or reporting requirements of this Section.

E. A pharmacist who is aggrieved by any decision of the Board or its administrative staff concerning continuing education units may request a hearing before the Board.

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-407.2. Dispensing a Self-administered Hormonal Contraceptive

A. Standard procedures. The first time a pharmacist dispenses a self-administered hormonal contraceptive under a standing prescription order, as authorized under A.R.S. § 32-1979.01, to a patient, the pharmacist shall:

1. Determine the patient is at least 18 years old;
2. Obtain from the patient a completed self-screening risk assessment based on nationally recognized guidelines;
3. Provide the patient with written information prepared by the manufacturer of the hormonal contraceptive; and
4. Provide the following information orally to the patient:
   a. How hormonal contraception works;

b. When and how to take the self-administered hormonal contraceptive;

c. Risks associated with taking a self-administered hormonal contraceptive; and

d. When to seek medical assistance while taking a self-administered hormonal contraceptive.

B. A pharmacist who dispenses a self-administered hormonal contraceptive under a standing prescription order shall have a patient complete the self-screening risk assessment based on nationally recognized guidelines, required under subsection (A)(2), annually.

C. A pharmacist who dispenses a self-administered hormonal contraceptive under a standing prescription order shall maintain evidence of the patient's age at the time of initial dispensing and the completed nationally recognized self-screening risk assessment for at least seven years. The pharmacist shall ensure this information is readily retrievable and available to the Board on request.

D. When dispensing a self-administered hormonal contraceptive under a standing prescription order, a pharmacist shall comply with R4-23-407 except subsection (A)(1)(b), R4-23-408, and R4-23-409.

E. During each biennial renewal period, a pharmacist who dispenses self-administered hormonal contraceptives under a standing prescription order shall complete the three contact hours of continuing education specified under R4-23-204(A)(2)(c).

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

Under Laws 2021, Chapter 429, the legislature enacted A.R.S. § 32-1979.01 authorizing a pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription order to specified individuals. The statute required the Board, in conjunction with the Department of Health Services and in consultation with a national professional organization specializing in obstetrics and gynecology, to make rules establishing standard procedures for pharmacists to follow when dispensing the self-administered hormonal contraceptives. This rulemaking establishes the required standard procedures.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. As required under A.R.S. § 41-1039(B), approval to submit these proposed rules to the Council was provided by Ms. Dedolph, in an e-mail dated May 18, 2023.

a. The conduct and its frequency of occurrence that the rule is designed to change:
   Until the rulemaking is completed, the Board will not be in compliance with statute (See A.R.S. § 32-1979.01) requiring the Board to make rules establishing standard procedures for pharmacists to follow when dispensing a self-administered hormonal contraceptive under a standing prescription order.
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 for the Board to delay establishing the required standard procedures. The delay may negatively impact the health and well-being of individuals who need ready access to hormonal contraceptives.

[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 will be in compliance with statute and licensed pharmacists will be able to dispense hormonal contraceptives under a standing prescription order by following the established standard procedures.

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

The rulemaking will have economic impact for pharmacists who will now be able to dispense self-administered hormonal contraceptives under a standing prescription order rather than patient-specific prescription orders. There will be economic benefit for pharmacists who may seek reimbursement for both the consulting they provide to individuals to whom they dispense and the hormonal contraceptive product. There will also be economic impact for pharmacists resulting from requirements regarding recordkeeping and redirecting some hours of continuing education. The primary economic impact, which results from statute rather than rule, will be on individuals who are able to obtain self-administered hormonal contraceptives under the standing prescription order rather than repeatedly paying to see a primary care physician to obtain a patient-specific prescription order.

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: Kamlesh Gandhi
Address: 1110 W. Washington Street, Suite 260
Phoenix, AZ 85007
Telephone: (602) 771-2740
Fax: (602) 771-2749
E-mail: kgandhi@azpharmacy.gov
Website: www.azpharmacy.gov

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

Licensed pharmacists and the Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking.

There are currently 6700 licensed pharmacists in Arizona. The Board expects the Department of Health Services will issue a standing order for the entire state. There may be other standing orders issued by a retail pharmacy chain for use by pharmacists employed by the chain or by county health departments. The standing order will specify conditions, such as those in statute, under which a pharmacist may dispense a hormonal contraceptive under the order. When a pharmacist dispenses under a standing prescription order, the name of the health professional who issued the standing prescription order is recorded in the patient's record and written on the medication dispensed.

Because there is no doctor-patient relationship when a hormonal contraceptive is dispensed under a standing prescription order, the standard procedures established in R4-23-407.2 require a licensed pharmacist to obtain certain information from and provide certain information to the patient seeking the hormonal contraceptive. This consultation will require the pharmacist's time. However, the pharmacist may be able to obtain payment for the consultation from the patient. As with any prescription order dispensed by the pharmacist, the pharmacist is required to maintain certain records. The standard procedures also require the pharmacist to complete three contact hours of continuing education related to self-administered hormonal contraceptives biennially. These are not additional hours of continuing education but rather, a redirection of hours currently required. As a result, the continuing education requirement should have minimal economic impact for the licensed pharmacist.

The Board incurred the cost of completing the rulemaking and will incur the cost of implementing it. The Board has the benefit of being in compliance with statute.

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's costs and benefits are described in item 4.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking. Some political subdivisions may issue standing prescription orders.

c. Costs and benefits to businesses directly affected by the rulemaking:
Licensed pharmacists are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:
The rulemaking has no impact on private or public employment.

7. Impact on small businesses[2]:

a. Identification of the small business subject to the rulemaking:
Licensed pharmacists who choose to dispense hormonal contraceptives under a standing prescription order are small businesses subject to this rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:
Under R4-23-407.2, a pharmacist who chooses to dispense hormonal contraceptives under a standing prescription order is required to obtain certain information from and provide certain information to the patient. As with all drugs dispensed, the pharmacist is also required to maintain records of the dispensing. The pharmacist is also required to obtain three contact hours of continuing education related to self-administered hormonal contraceptives biennially.

c. Description of methods that may be used to reduce the impact on small businesses:
Because all licensed pharmacists are small businesses, there is no way to reduce the impact and still achieve the statutory goal of making hormonal contraceptives readily available under a standing prescription order.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
Private persons and consumers are not directly affected by the rulemaking.

9. Probable effects on state revenues:
None

10. Less intrusive or less costly alternative methods considered:
The Board believes the standard procedures established in the rulemaking are the least intrusive and least costly procedures possible. No alternatives were considered.

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. 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 was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board,

Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

13. Open an investigation only if the identifying information regarding a complainant is provided or the information provided is sufficient to conduct an investigation.

14. Provide notice to an applicant, licensee or permittee using only the information provided to the board through the board's licensing database.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for modernization of pharmacy practice, experimentation or technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, email address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(b) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(c) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(d) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board may issue nondisciplinary civil penalties or delegate to the executive director the authority to issue nondisciplinary civil penalties. The nondisciplinary civil penalties shall be prescribed by the board in rule and issued using a board-approved form. If a licensee or permittee fails to pay a nondisciplinary civil penalty that the board has imposed on it, the board shall hold a hearing on the matter. In addition to any other nondisciplinary civil penalty adopted by the board, either of the following acts or omissions that is not an imminent threat to the public health and safety is subject to a nondisciplinary civil penalty:

1. An occurrence of either of the following:

(a) Failing to submit a remodel application before remodeling a permitted facility.

(b) Failing to notify the board of the relocation of a business.

2. The occurrence of any of the following violations or any of the violations adopted by the board in rule, with three or more violations being presented to the board as a complaint:

(a) The licensee or permittee fails to update the licensee's or permittee's online profile within ten days after a change in contact information, address, telephone number or email address.

(b) The licensee fails to update the licensee's online profile within ten days after a change in employment.

(c) The licensee fails to complete the required continuing education for a license renewal.

(d) The licensee fails to update the licensee's online profile to reflect a new pharmacist in charge within fourteen days after the position change.

(e) The permittee fails to update the permittee's online profile to reflect a new designated representative within ten days after the position change.

(f) The licensee or permittee fails to notify the board of a new criminal charge, arrest or conviction against the licensee or permittee in this state or any other jurisdiction.

(g) The licensee or permittee fails to notify the board of a disciplinary action taken against the licensee or permittee by another regulating agency in this state or any other jurisdiction.

(h) A licensee or permittee fails to renew a license or permit within sixty days after the license or permit expires. If more than sixty days have lapsed after the expiration of a license or permit, the licensee or permittee shall appear before the board.

(i) A new pharmacist in charge fails to conduct a controlled substance inventory within ten days after starting the position.

(j) A person fails to obtain a permit before shipping into this state anything that requires a permit pursuant to this chapter.

(k) Any other violations of statute or rule that the board or the board's designee deems appropriate for a nondisciplinary civil penalty.

E. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

F. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1936. Mandatory continuing professional pharmacy education

A. All pharmacists licensed in this state shall satisfactorily complete approved courses of continuing professional pharmacy education or continue their education by other means in accordance with rules adopted by the board before renewing a license.

B. The board by rule shall establish the form and content of courses for continuing professional pharmacy education and the number of hours required for renewal of a license.

32-1979.01. Self-administered hormonal contraceptives; requirements; rules; immunity; definition

A. A pharmacist may dispense a self-administered hormonal contraceptive to a patient who is at least eighteen years of age pursuant to a standing prescription drug order made in accordance with subsection B of this section and without any other patient-specific prescription drug order.

B. A prescriber who is licensed to prescribe a self-administered hormonal contraceptive, including a person acting in the prescriber's capacity as an employee of the department of health services or a county health department, may issue a standing prescription drug order authorizing the dispensing of a self-administered hormonal contraceptive. This subsection does not create a duty to act or standard of care for an employee of the department of health services to issue a standing order for a hormonal contraceptive.

C. The board, in conjunction with the department of health services and in consultation with a national professional organization specializing in obstetrics and gynecology, shall adopt rules to establish standard procedures for pharmacists to dispense self-administered hormonal contraceptives pursuant to this section. The standard procedures shall require a pharmacist to do both of the following:

1. Obtain a completed nationally recognized self-screening risk assessment from each patient before dispensing the self-administered hormonal contraceptive to the patient.

2. Provide the patient with information about the self-administered hormonal contraceptive that is dispensed to the patient.

D. A pharmacist or prescriber acting reasonably and in good faith in dispensing or prescribing a self-administered hormonal contraceptive pursuant to this section is not liable for any civil damages for acts or omissions resulting from dispensing that self-administered hormonal contraceptive.

E. All state and federal laws governing insurance coverage of contraceptive drugs, devices, products and services apply to self-administered hormonal contraceptives that are prescribed and dispensed pursuant to this section.

F. This section does not apply to a valid patient-specific prescription for a hormonal contraceptive that is issued by an authorized prescriber and dispensed by a pharmacist pursuant to that valid prescription.

G. For the purposes of this section:

1. "Primary care provider" means a physician who is licensed pursuant to chapter 13, 14 or 17 of this title, a nurse practitioner who is licensed pursuant to chapter 15 of this title or a physician assistant who is licensed pursuant to chapter 25 of this title.

2. "Self-administered hormonal contraceptive":

(a) Means a self-administered hormonal contraceptive that is approved by the United States food and drug administration to prevent pregnancy.

(b) Includes an oral hormonal contraceptive, a hormonal contraceptive vaginal ring and a hormonal contraceptive patch.

Arizona State Board of Pharmacy

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Members of GRRC,

1. Can a pharmacist dispense a hormonal contraceptive without a prescription?

   Pharmacists can only dispense a hormonal contraceptive pursuant to a standing order written by a prescriber that is licensed in this state.

2. What is a standing order?

   A standing order is a written protocol that authorizes designated members of the health care team, i.e. pharmacist, to complete certain clinical tasks without having to first obtain a physician order. Simply stated, a standing order acts like a prescription order without designating a specific patient.

3. Can all pharmacists dispense hormonal contraceptives pursuant to a standing order?

   No, a pharmacist must complete 3 hours continuing education related to hormonal contraceptives.

4. Can anyone go to the pharmacy and receive a hormonal contraceptive?

   A patient must fill out a self-assessment risk form for the pharmacist to review. A pharmacist will have to review the self-assessment risk form that was completed by the patient and exercise their professional/clinical judgment prior to dispensing a hormonal contraceptive.

5. Can a minor with a parent's consent receive a hormonal contraceptive from a pharmacist?

   No, a patient must be 18 years of age and shall provide proof of age prior to a pharmacist assessing that patient.

6. How many dispensations can a pharmacist provide a patient?

   A pharmacist will have to direct the patient to see their primary care provider pursuant to the guideline presented in their training and therefore there is a limited number of dispensations.

   A patient will need to have a wellness check by their primary care provider. The self-assessment risk form asks patient about their last visit and the training the pharmacist must complete will guide the pharmacist on how to address

Hormonal Contraceptive Self-Screening Questionnaire (form updated April 2023)

Name_____ Health Care Provider's Name _____ Date_____

Date of Birth_____ Age*_____ Weight_____ Do you have health insurance? Yes / No

What was the date of your last women's health clinical visit? _____

Any Allergies to Medications? *Yes / No* If yes, list them here: _____

Do you have a preferred method of birth control that you would like to use?

☐ A pill you take each day ☐ A patch that you change weekly ☐ Other (ring, injectable, implant, or IUD)

Background Information:

1	Do you think you might be pregnant now?	Yes □ No□
2	What was the first day of your last menstrual period?	___/___/___
3	Have you ever taken birth control pills, or used a birth control patch, ring, or injection? Have you previously had contraceptives prescribed to you by a pharmacist?	Yes □ No □ Yes □ No □
	Did you ever experience a bad reaction to using hormonal birth control?	Yes □ No □
	- If yes, what kind of reaction occurred?	_____
	Are you currently using any method of birth control including pills, or a birth control patch, ring or shot/injection?	Yes □ No □
	- If yes, which one do you use?	_____
4	Have you ever been told by a medical professional not to take hormones?	Yes □ No □
5	Do you smoke cigarettes?	Yes □ No □

Medical History:

6	Have you given birth within 21 days? If yes, how long ago?	Yes □ No □
7	Are you currently breastfeeding?	Yes □ No □
8	Do you have diabetes?	Yes □ No □
9	Do you get migraine headaches? If so, have you ever had the kind of headaches that start with warning signs or symptoms, such as flashes of light, blind spots, or tingling in your hand or face that comes and goes completely away before the headache starts?	Yes □ No □
10	Do you have high blood pressure, hypertension, or high cholesterol? (Please indicate yes, even if it is controlled by medication)	Yes □ No □
11	Have you ever had a heart attack or stroke, or been told you had any heart disease?	Yes □ No □
12	Have you ever had a blood clot?	Yes □ No □
13	Have you ever been told by a medical professional that you are at risk of developing a blood clot?	Yes □ No □
14	Have you had recent major surgery or are you planning to have surgery in the next 4 weeks?	Yes □ No □
15	Have you had bariatric surgery or stomach reduction surgery?	Yes □ No □
16	Do you have or have you ever had breast cancer?	Yes □ No □
17	Do you have or have you ever had hepatitis, liver disease, liver cancer, or gall bladder disease, or do you have jaundice (yellow skin or eyes)?	Yes □ No □
18	Do you have lupus, rheumatoid arthritis, or any blood disorders?	Yes □ No □
19	Do you take medication for seizures, tuberculosis (TB), fungal infections, or human immunodeficiency virus (HIV)?	Yes □ No □
	- If yes, list them here:	
20	Do you have any other medical problems or take any medications, including herbs or supplements?	Yes □ No □
	- If yes, list them here:	
21	Will you be immobile for a long period? (e.g. flying on a long airplane trip, etc.)	

Internal use only ☐ verified DOB* with valid photo ID ☐ BP Reading ____/_____

Pharmacist Name _____ Pharmacist Signature _____

☐ Drug Prescribed_____Rx# _____ -or- Patient Referred-circle reason(s) Sig: _____(Pharmacy Phone _____Address _____)

Notes: _____

STANDARD PROCEDURES ALGORITHM FOR ILLINOIS RPH DISPENSING OF CONTRACEPTIVES

1) Health and History Screen

Review Hormonal Contraceptive Self-Screening Questionnaire.
To evaluate health and history, refer to USMEC or Illinois MEC.

1 or 2 (green boxes) - Hormonal contraception is indicated, proceed to next step.
3 or 4 (red boxes) - Hormonal contraception is contraindicated --> Refer

Contraindicating Condition(s) → Refer

No Contraindicating Conditions

2) Pregnancy Screen

a. Did you have a baby less than 6 months ago, are you fully or nearly-fully breast feeding, *AND* have you had no menstrual period since the delivery?
b. Have you had a baby in the last 4 weeks?
c. Did you have a miscarriage or abortion in the last 7 days?
d. Did your last menstrual period start within the past 7 days?
e. Have you abstained from sexual intercourse since your last menstrual period or delivery?
f. Have you been using a reliable contraceptive method consistently and correctly?

If YES to AT LEAST ONE and is free of pregnancy symptoms, proceed to next step.

Possible Pregnancy → Refer

Patient is not pregnant

3) Medication Screen (Questionnaire #20)?

Caution: anticonvulsants, antiretrovirals, antimicrobials, barbiturates, herbs & supplements, including:

carbamazepine	lumacaftor/ivacaftor	primidone	*(*PLEASE ALWAYS REFER TO CURRENT MEC*)*
felbamate	oxcarbazepine	rifampin / rifabutin	
griseofulvin	phenobarbital	topiramate	
lamotrigine	phenytoin	fosamprenavir (when not combined with ritonavir)	

Contraindicating Medications → Refer

No Contraindicating Medications

4) Blood Pressure Screen:

Is blood pressure <140/90?
Note: RPH may choose to take a second reading, if initial is high.

BP >140/90 → Refer

BP < 140/90

5) Evaluate patient history, preference, and current therapy for selection of treatment.

Not currently on birth control

5a) Choose Contraception

Initiate contraception based on patient preferences, adherence, and history for new therapy

-Prescribe up to 12 months of desired contraception and dispense product (quantity based on professional judgment and patient preference)

Patient is currently on birth control

5b) Choose Contraception

Continue current form of hormonal contraception, if no change is necessary

-or-

Alter therapy based on patient concerns, such as side effects patient may be experiencing; or refer, if appropriate

-Prescribe up to 12 months of desired contraception and dispense product. (quantity based on professional judgment and patient preference)

6) Discuss Initiation Strategy for Initial Treatment/Change in Treatment (as applicable)

a) Counseling - Quick start - Instruct patient she can begin contraceptive today; use backup method for 7 days.
b) Counseling - Discuss the management and expectations of side effects (bleeding irregularities, etc.)
c) Counseling - Discuss adherence and expectations for follow-up visits

7) Discuss and Provide Referral / Visit Summary to patient

Encourage: Routine health screenings, STD prevention, and notification to care provider
If patient smokes, provide smoking cessation counseling; refer to Quitline

Summary Chart of U.S. Medical Eligibility Criteria for Contraceptive Use

Pages 1,2 ..... Color coded in the left column to match the corresponding question of the Illinois Hormonal Contraception Self-Screening Tool Questionnaire.
Pages 3,4..... Arranged alphabetically by disease state

Key:	
1	No restriction (method can be used)
2	Advantages generally outweigh theoretical or proven risks
3	Theoretical or proven risks usually outweigh the advantages
4	Unacceptable health risk (method not to be used)

/Updated April 2023 This summary sheet only contains a subset of the recommendations from the US MEC. For complete guidance, see: https://www.cdc.gov/reproductivehealth/contraception/mmwr/mec/summary.html

Corresponding to the order of the Illinois Hormonal Contraception Self Screening Tool Questionnaire:

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Age		Menarche to <40=1		Menarche to <18=1		Yes
		>40=2		18-45=1		Yes
				>45=1		Yes
Smoking	a) Age < 35	2		1		Yes
	b) Age ≥ 35, < 15 cigarettes/day	3		1		Yes
	c) Age > 35, >15 cigarettes/day	4		1		Yes
Pregnancy	(Not Eligible for contraception)	NA*		NA*		NA*
Postpartum (see also Breastfeeding)	a) < 21 days	4		1		Yes
	b) 21 days to 42 days:					
	(i) with other risk factors for VTE	3*		1		Yes
	(ii) without other risk factors for VTE	2		1		Yes
	c) > 42 days	1		1		Yes
Breastfeeding (see also Postpartum)	a) < 1 month postpartum	3*		2*		Yes
	b) 1 month or more postpartum	2*		1*		Yes
Diabetes mellitus (DM)	a) History of gestational DM only	1		1		Yes
	b) Non-vascular disease					
	b) Other abnormalities:					
	(i) non-insulin dependent	2		2		Yes
	(ii) insulin dependent‡	2		2		Yes
	c) Nephropathy/ retinopathy/ neuropathy‡	3/4*		2		Yes
	d) Other vascular disease or diabetes of >20 years' duration‡	3/4*		2		Yes
Headaches	a) Non-migrainous	1*	2*	1*	1*	Yes
	b) Migraine:					
	i) without aura, age <35	2*	3*	1*	2*	Yes
	ii) without aura, age ≥35	3*	4*	1*	2*	Yes
	iii) with aura, any age	4*	4*	2*	3*	Yes
Hypertension	a) Adequately controlled hypertension	3*		1*		Yes
	b) Elevated blood pressure levels (properly taken measurements):					
	(i) systolic 140-159 or diastolic 90-99	3		1		Yes
	(ii) systolic ≥160 or diastolic ≥100‡	4		2		Yes
	c) Vascular disease	4		2		Yes
History of high blood pressure during pregnancy		2		1		Yes
Hyperlipidemias		2/3*		2*		Yes
Peripartum cardiomyopathy‡	a) Normal or mildly impaired cardiac function:					
	(i) < 6 months	4		1		Yes
	(ii) ≥ 6 months	3		1		Yes

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
	b) Moderately or severely impaired cardiac function	4		2		Yes
Multiple risk factors for arterial cardiovascular disease	(such as older age, smoking, diabetes and hypertension)	3/4*		2*		Yes
Ischemic heart disease‡	Current and history of	4		2	3	Yes
Valvular heart disease	a) Uncomplicated	2		1		Yes
	b) Complicated‡	4		1		Yes
Stroke‡	History of cerebrovascular accident	4		2	3	Yes
Thrombogenic mutations‡		4*		2*		Yes
Deep venous thrombosis (DVT) /Pulmonary embolism (PE)	a) History of DVT/PE, not on anticoagulant therapy					
	i) higher risk for recurrent DVT/PE	4		2		Yes
	ii) lower risk for recurrent DVT/PE	3		2		Yes
	b) Acute DVT/PE	4		2		Yes
	c) DVT/PE and established on anticoagulant therapy for at least 3 months					
	i) higher risk for recurrent DVT/PE	4*		2		Yes
	ii) lower risk for recurrent DVT/PE	3*		2		Yes
	d) Family history (first-degree relatives)	2		1		Yes
	e) Major surgery					
	(i) with prolonged immobilization	4		2		Yes
	(ii) without prolonged immobilization	2		1		Yes
	f) Minor surgery without immobilization	1		1		Yes
History of bariatric surgery‡	a) Restrictive procedures	1		1		Yes
	b) Malabsorptive procedures	COCs: 3		3		Yes
Breast disease/ Breast Cancer	a) Undiagnosed mass	2*		2*		Yes
	b) Benign breast disease	1		1		Yes
	c) Family history of cancer	1		1		Yes
	d) Breast cancer:‡					
	i) current	4		4		Yes
	ii) past and no evidence of current disease for 5 years	3		3		Yes

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Viral hepatitis	a) Acute or flare	3/4*	2	1		Yes
	b) Carrier/Chronic	1	1	1		Yes
Cirrhosis	a) Mild (compensated)	1		1		Yes
	b) Severe‡ (decompensated)	4		3		Yes
Liver tumors	a) Benign:					
	i) Focal nodular hyperplasia	2		2		Yes
	ii) Hepatocellular adenoma‡	4		3		Yes
	b) Malignant‡	4		3		Yes
Gallbladder disease	a) Symptomatic:					
	(i) treated by cholecystectomy	2		2		Yes
	(ii) medically treated	3		2		Yes
	(iii) current	3		2		Yes
	b) Asymptomatic	2		2		Yes
History of Cholestasis	a) Pregnancy-related	2		1		Yes
	b) Past COC-related	3		2		Yes
Systemic lupus erythematosus‡	a) Positive (or unknown) antiphospholipid antibodies	4		3		Yes
	b) Severe thrombocytopenia	2		2		Yes
	c) Immunosuppressive treatment	2		2		Yes
	d) None of the above	2		2		Yes
Rheumatoid arthritis	a) On immunosuppressive therapy	2		1		Yes
	b) Not on immunosuppressive therapy	2		1		Yes
Blood Conditions?						
Epilepsy‡	(see also Drug Interactions)	1*		1*		Yes
Tuberculosis‡ (see also Drug Interactions)	a) Non-pelvic	1*		1*		Yes
	b) Pelvic	1*		1*		Yes
HIV	High risk	1		1		Yes
	HIV infected (see also Drug Interactions)‡	1*		1*		Yes
	AIDS (see also Drug Interactions) ‡	1*		1*		Yes
	Clinically well on therapy	If on treatment, see Drug Interactions.				
Antiretroviral therapy	a) Nucleoside reverse transcriptase inhibitors	1*		1		Yes
	b) Non-nucleoside reverse transcriptase inhibitors	2*		2*		Yes
	c) Ritonavir-boosted protease inhibitors	3*		3*		Yes
Anticonvulsant therapy	a) Certain anticonvulsants (phenytoin, carbamazepine, barbiturates, primidone, topiramate, oxcarbazepine)	3*		3*		Yes
	b) Lamotrigine	3*		1		Yes
Antimicrobial therapy	a) Broad spectrum antibiotics	1		1		Yes
	b) Antifungals	1		1		Yes
	c) Antiparasitics	1		1		Yes
	d) Rifampicin or rifabutin therapy	3*		3*		Yes

Alphabetical Listing of USMEC Contraceptive Eligibility By Disease State

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Breast disease/ Breast Cancer	a) Undiagnosed mass	2*		2*		Yes
	b) Benign breast disease	1		1		Yes
	c) Family history of cancer	1		1		Yes
	d) Breast cancer‡					
	i) current	4		4		Yes
	ii) past and no evidence of current disease for 5 years	3		3		Yes
Breastfeeding (see also Postpartum)	a) < 1 month postpartum	3*		2*		Yes
	b) 1 month or more postpartum	2*		1*		Yes
Cervical cancer	Awaiting treatment	2		1		Yes
Cervical ectropion		1		1		Yes
Cervical intraepithelial neoplasia		2		1		Yes
Cirrhosis	a) Mild (compensated)	1		1		Yes
	b) Severe‡ (decompensated)	4		3		Yes
Cystic Fibrosis		1*		1*		Yes
Deep venous thrombosis (DVT) /Pulmonary embolism (PE)	a) History of DVT/PE, not on anticoagulant therapy					
	i) higher risk for recurrent DVT/PE	4		2		Yes
	ii) lower risk for recurrent DVT/PE	3		2		Yes
	b) Acute DVT/PE	4		2		Yes
	c) DVT/PE and established on anticoagulant therapy for at least 3 months					
	i) higher risk for recurrent DVT/PE	4*		2		Yes
	ii) lower risk for recurrent DVT/PE	3*		2		Yes
	d) Family history (first-degree relatives)	2		1		Yes
	e) Major surgery					
	(i) with prolonged immobilization	4		2		Yes
	(ii) without prolonged immobilization	2		1		Yes
	f) Minor surgery without immobilization	1		1		Yes
Depressive disorders		1*		1*		Yes
Diabetes mellitus (DM)	a) History of gestational DM only	1		1		Yes
	b) Non-vascular disease					
Diabetes mellitus (cont.)	(i) non-insulin dependent	2		2		Yes
	(ii) insulin dependent‡	2		2		Yes
	c) Nephropathy/ retinopathy/ neuropathy‡	3/4*		2		Yes
	d) Other vascular disease or diabetes of >20 years' duration‡	3/4*		2		Yes
Endometrial cancer‡		1		1		Yes
Endometrial hyperplasia		1		1		Yes
Endometriosis		1		1		Yes
Epilepsy‡	(see also Drug Interactions)	1*		1*		Yes
Gallbladder disease	a) Symptomatic					
	(i) treated by cholecystectomy	2		2		Yes
	(ii) medically treated	3		2		Yes
	(iii) current	3		2		Yes
	b) Asymptomatic	2		2		Yes

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Gestational trophoblastic disease	a) Decreasing or undetectable ß-hCG levels	1		1		Yes
	b) Persistently elevated ß-hCG levels or malignant disease‡	1		1		Yes
Headaches	a) Non-migrainous	1*	2*	1*	1*	Yes
	b) Migraine					
	i) without aura, age <35	2*	3*	1*	2*	Yes
	ii) without aura, age ≥35	3*	4*	1*	2*	Yes
	iii) with aura, any age	4*	4*	2*	3*	Yes
History of bariatric surgery‡	a) Restrictive procedures	1		1		Yes
	b) Malabsorptive procedures	COCs: 3 P/R: 1		3		Yes
History of cholestasis	a) Pregnancy-related	2		1		Yes
	b) Past COC-related	3		2		Yes
History of high blood pressure during pregnancy		2		1		Yes
History of pelvic surgery		1		1		Yes
HIV	High risk	1		1		Yes
	HIV infected (see also Drug Interactions)‡	1*		1*		Yes
	AIDS (see also Drug Interactions) ‡	1*		1*		Yes
	Clinically well on therapy	If on treatment, see Drug Interactions.				
Hyperlipidemias		2/3*		2*		Yes
Hypertension	a) Adequately controlled hypertension	3*		1*		Yes
	b) Elevated blood pressure levels (properly taken measurements)					
	(i) systolic 140-159 or diastolic 90-99	3		1		Yes
	(ii) systolic ≥160 or diastolic ≥100‡	4		2		Yes
	c) Vascular disease	4		2		Yes
Inflammatory bowel disease	(Ulcerative colitis, Crohn's disease)	2/3*		2		Yes
Ischemic heart disease‡	Current and history of	4		2	3	Yes
Liver tumors	a) Benign					
	i) Focal nodular hyperplasia	2		2		Yes
	ii) Hepatocellular adenoma‡	4		3		Yes
	b) Malignant‡	4		3		Yes
Malaria		1		1		Yes
Multiple risk factors for arterial cardiovascular disease	(such as older age, smoking, diabetes and hypertension)	3/4*		2*		Yes
Obesity	a) ≥30 kg/m² body mass index (BMI)	2		1		Yes
	b) Menarche to < 18 years and ≥ 30 kg/m² BMI	2		1		Yes
Ovarian cancer‡		1		1		Yes
Parity	a) Nulliparous	1		1		Yes
	b) Parous	1		1		Yes
Past ectopic pregnancy		1		2		Yes

Alphabetical Listing of USMEC Contraceptive Eligibility By Disease State

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Pelvic inflammatory disease	a) Past, (assuming no current risk factors of STIs)					
	(i) with subsequent pregnancy	1		1		**Yes**
	(ii) without subsequent pregnancy	1		1		**Yes**
	b) Current	1		1		**Yes**
Peripartum cardiomyopathy‡	a) Normal or mildly impaired cardiac function					
	(i) < 6 months	4		1		**Yes**
	(ii) ≥ 6 months	3		1		**Yes**
	b) Moderately or severely impaired cardiac function	4		2		**Yes**
Postabortion	a) First trimester	1*		1*		**Yes**
	b) Second trimester	1*		1*		**Yes**
	c) Immediately post-septic abortion	1*		1*		**Yes**
Postpartum (see also Breastfeeding)	a) < 21 days	4		1		**Yes**
	b) 21 days to 42 days					
	(i) with other risk factors for VTE	3*		1		**Yes**
	(ii) without other risk factors for VTE	2		1		**Yes**
	c) > 42 days	1		1		**Yes**
Postpartum (in breastfeeding or non-breastfeeding women, including post-cesarean section)	a) < 10 minutes after delivery of the placenta					
	b) 10 minutes after delivery of the placenta to < 4 weeks					
	c) ≥ 4 weeks					
	d) Puerperal sepsis					
Pregnancy		NA*		NA*		**NA***
Rheumatoid arthritis	a) On immunosuppressive therapy	2		1		**Yes**
	b) Not on immunosuppressive therapy	2		1		**Yes**
Schistosomiasis	a) Uncomplicated	1		1		**Yes**
	b) Fibrosis of the liver‡	1		1		**Yes**
Severe dysmenorrhea		1		1		**Yes**
Sexually transmitted infections (STIs)	a) Current purulent cervicitis or chlamydial infection or gonorrhea	1		1		**Yes**
	b) Other STIs (excluding HIV and hepatitis)	1		1		**Yes**
Sexually transmitted infections (cont.)	c) Vaginitis (including trichomonas vaginalis and bacterial vaginosis)	1		1		**Yes**
	d) Increased risk of STIs	1		1		**Yes**
Smoking	a) Age < 35	2		1		**Yes**
	b) Age ≥ 35, < 15 cigarettes/day			1		**Yes**
	c) Age ≥ 35, ≥15 cigarettes/day			1		**Yes**
Solid organ transplantation‡	a) Complicated			2		**Yes**
	b) Uncomplicated	2*		2		**Yes**
Stroke‡	History of cerebrovascular accident	4		2	3	**Yes**
Superficial venous thrombosis	a) Varicose veins	1		1		**Yes**
	b) Superficial thrombophlebitis	2		1		**Yes**
Systemic lupus erythematosus‡	a) Positive (or unknown) antiphospholipid antibodies	4		3		**Yes**
	b) Severe thrombocytopenia	2		2		**Yes**
	c) Immunosuppressive treatment	2		2		**Yes**
	d) None of the above	2		2		**Yes**
Thrombogenic mutations‡		4*		2*		**Yes**

Condition	Sub-condition	Combined pill, patch, ring		Progestin-only pill/injection		Other Contraception Options Indicated for Patient
		Initiating	Continuing	Initiating	Continuing	
Thyroid disorders	Simple goiter/ hyperthyroid/hypothyroid.	1		1		Yes
Tuberculosis‡ (see also Drug Interactions)	a) Non-pelvic	1*		1*		Yes
	b) Pelvic	1*		1*		Yes
Unexplained vaginal bleeding	(suspicious for serious condition) before evaluation	2*		2*		Yes
Uterine fibroids		1		1		Yes
Valvular heart disease	a) Uncomplicated	2		1		Yes
	b) Complicated‡	4		1		Yes
Vaginal bleeding patterns	a) Irregular pattern without heavy bleeding	1		2		Yes
	b) Heavy or prolonged bleeding	1*		2*		Yes
Viral hepatitis	a) Acute or flare	3/4*	2	1		Yes
	b) Carrier/Chronic	1	1	1		Yes
Antiretroviral therapy (All other ARVs are 1 or 2 for all methods)	Fosamprenavir (FPV)	3*		2*		Yes
Anticonvulsant therapy	a) Certain anticonvulsants (phenytoin, carbamazepine, barbiturates, primidone, topiramate, oxcarbazepine)	3*		3*		Yes
	b) Lamotrigine	3*		1		Yes
Antimicrobial therapy	a) Broad spectrum antibiotics	1		1		Yes
	b) Antifungals	1		1		Yes
	c) Antiparasitics	1		1		Yes
	d) Rifampicin or rifabutin therapy	3*		3*		Yes
SSRIs		1		1		Yes
St. John's Wort		2		2		Yes

I = initiation of contraceptive method; C = continuation of contraceptive method; NA = Not applicable

* Please see the complete guidance for a clarification to this classification: www.cdc.gov/reproductivehealth/unintendedpregnancy/USMEC.htm

‡ Condition that exposes a woman to increased risk as a result of unintended pregnancy.

MARYLAND SELF-SCREENING RISK ASSESSMENT FOR BIRTH CONTROL

THIS FORM SHOULD BE FILLED OUT BY THE PATIENT

Patient Name_____ Date_____/_____/_____
Patient Address_____ Date of Birth ___/___/____
Name of your Primary Care Provider (PCP) or Reproductive Health Care Provider
_____ Address_____
When did you last visit a PCP or Reproductive Health Care Provider: Date _____/_____/_____

Please answer the following questions about your medical history:

PREGNANCY SCREEN			
1	Do you think you might be pregnant now? If you answered **YES**, please **STOP** here.	Yes ☐	No ☐
2	Did you have a baby in the past 4 weeks?	Yes ☐	No ☐
3a	Did you have a baby less than 6 months ago?	Yes ☐	No ☐
3b	Are you fully or nearly-fully breast feeding?	Yes ☐	No ☐
3c	Have you had a menstrual period since the delivery?	Yes ☐	No ☐
4	Did your last menstrual period start within the last 7 days?	Yes ☐	No ☐
5	Have you been using a reliable birth control method consistently and correctly?	Yes ☐	No ☐
6	Have you abstained from sexual intercourse since your last menstrual period or delivery?	Yes ☐	No ☐
MEDICAL HISTORY			
7	Did you have a baby in the past 21 days?	Yes ☐	No ☐
8	Did you have a baby in the past 6 weeks?	Yes ☐	No ☐
9	Have you ever had surgery? If so, list the date of your most recent procedure?	___/___/___	
10	Have you ever had a blood clot in the arms, legs, lungs or other parts of the body?	Yes ☐	No ☐
11	Have you ever been told by your PCP that you are at risk of having a blood clot?	Yes ☐	No ☐
12	Do you have high blood pressure?	Yes ☐	No ☐
13a	Do you have diabetes? If you answered **NO**, skip to question 14.	Yes ☐	No ☐
13b	Have you had diabetes for more than 20 years?	Yes ☐	No ☐
13c	Are you using insulin?	Yes ☐	No ☐
13d	Do you have damage to your eyes, nerves of the feet, hands, kidneys or any other organ from diabetes?	Yes ☐	No ☐
14	Do you have high cholesterol?	Yes ☐	No ☐
15	Have you ever had a heart attack or stroke, or been told you had heart disease?	Yes ☐	No ☐
16a	Do you use any form of tobacco, e.g. vape e-cigarette, e-hookah, or e-liquid; chew tobacco, dip snuff, or smoke cigarettes? If you answered **NO**, skip to question 17.	Yes ☐	No ☐
16b	If you answered **YES**, how often do you use any form of tobacco?	_____	
16c	How much tobacco do you use in a day?	_____	
17	Do you ever have headaches that start with flashes of light, blind spots, or tingling in your hands or face, that comes and goes away before the headache starts?	Yes ☐	No ☐

PLEASE TURN OVER

18	Have you had a recent change in vaginal bleeding that worries you?	Yes ☐	No ☐
19	Have you had stomach reduction or weight loss surgery?	Yes ☐	No ☐
20	Do you have, or have you ever had breast cancer?	Yes ☐	No ☐
21	Have you had a heart, liver, kidney, lung, or other organ transplant?	Yes ☐	No ☐
22	Do you have lupus?	Yes ☐	No ☐
23	Have you ever had hepatitis, liver disease, liver cancer, gall bladder disease, or jaundice (yellow skin/eyes)?	Yes ☐	No ☐
24	Do you have or have you ever had any other medical conditions that we have not discussed? Please list them here:_____	Yes ☐	No ☐
MEDICATION HISTORY			
25	Do you take any medications or supplements? Please list them here: _____ _____	Yes ☐	No ☐
26	Have you had any allergies or bad reactions to any medication you have taken? Please list them here: _____	Yes ☐	No ☐
27	Have you ever been told by a health care provider not to take birth control pills, patch, vaginal ring, injection, implant, diaphragm, intrauterine device (IUD) or coil or any other? _____	Yes ☐	No ☐
28	Have you ever used birth control in the past? If **YES**, circle the type you have used: birth control pills, patch, vaginal ring, injection, implant, diaphragm, IUD or coil, or any other? _____	Yes ☐	No ☐
29	When did you last use birth control pills, patch, vaginal ring, injection, implant, diaphragm, IUD or coil, or any other?	___/____/___	
30	Is there a type of birth control that you would like to use? If **YES**, circle your response: birth control pills, patch, vaginal ring, injection, implant, diaphragm, IUD or coil, or any other? _____	Yes ☐	No ☐
31	Have you taken emergency contraception in the last 5 days?	Yes ☐	No ☐

Pharmacist Internal Use Only

Blood Pressure Reading_____mmHg Pulse_____b/min Weight_____lbs
Pharmacist Name_____
Phone _____
Pharmacy Name_____Address_____
Notes _____
_____

Utah Hormonal Contraceptive Self-Screening Questionnaire

Name_____ Health Care Provider's Name_____ Date_____
Date of Birth_____ Age_____ (must be 18) Weight _____ Do you have health insurance? Yes / No
What was the date of your last women's health clinical visit? _____
Any allergies to Medications? *Yes / No* If yes, list them here _____

Do you have a preferred method of birth control that you would like to use?

□A daily pill □A weekly patch □A monthly vaginal ring □Injectable (every 3 mo.) □Other (IUD, implant)

Background Information:

1	Do you think you might be pregnant now?	Yes □ No□
2	What was the first day of your last menstrual period?	___/___/___
3	Have you ever taken birth control pills, or used a birth control patch, ring, or injection? Have you previously received contraceptives?	Yes □ No □ Yes □ No □
	Did you ever experience a bad reaction to using hormonal birth control?	Yes □ No □
	- If yes, what kind of reaction occurred?	_____
	Are you currently using any method of birth control including pills, or a birth control patch, ring or shot/injection?	Yes □ No □
	- If yes, which one do you use?	_____
4	Have you ever been told by a medical professional not to take hormones?	Yes □ No □
5	Do you smoke cigarettes?	Yes □ No □

Medical History:

6	Have you had a recent change in vaginal bleeding that worries you?	Yes □ No □
7	Have you given birth within the past 21 days? If yes, how long ago?	Yes □ No □
8	Are you currently breastfeeding?	Yes □ No □
9	Do you have diabetes?	Yes □ No □
10	Have you ever had a migraine headaches?	Yes □ No □
11	Are you being treated for inflammatory bowel disease?	Yes □ No □
12	Do you have high blood pressure, hypertension, or high cholesterol? (Please indicate yes, even if it is controlled by medication)	Yes □ No □
13	Have you ever had a heart attack or stroke, or been told you had any heart disease?	Yes □ No □
14	Have you ever had a blood clot?	Yes □ No □
15	Have you ever been told by a medical professional you are at risk of developing a blood clot?	Yes □ No □
16	Have you had recent major surgery or are you planning to have surgery in the next 4 weeks?	Yes □ No □
17	Will you be immobile for a long period? (e.g. flying on a long airplane trip, etc.)	Yes □ No □
18	Have you had bariatric surgery or stomach reduction surgery?	Yes □ No □
19	Do you have or have you ever had breast cancer?	Yes □ No □
20	Have you had a solid organ transplant?	Yes □ No □
21	Do you have or have you ever had hepatitis, liver disease, liver cancer, or gall bladder disease, or do you have jaundice (yellow skin or eyes)?	Yes □ No □
22	Do you have lupus, rheumatoid arthritis, or any blood disorders?	Yes □ No □
23	Do you take medication for seizures, tuberculosis (TB), fungal infections, or human immunodeficiency virus (HIV)?	Yes □ No □
	- If yes, list them here:	
24	Do you have any other medical problems or take any medications, including herbs or supplements?	Yes □ No □
	- If yes, list them here:	

*Signature*_____ *Date*_____

Optional Side – May be used by pharmacy
This side of form may be customized by pharmacy –Do not make edits to the Questionnaire (front side)

Pregnancy Screen	
a. Did you have a baby less than 6 months ago, are you fully or nearly-fully breast feeding, AND have you had no menstrual period since the delivery?	Yes □ No □
b. Have you had a baby in the last 4 weeks?	Yes □ No □
c. Did you have a miscarriage or abortion in the last 7 days?	Yes □ No □
d. Did your last menstrual period start within the past 7 days?	Yes □ No □
e. Have you abstained from sexual intercourse since your last menstrual period or delivery?	Yes □ No □
f. Have you been using a reliable contraceptive method consistently and correctly?	Yes □ No □

☐ Verified DOB with valid photo ID ☐ BP Reading _____ /_____

Note: Must refer patient if either systolic or diastolic reading is out of range, per algorithm

℞ Drug Prescribed _____Rx_____
Directions for Use _____
Pharmacist Name _____ Pharmacist Signature _____
Pharmacy Address _____ Pharmacy Phone _____

-or-

☐ Patient Referred

Notes:
_____
_____
_____

May 11, 2023

Kamlesh Gandhi, PharmD
Executive Director, Arizona Board of Pharmacy
1616 W. Adams Street, Suite 120
Phoenix, AZ 85007

Re: Rulemaking Chapter R4-23-204 and R4-23-407.2 – Pharmacists and Hormonal Contraceptives

Dear Dr. Gandhi,

Albertsons Companies Inc., owns and operates 122 community pharmacies under two well known banners: Albertsons and Safeway. We currently offer a hormonal contraceptive prescribing service administered by trained pharmacists across our pharmacy footprint where states allow, which is 15 states. We are encouraged by these proposed regulations to allow pharmacists in Arizona to begin offering this important service to aid in public health initiatives.

We applaud the Board for their actions to arrive at the point of proposed regulations and strongly support them. By empowering pharmacists to offer this service, the Board is facilitating pharmacists' training, education, and experience to be leveraged to respond to gaps in health equity and access.

We support the content of the proposed regulations but would like to suggest one minor edit that we believe is non-substantive. As drafted, the proposed regulations make two references to a "nationally recognized self-screening risk assessment." We are not aware of a nationally recognized self-screening risk assessment, but rather some jurisdictions have created their own patient self-assessment surveys based on nationally recognized guidelines including the US Medical Eligibility Criteria for Contraception (MEC)[1] published by the CDC. We suggest making the following change to the language in both areas of the proposed regulations to avoid this potential conflict:

[1] US Medical Eligibility Criteria for Contraceptive Use, 2016 (US MEC) | CDC

R4-23-407.2 Prescribing a Self-administered Hormonal Contraceptive

A. Standard procedures. The first time a pharmacist prescribes a self-administered hormonal contraceptive under standing prescription order, as authorized under A.R.S. 32-1979.01 to a patient, the pharmacist shall:
   1. Determine the patient is at least 18 years old;
   2. Obtain from the patient a completed ~~nationally recognized~~ self-screening risk assessment based on nationally recognized guidelines;
   …

B. A pharmacist who prescribes a self-administered hormonal contraceptive under a standing prescription order shall have a patient complete ~~the nationally recognized nationally recognized~~ self-screening risk assessment based on nationally recognized guidelines required under subsection (A)(2) annually.

Thank you for the work you are performing. If you have any questions or concerns, please reach out to me at 208-513-3470 or Rob.Geddes@albertsons.com.

Sincerely,

Rob Geddes, PharmD
Director, Pharmacy Legislative and Regulatory Affairs
Albertsons Companies, Inc.

The American College of Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

May 5, 2023

Kamlesh Gandhi, Executive Director
Arizona Board of Pharmacy
1616 W. Adams Street, Suite 120
Phoenix, Arizona 85007

Dear Mr. Gandhi:

The Arizona Section of the American College of Obstetricians and Gynecologists (ACOG) appreciates the opportunity to provide comments on the draft rules required to implement changes to Arizona Revised Statutes 32-1979.01, as amended in 2021 by S.B. 1082, authorizing pharmacists to dispense hormonal contraceptives under a standing order with the Arizona Department of Health Services or a County Health Department. ACOG welcomes the efforts by the Board to move forward with the adoption of the Notices of Proposed Rulemaking for submission to the Governor's Regulatory Review Council.

ACOG recommends the Arizona Board of Pharmacy consider the one (1) following change to the proposed draft rules:

- **Amend "prescribing" and "prescribes" a self-administered hormonal contraceptive to "dispensing" and "dispenses" a self-administered hormonal contraceptive.** The language in the current rules as drafted conflict with what state statute says in A.R.S. 32-1979.01 which states that a pharmacist is authorized to dispense self-administered hormonal contraception pursuant to a standing order from the Arizona Department of Health or County Health Department.

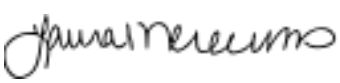
By implementing the 2021 legislation, these rules will improve access to these types of contraceptives, especially for low-income patients and those who live in rural areas. Self-administered hormonal contraception improves community health and well-being, reduces global maternal mortality, creates health benefits of pregnancy spacing for maternal and child health and allows for women to engage in economic self-sufficiency.

Since 2012 ACOG has endorsed this model of access to hormonal contraception to minimize barriers to access. Studies have shown these medications can be safely dispensed using the health risk screening questionnaire that is required in the legislation and reflected in the rules—this will help women and their pharmacists determine which medication is right for them and what is safe based on their individual health history.

Allowing pharmacists to dispense hormonal contraceptives under a standing order will decrease access barriers to contraception yet still maintains the clinician consultation for the patient.

Thank you for the opportunity to express our comments.

Sincerely,



Laura Mercer, MD
Chair, Arizona Section-American College of Obstetricians and Gynecologists

AzPA
Arizona Pharmacy Association

May 16, 2023

Submitted electronically via: kgandhi@azpharmacy.gov

Kamlesh Gandhi, PharmD
Executive Director | Arizona Board of Pharmacy
1110 W Washington St # 260; Phoenix, AZ 85007

Re: **R4-23-407.1 Prescribing a Self-administered Hormonal Contraceptive Proposed Rules**

Dear Mr. Gandhi,

The Arizona Pharmacy Association (AzPA) appreciates the opportunity to submit comments on the recent rule the Arizona Board of Pharmacy filed regarding pharmacist prescribing of self-administered hormonal contraceptives. We are very supportive of the proposed rules and had an opportunity to weigh in on the language as part of the Arizona Board of Pharmacy Rule Writing Task Force Committee.

The Arizona Pharmacy Association (AzPA) was established in 1910 and has worked hard to become a trusted and influential voice amongst Arizona pharmacy professionals, patients, legislators, and healthcare partners. As the only association for pharmacy professionals in Arizona, the Association works to unify, amplify, and empower the voice of pharmacy professionals in Arizona enhancing their ability to provide high quality and accessible patient care through:

- Influence and focused efforts around advocacy and education to expand pharmacy scope of practice,
- Growth of innovative services, and
- Support of financial viability of pharmacy services

AzPA believes pharmacists working autonomously and collaboratively at the highest level of their educational capability, with their teams, improves the health care experience for patients and other health care professionals.

Furthermore, AzPA worked hard with our physician partners to pass SB1493 in 2020 that gave Arizona women greater access to hormonal contraceptives by utilizing pharmacists. We are excited to see the rules move forward to allow this critical service to be rolled out across the state. Pharmacists are highly trained health care professionals that are not utilized fully according to their training and expertise due to barriers in our state Pharmacy Practice Act. This rules package takes a positive step in the right direction to allow pharmacists to work to the top of their degrees while giving Arizona women greater access to hormonal contraceptives.

Thank you again for the opportunity to submit comments. If you have any questions or require additional information please let me know.

Sincerely,

Kelly Fine, RPh, FAzPA
Chief Executive Officer
Arizona Pharmacy Association
kelly@azpharmacy.org

From: **Zaida Dedolph** <zdedolph@az.gov>
Date: Fri, Apr 28, 2023 at 10:48 AM
Subject: OTC birth control rules
To: Kamlesh Gandhi <kgandhi@azpharmacy.gov>, Jessica Rainbow <jessica@pivotalpolicyconsulting.com>
Cc: William Gaona <wgaona@az.gov>, Jennifer Loredo <jloredo@az.gov>

Hey Kam,

Introducing you to Jessica Rainbow. She represents ACOG, who have been eagerly awaiting the OTC Contraception guidelines.

Jessica raised a concern about the language in the proposed OTC Contraception rule. She noted that in Article 4 the language states that pharmacists will "prescribe" the self-administered contraceptive under the standing prescription order. The authorizing statute refers to the pharmacist "dispensing" the medication.

Hoping you two can chat and we can identify a route forward here -

Thanks!

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 3

Amend: R21-3-202

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 8, 2023**

SUBJECT: **DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 3

Amend: R21-3-202

Summary:

This regular rulemaking for the Arizona Department of Child Safety relates to one rule in Title 21, Chapter 3, Preliminary Screening. The purpose of the Department is to protect children via investigation of reports of abuse and neglect; assess, promote, and support the safety of a child; and coordinate services on behalf of the child. The rules in this Article pertain to the Department of Child Safety Centralized Intake Hotline, which manages the receipt of reports of alleged child abuse or neglect. In 2021, the legislature passed HB 2410 (Laws 2021, Chapter 195), which amended the safe haven definition of "newborn infant" in A.R.S. § 13-3623.01. In addition to addressing the concerns found in the 5YRR approved by Council on November 6, 2018, with this rulemaking the Department clarifies the criteria for a child to be considered "an unharmed newborn" and relieves the Department of obligations to write reports of abuse or neglect in certain circumstances.

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?

The Department indicates that 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?

The Department did not review or rely on any study relevant to the proposed amended rules.

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

The Department states that the rules under 21 A.A.C. 3, Article 2 pertain to the Department's Centralized Intake Hotline and procedures regarding receipt, screening, and processing of concerns of abuse or neglect received at the Centralized Intake Hotline. The Department indicates that the rules in this Article provides information on how the information received is processed. The Department believes the amendments to the rules aid the Department to further standardize child abuse and neglect screening and decisions, and judiciously deploy resources. Stakeholders include the Department, children and families that are subject of an allegation of abuse or neglect, a person named as the alleged perpetrator of abuse or neglect of a child, and the general public.

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

The Department believes that the rules under review propose the least intrusive and least costly method of achieving the purpose of the rules.

6. What are the economic impacts on stakeholders?

The Department believes that it and the public benefit from the rules because the rules inform how the reports of child abuse and neglect are received, screened, and processed by the Centralized Intake Hotline. The Department indicates that these amendments clarify new screening criteria, which may reduce unnecessary calls to the Centralized Intake Hotline for reports that will be screened out based on the new criteria, saving the public and the Department time. The Department states that between July 2020 to June 2021, there were 152,856 incoming communications to the Centralized Intake Hotline: 85,018 calls were concerning child abuse or neglect; 45,590 calls (53.7%) met the statutory requirements of abuse or neglect. Further, the Department states that there are no costs associated with reporting suspicions of abuse and neglect of children.

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

The Department states that there are no changes between the proposed rulemaking and the final rulemaking.

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

The Department did not receive any public or stakeholder comments.

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

The Department states that the rules pertain to the DCS Centralized Intake Hotline and therefore, a general permit is not used.

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

The Department states the rules are not more stringent than Federal laws 42 U.S.C. 5106a.

11. Conclusion

This regular rulemaking for the Arizona Department of Child Safety relates to one rule in Title 21, Chapter 3, Preliminary Screening. As mentioned above, the Department is seeking to clarify the criteria for a child to be considered "an unharmed newborn" and to relieve the Department of obligations to write reports of abuse or neglect in certain circumstances.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

ARIZONA
DEPARTMENT
of CHILD SAFETY

David Lujan, Director
Katie Hobbs, Governor

May 9, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: Title 21, Chapter 3 Article 2 Notice of Final Rulemaking

Dear Ms. Sornsin:

The attached final rulemaking package is respectfully submitted for review and approval by the Arizona Governor's Regulatory Review Council (Council/GRRC). The following information is provided for your use in reviewing the rulemaking package:

A. Close of Record Date:
The rulemaking record closed on January 10, 2023. This rulemaking package is being submitted within the 120 days allowed for Final Rulemaking. An oral proceeding was not held and the Department of Child Safety did not receive a request to hold an oral proceeding. The Department of Child Safety did not receive any comments during the comment period.

B. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
This rulemaking relates to a five-year-review report, in part. GRRC approved the five-year-review report on November 6, 2018. This rulemaking also includes other amendments to update the rules so that they align with statutory amendments and adds two rules that address certain conditions whereby the Department of Child Safety is excepted from preparing a report for investigation of alleged abuse or neglect.

C. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee:
This rulemaking does not establish a new fee.

D. Whether the rule contains a fee increase:
This rulemaking does not contain a fee increase.

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Telephone (602) 255-2500

E. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department of Child Safety is not requesting an immediate effective date.

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 or justification for the rule:
The Department of Child Safety certifies that the preamble accurately discloses that a study was not conducted or relied on in the agency's evaluation or justification of the rule.

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 (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:
The Department of Child Safety is not required to make a certification to JLBC because amendments in this rulemaking do not require any new full-time employees.

H. A list of all documents enclosed:
1. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text
2. Economic, Small Business, and Consumer Impact Statement
3. Copy of the authorizing and implementing statutes
4. Copy of current rules
5. Governor's Office Approval via email from the Policy Advisor. (Approval of the request of an exception to the rulemaking moratorium and approval of the Notice of Final Rulemaking)

If you have any questions, please contact Angie Trevino, Rules Development and Policy Specialist, at (602) 619-3163 or by email at angelica.trevino@azdcs.gov.

Sincerely,

David Lujan
Director

Enclosures

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Telephone (602) 255-2500

NOTICE OF FINAL RULEMAKING

TITLE 21. CHILD SAFETY

CHAPTER 3. RECEIPT AND SCREENING OF COMMUNICATIONS

PREAMBLE

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

R21-3-202 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. § 8-453(A)(5)

Implementing statute: A.R.S. §§ 8-454 and 8-455

3. The effective date of the rule:

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of Secretary of State.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 28 A.A.R. 3722, December 2, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3665, December 2, 2022

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

Name: Angie Trevino, Rule Development Specialist

Address: Department of Child Safety
3003 N. Central Avenue
Phoenix, AZ 85012

Telephone: (602) 619-3163

E-mail: angelica.trevino@azdcs.gov

Web site: https://dcs.az.gov/about/dcs-rules-rulemaking

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 rules in this Article pertain to the Department of Child Safety Centralized Intake Hotline, which manages the receipt of reports of alleged child abuse or neglect. Through the process of completing a Five-Year-Review Report per A.R.S. § 41-1056, in 2018 the Department identified rules that need to be updated and amended. The Department, with this rulemaking, clarifies the criteria for a child to be considered "an unharmed newborn." Second, in 2021 the Fifty-fifth Legislature, First Regular Session, passed HB2410 amending the safe haven definition of "newborn infant" in A.R.S. § 13-3623.01. The proposed amendments provide updates to align the rules with the 2021 statutory amendments. Third, the Department proposes to add two (2) subsections that relieve the Department of the obligation to prepare a report of abuse or neglect. The new subsections in R21-3-202 (13 and 14) clarify the screening exceptions for concerns of abuse or neglect that occurred by a now deceased perpetrator, or a perpetrator whose parental rights have been terminated. Fourth, the Department proposes to add a subsection to align the rules with a 2022 statute amendment that became effective on September 24, 2022. The 2022 statutory amendment relieved the Department of the duty to prepare a report of abuse or neglect if the alleged abuse or neglect occurred in a foreign country and the child is in the custody of the federal government. The proposed amendments identified in this rulemaking add, amend, and update the rules in order to make them more effective, consistent with other statutes, and be more clear, concise, and understandable.

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

The Department of Child Safety (DCS) did not review or rely on any study relevant to the proposed amended rules.

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

Not applicable.

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

The rules under 21 A.A.C. 3, Article 2 pertain to the Department's Centralized Intake Hotline and procedures regarding receipt, screening, and processing of concerns of abuse or neglect received at the Centralized Intake Hotline. The purpose of the rules in this Article is to communicate the Department's responsibility to maintain a centralized intake hotline for the public to report suspicions of child abuse and neglect. The rules in this Article provide information on how the information received is processed. The Centralized Intake Hotline is staffed 24 hours a day, seven (7) days a week. The amendments to the rules aid the Department to further standardize child abuse and neglect screening decisions, and judiciously deploy resources. Neither the rules in this Article nor the proposed amendments contain any fees to the public for this service. The Centralized Intake Hotline is funded by federal and state funds.

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 rulemaking and the 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 of Child Safety did not receive any public or stakeholder comments.

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

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules pertain to the DCS Centralized Intake Hotline. A general permit is not used.

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

Federal laws 42 U.S.C. 5106a. The rules are not more stringent than 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 such analysis was submitted.

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

None

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

Not applicable

15. The full text of the rules follows:

TITLE 21. CHILD SAFETY

CHAPTER 3. DEPARTMENT OF CHILD SAFETY - CENTRALIZED INTAKE HOTLINE

ARTICLE 2. RECEIPT AND SCREENING OF COMMUNICATIONS

Section

R21-3-202. Preliminary Screening

ARTICLE 2. RECEIPT AND SCREENING OF COMMUNICATIONS

R21-3-202. Preliminary Screening

The following allegations standing alone do not meet the criteria for a DCS Report unless the communication also includes an allegation of child abuse or neglect as defined in A.R.S. § 8-201 and otherwise meets the criteria as set forth in A.R.S. § 8-455:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
    a. No change
    b. No change
7. No change
8. No change
9. No change
10. No change
    a. No change
    b. No change
11. ~~The child is an unharmed newborn infant, who is seventy-two hours of age or younger, and whose parent or agent of the parent voluntarily delivered the parent's newborn to a safe haven provider as provided in A.R.S. §§ 8-528 and 13-3623.01.~~ The child is a safe haven newborn infant. A child is considered a safe haven newborn infant if the parent or agent of the parent voluntarily delivered the newborn to a safe haven provider per A.R.S. § § 8-528 and 13-3623.01; and following a physical examination of the child at a hospital the child is determined to be unharmed, and 30 days of age or younger. The child shall not qualify as a safe haven newborn infant if:
    a. The physical examination results in suspicion of abuse or neglect that meets criteria as a DCS Report; or
    b. The child is believed to be an alleged victim in an open DCS Report.

12. The child is in the custody of the federal government, and the alleged abuse or neglect occurred in a foreign country;
13. The suspected perpetrator is deceased and there is no indication that the perpetrator's death occurred during an act of abuse or neglect against the child; or
14. The suspected perpetrator's parental rights are terminated as to the alleged child victim.

ARIZONA DEPARTMENT OF CHILD SAFETY

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21 A.A.C. 3 Department of Child Safety – Centralized Intake Hotline

Article 2. Receipt and Screening of Communications

Economic, Small Business and Consumer Impact Statement

February 2023

1. Identification of the rulemaking

The rules under Chapter 3 pertain to Department's Centralized Intake Hotline, at times referred to as the Child Abuse Hotline, and procedures regarding receipt, screening, and follow-up of calls received at the Hotline. The purpose of the rules is to communicate the Department's responsibilities in maintaining a centralized intake hotline for the public to report suspicions of child abuse and neglect. The rules further provide information on how the information received is processed. During the process of completing the 2018 Five-Year-Review Report per A.R.S. § 41-1056, the Department identified rules that need to be updated and amended. The Department, with this rulemaking, clarifies the criteria for a child to be considered "an unharmed newborn." Second, the proposed amendments provide updates to align the rules with the 2021 statutory amendments made to the definition of "newborn infant." Third, this rulemaking will add two (2) rules that, consistent with statute, relieve the DCS of the duty to prepare a report for investigation of alleged abuse or neglect in specific, limited circumstances. The new subsections in R21-3-202 (13 and 14) clarify the screening exceptions for concerns of abuse or neglect perpetrated by a now deceased person, or a person whose parental rights have been terminated. Fourth, the Department proposes to add a rule to align the rules with a 2022 statute amendment that became effective on September 24, 2022, which relieves the Department of the obligation to prepare a report of abuse or neglect if the alleged abuse or neglect occurred in a foreign country and the child is in the custody of the federal government. The proposed amendments identified in this rulemaking add, amend, and update the rules in order to make them more effective, consistent with other statutes, and be more clear, concise, and understandable.

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

The rules under 21 A.A.C. 3, Article 2 pertain to the Department's Centralized Intake Hotline and procedures regarding receipt, screening, and processing of concerns of abuse or neglect received at the Centralized Intake Hotline. The purpose of the rules in this Article is to communicate the Department's responsibilities in maintaining a centralized intake hotline for the public to report suspicions of child abuse and neglect. The rules in this Article provides information on how the information received is processed. The Centralized Intake Hotline is staffed 24 hours a day, seven (7) days a week. The amendments to the rules aid the Department to further standardize child abuse and neglect screening decisions, and judiciously deploy resources. Neither the rules in this Article nor the proposed amendments contain any fees to the public for this service. The Centralized Intake Hotline is funded by federal and state funds.

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: Angie Trevino, Rules Development Specialist

Telephone: 602-619-3163

Email: Angelica.Trevino@azdcs.gov

Web site: https://dcs.az.gov/about/dcs-rules-rulemaking

4. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules.

a. Cost bearers

- Department of Child Safety

b. Beneficiaries

- General Public
- Children and families that are subject of an allegation of abuse or neglect
- Person named as the alleged perpetrator of abuse or neglect of a child
- Department of Child Safety

5. Cost/Benefit Analysis

Cost bearers and beneficiaries from these rules are as listed in #4. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted as a result of these rule changes; however, the Department will continue to hire employees to fill vacancies as they arise. There are no political subdivisions affected by these rules. The Department and the public benefit from the rules in Chapter 3, Article 2 because the rules inform how the reports of child abuse and neglect are received, screened, and processed by the Centralized Intake Hotline. These amendments clarify new screening criteria, which may reduce unnecessary calls to the Centralized Intake Hotline for reports that will be screened out based on the new criteria, saving the public and the Department time.

Between July 2020 to June 2021, there were 152,856 incoming communications to the Centralized Intake Hotline: 85,018 calls were concerning child abuse or neglect; 45,590 calls (53.7%) met the statutory requirements of abuse or neglect. Calls to the Hotline were answered on average of 4.23 minutes. Additionally, the abandoned call rate was at 12.24% before the Specialist answered the call. (Monthly Operational Outcomes Report November 2022.)

Additionally, the Department performs weekly quality assurance reviews of these communications to ensure accurate assessments and proper classification of communications.

The Department's Centralized Intake Hotline operates 24 hours a day, seven (7) days a week and is allocated 120 FTEs. The Centralized Intake Hotline staff consists of the following: one (1) Program Administrator, two (2) Program Managers, one (1) Operations Manager, seven (7) support staff, eight (8) Quality Assurance Specialists, thirteen (13) Supervisors, and eighty-eight (88) DCS Specialists. The Department does not anticipate allocating additional FTEs with this rulemaking.

The Department's Centralized Intake Hotline, referred to as the Child Abuse Hotline, is the community's first point of contact to report concerns of child abuse or neglect. The Child Abuse Hotline receives communications through its 24/7 toll-free reporting line, an online reporting site, fax, and mail. The Child Abuse Hotline primary functions include:

- Screen concerns of abuse or neglect to determine if the concern meets statutory criteria as a DCS report for investigation
- Conduct interviews with sources regarding their abuse or neglect concerns
- Document information gathered
- Conduct research within the DCS management information system to determine if reported individuals have prior history with DCS
  - If DCS Report criteria is met, additional tasks include: assess for Criminal Conduct criteria, assign priority response time and assign to a local DCS unit for investigation
  - If DCS Report criteria is not met, additional tasks include: determine relevant intake category and when applicable cross-report to other agencies that may have investigative authority.

The Department expended $8,063,413 in Fiscal Year 2022 for the functions of the Department's Centralized Intake Hotline. The ongoing estimated budget for the Department's Centralized Intake Hotline is $9.4 million. This is a combination of federal and state funding.

6. 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 rulemaking.

There is no known direct impact on private and public employment in businesses or political subdivisions of this state directly affected by these rules.

7. A statement of the probable impact of the rules on small business.

There are no probable impacts on small businesses.

7.1. Identification of the small businesses subject to the rules.

There are no small businesses subject to the rules in Chapter 3, Article 2.

7.2. The administrative and other costs required for compliance with the rules.

The rules in Chapter 3, Article 2 impact the Department of Child Safety as the state agency authorized to receive and screen calls pertaining to child abuse and neglect. Costs and funding to operate the Centralized Intake Hotline are detailed under #5. There are no costs charged to the public for availability and services provided by the DCS Centralized Intake Hotline.

7.3. A description of the methods that the agency may use to reduce the impact on small businesses.

There are no fees charged to those calling the Centralized Intake Hotline.

7.4. The probable costs and benefits to private persons and consumers who are directly affected by the rules.

There are no costs associated with reporting suspicions of abuse and neglect of children. The Department of Child Safety is responsible for the maintenance of the Centralized Intake Hotline. The benefits to private persons is the availability of the services provided by the Department of Child Safety Centralized Intake Hotline when they want to report suspicions of child abuse or neglect. Arizona's Centralized Intake Hotline also benefits private persons because it serves a vital child protection function, alerting the DCS to suspected abuse or neglect.

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

There are no fees associated with these rules. The Department has not identified any direct or indirect effect of the rulemaking on state revenues.

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

The rules under review propose the least intrusive and least costly method of achieving the purpose in the rules.

10. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

Not applicable

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-454. Department organization

A. The director shall organize the department to best implement the following functions:

1. Receiving, analyzing and efficiently responding to reports of possible abuse or neglect as provided in section 8-455.

2. Appropriately investigating the reports whether or not they involve criminal conduct allegations as provided in section 8-456.

3. Coordinating services necessary for the child or the child's family as provided in section 8-457.

4. Overseeing adoption pursuant to chapter 1 of this title and foster care pursuant to article 4 of this chapter.

5. Reviewing and reporting the actions of the department to ensure that the actions comply with statute and the rules and policies of the department and reporting significant violations as provided in section 8-458.

B. Subject to title 41, chapter 4, article 4, the director shall employ:

1. A chief of the office of child welfare investigations. The chief is the administrative head of the office of child welfare investigations and shall report directly to the director.

2. An inspector general. The inspector general is the administrative head of the inspections bureau and shall report directly to the director.

3. Administrators to serve as the administrative heads of the other bureaus of the department, who may report directly to the deputy director.

8-455. Centralized intake hotline; purposes; report of possible crime; DCS report; risk assessment tools; access to information; public awareness; definitions

A. The department shall operate and maintain a centralized intake hotline to protect children by receiving at all times communications concerning suspected abuse or neglect. If a person communicates suspected abuse or neglect to a department employee other than through the hotline, the employee shall refer the person or communication to the hotline.

B. The hotline is the first step in the safety assessment and investigation process and must be operated to:

1. Record communications made concerning suspected abuse or neglect.

2. Immediately take steps necessary to identify and locate prior communications and DCS reports related to the current communication using the department's data system and the central registry system of this state.

3. Quickly and efficiently provide information to a law enforcement agency or prepare a DCS report as required by this section.

4. Determine the proper initial priority level of investigation based on the report screening assessment and direct the DCS report to the appropriate part of the department based on this determination.

C. If a communication provides a reason to believe that a criminal offense has been committed and the communication does not meet the criteria for a DCS report, the hotline worker shall immediately provide the information to the appropriate law enforcement agency.

D. A hotline worker shall prepare a DCS report if the identity or current location of the child victim, the child's family or the person suspected of abuse or neglect is known or can be reasonably ascertained and all of the following are alleged:

1. The suspected conduct would constitute abuse or neglect.

2. The suspected victim of the conduct is under eighteen years of age.

3. The suspected victim of the conduct is a resident of or present in this state.

4. The person suspected of committing the abuse or neglect is the parent, guardian or custodian of the victim or an adult member of the victim's household.

E. Except for criminal conduct allegations, the department is not required to prepare a DCS report if all of the following apply:

1. The suspected conduct occurred more than three years before the communication to the hotline.

2. There is no information or indication that a child is currently being abused or neglected.

F. Investigations of DCS reports shall be conducted as provided in section 8-456 except for investigations containing allegations of criminal conduct, which shall be conducted as provided in section 8-471.

G. The department is not required to prepare a DCS report concerning alleged abuse or neglect if the alleged act or acts occurred in a foreign country and the child is in the custody of the federal government.

H. The department shall develop and train hotline workers to use uniform risk assessment tools to determine:

1. Whether the suspected conduct constitutes abuse or neglect and the severity of the suspected abuse or neglect.

2. Whether the suspected abuse or neglect involves criminal conduct, even if the communication does not result in the preparation of a DCS report.

3. The appropriate investigative track for referral based on the risk to the child's safety.

I. A DCS report must include, if available, all of the following:

1. The name, address or contact information for the person making the communication.

2. The name, address and other location or contact information for the parent, guardian or custodian of the child or other adult member of the child's household who is suspected of committing the abuse or neglect.

3. The name, address and other location or contact information for the child.

4. The nature and extent of the indications of the child's abuse or neglect, including any indication of physical injury.

5. Any information regarding possible prior abuse or neglect, including reference to any communication or DCS report involving the child, the child's siblings or the person suspected of committing the abuse or neglect.

J. Information gathered through the hotline must be made available to an employee of the department in order to perform the employee's duties. The office of child welfare investigations and the inspections bureau must have immediate access to all records of the hotline.

K. A representative of the:

1. Office of child welfare investigations must be embedded in the hotline to carry out the purposes of section 8-471.

2. Inspections bureau must be embedded in the hotline to carry out the purposes of section 8-458.

L. The department shall publicize the availability and the purposes of the centralized intake hotline.

M. For the purposes of this section:

1. "Centralized intake hotline" means the system developed pursuant to this section regardless of the communication methods or technologies used to implement the system.

2. "Criminal offense" means an allegation of conduct against a child by a person other than a parent, guardian or custodian of the child victim or another adult member of the child's household that, if true, would constitute a felony offense.

DCS field unit for investigation and ends when the DCS Investigator initiates the investigation by an attempt to make in-person contact with the alleged child victim. Any proposed changes to the response time shall be submitted to the DCS Community Advisory Committee as established in A.R.S. § 8-459 for review and discussion prior to implementation.

30. "Safe haven provider" means the same as in A.R.S. § 13-3623.01.
31. "Substantiated" means that there is probable cause to believe the child was abused or neglected.
32. "Temporary custody" means the same as in A.R.S. § 8-821.
33. "Unsubstantiated" means that there was insufficient evidence to substantiate that the child was abused or neglected when the finding was entered into the Department's case management information system.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

ARTICLE 2. RECEIPT AND SCREENING OF COMMUNICATIONS

R21-3-201. Receipt of Information; Centralized Intake Hotline

A. The Department shall operate a Centralized Intake Hotline to receive and screen communications of suspected abuse or neglect of a child.

B. The Department shall publicize on the Department's website the availability and the purposes of the Centralized Intake Hotline.

C. The Department shall accept an anonymous communication if the source refuses to provide identifying and contact information.

D. When the Centralized Intake Hotline receives an incoming communication, the Intake Specialist shall gather relevant information to determine whether it meets the criteria for a DCS Report as prescribed in A.R.S. § 8-455.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-202. Preliminary Screening

The following allegations standing alone do not meet the criteria for a DCS Report unless the communication also includes an allegation of child abuse or neglect as defined in A.R.S. § 8-201 and otherwise meets the criteria as set forth in A.R.S. § 8-455:

1. The child is absent from school;
2. The child is age eight years or older and has allegedly committed a delinquent act;
3. The sibling of a child eight years or older has allegedly committed a delinquent act;
4. The sibling or other child living in the home who is age eight years or older allegedly committed a delinquent act against the alleged child victim;
5. The child's parents are absent from the home or are unable to care for the child but made appropriate arrangements for the child's care;
6. The child is receiving treatment from an accredited Christian Science practitioner, or other religious or spiritual healer, but the child's health is not:
   a. In imminent risk of harm; or
   b. Endangered by the lack of medical care;
7. The child has minor hygienic problems;
8. The child is the subject of a custody or visitation dispute;
9. The spiritual neglect of a child or the religious practices or beliefs to which a child is exposed;
10. The child's parent, guardian, or custodian questions the use of or refuses to put the child on psychiatric medication but the child's health is not:
    a. In imminent risk of harm; or
    b. Endangered by the refusal to put the child on the recommended psychiatric medicine; or
11. The child is an unharmed newborn infant, who is seventy-two hours of age or younger, and whose parent or agent of the parent voluntarily delivered the parent's newborn to a safe haven provider as provided in A.R.S. §§ 8-528 and 13-3623.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-203. Disposition of Communications

A. DCS Report. If a communication meets criteria for a DCS Report, the Intake Specialist shall:

1. Enter the DCS Report information into the Department's case management information system;
2. Assign an appropriate response time, ranging from an immediate response to a response time not to exceed seven days;
3. Immediately transmit the DCS Report to the appropriate field unit; and
4. Inform the reporting source that the information meets criteria for a DCS Report, that the report will be sent to a field unit, and provide the reporting source, when identified, with contact information for the field unit.

B. Non-report. If a communication does not meet criteria for a DCS Report, the Intake Specialist:

1. Shall record the information regarding a child who is already in the Department's care, custody, and control, and forward it to the Child Safety Specialist managing that child's case;
2. Shall advise the reporting source to notify the appropriate law enforcement agency of an allegation of child abuse or neglect by a person other than a child's parent, guardian, custodian, or adult member of the household;
3. Shall inform the reporting source that the information does not meet criteria for a DCS Report, and that the information will be documented in the Department's case management information system; and
4. May refer the reporting source to a community resource, when appropriate.

C. Forwarding information on non-DCS Reports. If a communication does not meet criteria for a DCS Report, the Intake Specialist shall forward the information or allegations of abuse or neglect to:

1. The appropriate law enforcement agency concerning a felony criminal offense against a child;
2. The DCS Office of Licensing and Regulation, if the communication involves a DCS licensed out-of-home placement;
3. The appropriate child protection agency, if the child lives in another jurisdiction;
4. The appropriate licensing or certifying agency if a child is at a state licensed or certified child care home or facility;
5. The appropriate licensing agency if a child is at a state licensed behavioral health facility; or
6. The Arizona Department of Economic Security (DES) Adult Protective Services if the alleged victim is over the age of 18 years.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-204. Quality Assurance

The Department shall conduct a review at least weekly of communications concerning alleged abuse or neglect of a child, which do not meet criteria for a DCS Report, to verify the communications are properly classified.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2

New Part: Article 13, Part D

New Section: R18-2-D1301, R18-2-D1302, R18-2-D1303

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: June 15, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 2

New Part: Article 13, Part D

New Section: R18-2-D1301, R18-2-D1302, R18-2-D1303

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to add a new Part D to Title 18, Chapter 2, Article 13 consisting of three (3) rules related to Air Pollution Control, specifically, State Implementation Plan rules for specific locations.

The Department is proposing to add new sections to Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area. The Department indicates this action is necessary to provide reasonable progress towards achieving natural visibility conditions at Federal Class I areas under the Federal Regional Haze (RH) Rule. The Department states the proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads. The Department expects to submit the rules to the U.S. Environmental Protection Agency (EPA) as a revision to the Arizona State Implementation Plan (SIP).

The Department indicates these rules are a required component of the final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022*, which contained a commitment to submit supplemental nonpoint rules to satisfy federal emissions control requirements. The Department indicates, if it fails to submit these rules as part of the main Regional Haze SIP, the EPA could find that SIP submission incomplete or disapprove part of the plan, resulting in imposition of a federal implementation plan (FIP) on Arizona. The Department states failure to submit a satisfactory SIP revision may also result in sanctions, including suspension of federal highway funds and imposition of a 2 to 1 offset ratio under the nonattainment new source review permitting program (2:1 Offsets).

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 the final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022*, contains further information on ADEQ's nonpoint source evaluation. A copy of the document can be found at the following link: https://azdeq.gov/node/5377

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

The Department is proposing to add new sections to Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area. This action is necessary to provide reasonable progress towards achieving natural visibility conditions at Federal Class I areas under the Federal Regional Haze (RH) Rule. The proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads. The Department states that these rules are a required component of the final *State Implementation Plan Revisions: Regional Haze Program (2018-2028), August 15, 2022*, which contained a commitment to submit supplemental nonpoint rules to satisfy federal emissions control requirements. Failure to submit a satisfactory State Implementation Plan (SIP) may also result in sanctions, including suspension of federal highway funds and imposition of a 2 to 1 offset ratio under nonattainment new source review permitting program (2:1 Offsets). Stakeholders include the Department, county agencies acting as air quality regulatory authorities, public entities that own and operate unpaved road connections,

nonresidential or industrial, commercial or institutional (ICI) construction sector, and dust generating activities that may create trackout on paved roads, including construction or industrial earthmoving work.

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

The Department states that under the federal Regional Haze Rule, the Department conducted an emissions control measure analysis that included selection of the most substantially controlling sectors of fugitive dust and the most cost-effective controls applicable to those source sectors. Based on that analysis and review with relevant stakeholders, the Department determined there is no less intrusive or costly alternative method of achieving the emissions reductions.

6. What are the economic impacts on stakeholders?

The Department states that the Environmental Protection Agency (EPA) recognizes the technical difficulties and imprecision of assigning a dollar value to improved visibility conditions, given differences in "willingness to pay" for improved conditions and the different values people assign to better visibility either where they live or in a recreational area. The Department indicates there is limited survey data or research specifically concerning the estimated value impact of visibility improvements in Arizona. However, the Department indicates that given that these five federal Class I areas see over one million visitors each year, the associated economic impact of recreational tourist spending is substantial to the state. The Department states that the visibility improvements from regional haze controls prevents degradation of these national resources and negative health impacts on visitors, forest workers, and local communities. The Department also states that most industries already operate under dust control rules, such as construction or nonmetallic mineral processing and already practice trackout cleanup and may not incur any additional costs above the compliance they already practice for existing state, county, or permit 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 made the following changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- The nonresidential construction exclusions were moved from R18-2-D1301(6) to (13) for clarity.
- Definitions 13 and 22 under R18-2-D1301 were each revised to clarify ADEQ's intent for the rule to apply only to on-site road construction and use.
- R18-2-D1302(C) was revised to provide flexibility for operators when notifying ADEQ of changes to construction project information while retaining the requirement to notify of a new start date at least 30 days before construction begins.

- R18-2-D1302(D)(3) was revised to reflect ADEQ's intent that the construction site speed limit control will apply only to unpaved traffic areas, including unpaved roads and unpaved parking/staging areas.
- R18-2-D1303(C)(2) was revised to replace "mud/dirt" with "bulk material" to clarify the intended applicability of this trackout removal standard to all bulk material, not only mud or dirt.
- R18-2-D1303(C)(2)(C) was revised to allow Director-approved extensions to trackout cleanup requirements in certain cases, in recognition of the potential difficulty of timely obtaining state or local agency authority to restrict vehicle traffic and cleanup trackout.

Council staff does not believe these changes make the final rules substantially different from the proposed rules pursuant to 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 twenty-one (21) comments on this rulemaking from various stakeholders and entities. The comments are summarized in Section 11 of the Preamble along with the Department's responses. Copies of the written comments have also been provided with the final materials for the Council's reference. Council staff believes the Department has adequately responded to the comments on these proposed rules.

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

The Department indicates that the rules do not require the issuance of a regulatory permit, license or agency authorization.

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

While the Department indicates the federal Clean Air Act § 169(A) and regional haze implementing regulations adopted by EPA (40 CFR 51.308) apply to the subject of this rule, this rulemaking is no more stringent than required by federal law.

11. Conclusion

This regular rulemaking from the Department of Environmental Quality (Department) seeks to add a new Part D to Title 18, Chapter 2, Article 13 consisting of three (3) rules related to Air Pollution Control, specifically, State Implementation Plan rules for specific locations.

The Department is proposing to add new sections to Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition

Wilderness Area. The Department indicates this action is necessary to provide reasonable progress towards achieving natural visibility conditions at Federal Class I areas under the Federal Regional Haze (RH) Rule. The Department states the proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

5/9/2023

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

Re: Rulemaking for Title 18. Environmental Quality, Chapter 2. Department of Environmental Quality-Air Pollution Control, Article 13.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits new sections under Arizona Administrative Code (A.A.C) Title 18, Chapter 2, Article 13 (R18-2-D1301 through R18-2-D1303) to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for July 5, 2023.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)

- Pursuant to A.R.S. § 41-1038 (A)(2), this rulemaking is necessary to implement state statutes that direct ADEQ to create rules necessary to comply with the federal Regional Haze rule under the Clean Air Act. These rules will incorporate measures to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas in Arizona: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area. This action is necessary to provide reasonable progress towards achieving natural visibility conditions at Federal Class I areas as required under the federal Regional Haze rule.
- The public record closed for all rules on January 13, 2023 at 5:00 p.m.
- The rulemaking activity does not relate to any five-year review report.
- The rule does not establish a new fee or contain a fee increase.
- ADEQ is not requesting an immediate effective date under A.R.S. § 41-1032.
- The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

- A list of documents enclosed under A.A.C. R1-6-202(A)(1)(h), (A)(2)-(8), which are enclosed as electronic copies:
    - This cover letter.
    - The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, text of each rule, and the economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
    - The written comments and transcript of oral comments received by ADEQ on the Notice of Proposed Rulemaking (NPRM).
    - ADEQ received no analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.
    - The rules amended by this rulemaking do not incorporate materials by reference; therefore, no such materials are included.
    - No statute was declared unconstitutional.
    - One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rules, including relevant statutory definitions: A.R.S. §§ 49-104(A)(1), (A)(10), and (B)(4), 49-404(A), 49-458, and 49-458.01. A copy of 18 U.S.C. § 1151 is also enclosed, as it is referred to in A.A.C. R18-2-D1301(10).

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

Sincerely,

Karen Peters
Director
Arizona Department of Environmental Quality

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
Article 13, Part D	New Part
R18-2-D1301	New Section
R18-2-D1302	New Section
R18-2-D1303	New Section

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

Authorizing statutes: A.R.S. §§ 49-104(A)(1), (A)(10), and (B)(4), 49-404(A), 49-458.

Implementing statute: A.R.S. § 49-458.01.

3. The effective date of the rule:

[60 days after SOS publication]

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1111, July 23, 2021.
Notice of Rulemaking Docket Opening: 28 A.A.R. 3633, November 25, 2022.
Notice of Proposed Rulemaking: 28 A.A.R. 3603, November 25, 2022.

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

Name: Bruce Friedl
Address: Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2259
Email: friedl.bruce@azdeq.gov
Website: http://www.azdeq.gov/notices

Or

Name: Alex Ponikvar

Address: Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4601

Email: ponikvar.alex@azdeq.gov

Website: http://www.azdeq.gov/notices

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary

The Arizona Department of Environmental Quality (ADEQ) is proposing to add new sections to Arizona Administrative Code (A.A.C.) Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area. This action is necessary to provide reasonable progress towards achieving natural visibility conditions at Federal Class I areas under the Federal Regional Haze (RH) Rule. The proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads. ADEQ expects to submit the rules to the U.S. Environmental Protection Agency (EPA) as a revision to the Arizona State Implementation Plan (SIP).

These rules are a required component of the final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022,* which contained a commitment to submit supplemental nonpoint rules to satisfy federal emissions control requirements. If ADEQ fails to submit these rules as part of the main Regional Haze SIP, EPA could find that SIP submission incomplete or disapprove part of the plan, resulting in imposition of a federal implementation plan (FIP) on Arizona. Given the potential for economic impacts, FIPs have historically met with significant negative response from affected regulated entities and the public. Failure to submit a satisfactory SIP revision may also result in sanctions, including suspension of federal highway

funds and imposition of a 2 to 1 offset ratio under the nonattainment new source review permitting program (2:1 Offsets).

Background

Federal Regional Haze Rule

In 1977, Congress amended the Clean Air Act (CAA) to include provisions to protect the scenic vistas of the nation's national parks and wilderness areas. In these amendments, Congress declared as a national visibility goal: "The prevention of any future, and the remedying of any existing impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." CAA section 169A. "Class I area" means any international park, national wilderness area and national memorial park that exceeds 5,000 acres, or any national park that exceeds 6,000 acres, which are designated under the CAA as mandatory Federal Class I areas in order to preserve, protect and enhance air quality.

In 1999, EPA promulgated the Regional Haze Rule which requires states, in coordination with EPA, Federal Land Managers, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. In 2017, EPA published amendments to the Regional Haze Rule to update the program for the planning period 2018-2028. EPA's Regional Haze Rule requires periodic evaluation of source controls for emissions that significantly impact visibility in Federal Class I areas. ADEQ is required to submit to EPA a revision to the Arizona SIP that contains a long-term strategy that addresses regional haze visibility impairment for each mandatory Federal Class I area within the State and for each mandatory Federal Class I area located outside the State that may be affected by emissions from the State. The long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress. In establishing its long-term strategy for regional haze, the State must:

1) Evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment (commonly known as a "four factor" analysis) under 40 CFR 51.308(d)(1)(i).
2) Consider additional criteria as required under 40 CFR 51.308(f)(2)(ii)-(iv).

SIP development procedures for the 2018-2028 RH planning period included evaluation of potential measures to reduce emissions from nonpoint sources in addition to point sources. ADEQ's final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022*, contains further information on source evaluation and emissions control requirements.

Evaluation of Nonpoint Sources

As part of its evaluation of nonpoint sources, ADEQ examined the 2013-2017 anthropogenic average light extinction (visibility impairment) on the 20% most impaired days (MID's) at Arizona Federal Class I areas. ADEQ screened out particulate matter (PM) species that made only a small contribution to overall anthropogenic visibility impairment on the 2013-2017 MID's at Arizona Federal Class I areas. Species evaluated included ammonium sulfate (sulfate), ammonium nitrate (nitrate), organic mass carbon (OMC), light absorbing carbon (LAC), [fine] soil, and coarse mass (CM). CM is the difference between particulate matter with diameters less than or equal to 10 micrometers (PM_{10}) and particulate matter with diameters less than or equal to 2.5 micrometers ($PM_{2.5}$). Fugitive dust is a common source of PM_{10}. The results of the evaluation showed that ammonium sulfate, ammonium nitrate, and CM account for, on average, 80 percent of anthropogenic light extinction on the 2013-2017 MID's at Arizona Federal Class I areas. ADEQ determined that ammonium sulfate, ammonium nitrate, and CM should be further evaluated during the 2018-2028 planning period and selected nitrogen oxides (NO_x), sulfur dioxide (SO_2), and PM_{10} as the indicator pollutants for the monitored PM species, respectively. The selection of these indicator pollutants is consistent with the requirements of the Regional Haze program, past reasonable progress determinations, and is regionally consistent with other Western States. The decision to select the largest contributing anthropogenic visibility impairing particulate matter species on the 2013-2017 MID's at Arizona Federal Class I areas for evaluation will maximize the visibility benefit of the proposed regulations.

Using the 2014 National Emission Inventory county-level datasets, ADEQ summed the total emissions of NO_x, SO_2, and PM_{10} (e.g. "Q") for each nonpoint emissions sector for counties within 50 km of an Arizona Federal Class I area. ADEQ then sorted the source sectors from largest to smallest and selected the largest source sectors until at least 80 percent of total "Q" emissions across all nonpoint emission sectors were accounted for. The results of the analysis can be seen in the table below.

Total Emissions by Nonpoint Source Sector (tons per year)

NO_x	PM_{10}	SO_2	Total	Source Sector
18,045	541	11	18,597	Mobile - Locomotives
0	14,501	0	14,501	Dust - Paved Road Dust
0	107,924	0	107,924	Dust - Unpaved Road Dust
0	15,536	0	15,536	Dust - Industrial/Commercial/Institutional Construction Dust (Nonresidential)
0	44,753	0	44,753	Industrial Processes - Mining
13,912	0	0	13,912	Biogenics - Vegetation and Soil

Based on this analysis, ADEQ selected paved and unpaved roads, mining and quarrying, and nonresidential construction source sectors for further analysis of emission control measures. Control of PM_{10} emissions from the selected source sectors involves the mitigation or reduction of fugitive dust emissions (i.e. solid particles generated by mechanical processing of materials from open air operations). Locomotive and Biogenic nonpoint source sectors were not selected for this planning period because these sectors are generally controlled at the federal level or are mostly uncontrollable.

Because activity-based dust emissions from the selected nonpoint source sectors do not generally experience high transport distances, the proposed regulations only apply in and within 50 kilometers (approximate as described by township and range) of Arizona Federal Class I areas that were most impacted (greater than 10 percent of the total anthropogenic light extinction) by coarse mass on the 2013-2017 MID's. The Arizona Federal Class I areas that were most impacted by anthropogenic coarse mass visibility impairment on the 2013-2017 MID's are: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park, and Superstition Wilderness Area. The remaining Arizona Federal Class I areas in the state either fell below the 10 percent threshold or did not have complete data at the time of the evaluation and were excluded from control consideration.

ADEQ performed an emissions control measure analysis and evaluation of technical feasibility for more than 60 potential dust mitigation measures relevant to the paved and unpaved roads, mining and quarrying, and nonresidential construction source sectors. As part of the "cost of compliance" analysis, ADEQ selected a nonpoint cost-effectiveness threshold of $5,000 (or less) per ton of emissions reduction to generally align with the median threshold used in selecting point

source controls, as well as historic EPA approvability determinations. Any control measures above this threshold were removed from further consideration. The final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022*, contains further information on ADEQ's nonpoint source evaluation and is available for review at the ADEQ Records Center and ADEQ's Regional Haze SIP Planning web page.

Following the analysis, four measures (two for paved roads and two for nonresidential construction) were selected as being necessary to make reasonable progress under the Federal Regional Haze Rule and suitable for rule development. No measures were selected for the unpaved roads or mining and quarrying sectors. Candidate control measures for these sectors were excluded based on technical infeasibility, not meeting one or more of the emission control measure analysis criteria, or there was insufficient information to make a determination at this time.

In its "cost of compliance" analysis, ADEQ considered the costs for application and maintenance of various dust control measures but did not include additional costs related to performing opacity observations of emissions plumes (a measure of how much light is blocked by a visible emissions plume and an indicator of the concentration of particulate matter emitted from a source) or other stability tests (e.g., "drop ball test") that may be performed following application of controls on disturbed land. Therefore, the proposed rules do not include requirements to perform these procedures but do include other monitoring and inspection requirements to help ensure adequate and continued implementation of required dust mitigation measures.

Section by Section Explanation of Proposed Rules:

In order to make reasonable progress toward the national visibility goal, ADEQ proposes to add the following new sections to A.A.C. Title 18, Chapter 2, Article 13:

R18-2-D1301. ADEQ proposes to add section R18-2-D1301 to provide definitions for sections R18-2-D1302 and R18-2-D1303.

R18-2-D1302. ADEQ proposes to add section R18-2-D1302 to require speed limits for nonresidential construction sites 10 acres or larger and additional dust control measures for parking and staging areas that have a cumulative area of 1 acre or more. The proposed rule also requires the owner or operator of a nonresidential

construction site to notify ADEQ before beginning any construction activity, and create and maintain records of control measures and inspection results. These records and notifications will allow ADEQ to track and monitor emissions reduction measures without a more stringent and burdensome permitting requirement. Exemptions are included for areas where more stringent local rules apply.

R18-2-D1303. ADEQ proposes to add section R18-2-D1303 to require application of dust control measures to certain unpaved access points where unpaved public roads join paved public roads. The proposed rule also requires cleanup of trackout, spillage, and erosion-caused deposition of any bulk material on paved public roadways. Recordkeeping and reporting are required for both measures, allowing ADEQ to estimate emission reductions and visibility improvements resulting from application of these controls. Exemptions are included for areas where more stringent local rules apply.

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 final *State Implementation Plan Revision: Regional Haze Program (2018-2028), August 15, 2022*, contains further information on ADEQ's nonpoint source evaluation.

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 following discussion addresses each of the statutory elements required for an economic, small business and consumer impact statement (EIS) under A.R.S. § 41-1055.

1055(A)(1), (B)(1). An identification of the rule making.

18 A.A.C. 2, Article 13.

ADEQ is proposing to add new sections to A.A.C. Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust in and around five federal Class I areas (Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park, and Superstition Wilderness Area). This action is necessary to provide reasonable progress towards achieving natural visibility conditions in federal Class I areas under the federal Regional Haze Rule. The proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads. ADEQ expects to submit the rules to EPA as a revision to the Arizona SIP.

Conduct and Frequency; Resulting Harm; Estimated Harm Reduction

As required under the federal Regional Haze Rule, ADEQ analyzed emissions sources that contribute significantly to visibility impairments at five federal Class I areas in Arizona and determined that particulate matter emissions from the nonresidential, or industrial, commercial, and institutional ("ICI"), construction sector substantially contribute to such impairment. Specifically, fugitive dust emissions caused by vehicle traffic on unpaved roads and unpaved parking and staging areas at nonresidential construction sites was identified as a contributor to emissions from this sector that could be reduced with readily available and cost-effective control technology.

The emissions analysis also determined that visibility-impairing fugitive dust emissions are caused by vehicles tracking dirt from unpaved roads onto paved roads, or spilling dirt or bulk material on paved roads, which later becomes re-entrained or "kicked up" by vehicle traffic on the paved road. This mechanism of dust creation was identified as a contributor to emissions from the paved road source sector that could be reduced with readily available and cost-effective control technology.

Fugitive dust emissions from nonresidential construction activities amount to 15,536 tons per year of PM_{10}, while paved roads contribute 14,501 tons per year of PM_{10}. ADEQ's analysis demonstrated that both of these sectors contribute to reduced visibility at Arizona federal Class I areas on the 20% most anthropogenically-impaired days.

It is difficult to estimate a dollar value for the harm of reduced visibility at federal Class I areas, but given the substantial value to the State and local businesses of tourism and recreation to

Arizona's unique and protected natural areas, there is a marginal harm to economic activity in the state from reduced visibility.

Based on the emission control measure analysis ADEQ conducted under the federal Regional Haze Rule for nonpoint sources, it is estimated that these rules' controls will reduce the following amounts of PM_{10} emissions per application:

Control	**Estimated PM_{10} Reduction**
Dust Control Measures for Unpaved Parking/Staging Areas	0.5 – 1 ton (per project)
Speed Limit (Construction Sites)	116 pounds (per project)
Dust Control Measures for Unpaved Access Points	0.25 – 0.5 ton (per application)
Cleanup of Trackout/Spillage	600 pounds (per incident)

1055(B)(2) An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue or Benefit	Decreased Cost/Increased Revenue or Benefit
A. State and Local Government Agencies			
ADEQ/State of Arizona	Staff and contractor labor to create new construction notification portal	Substantial (ADEQ permitting staff estimated $200,000 to create the portal)	None
County agencies acting as air quality regulatory authorities	Staff time required to enforce the rules where applicable, review and document construction notification procedure	Minimal	None

Public entities that own and operate unpaved road connections	Labor and material costs to apply dust controls measures to unpaved access points	Minimal ($98 to $1,235 annual control cost, depending on material selected)	None
B. Private Entities			
Nonresidential or "ICI" construction sector	*Administrative, labor, and material costs for complying with the rules' new requirements to:*		
	apply dust controls measures to unpaved parking and staging areas.	Minimal to Moderate (approx. $430 per acre to $7,884 per acre controlled, depending on material selected)	Marginal benefit (reduced emissions exposure for workers on site)
	implement a speed limit with signage on construction sites.	Minimal (approx. $280 per project)	Marginal benefit (reduced emissions exposure for workers on site)
Dust generating activities that may create trackout on paved public roads, including construction or industrial earthmoving work	Labor cost to clean up trackout and document compliance	Minimal (approx. $250 per spill)	None

Minimal	Moderate	Substantial	Significant	Marginal
$5,000 or less	$5,001 to $25,000	Greater than $25,000	Cost or benefit cannot be easily quantified, but ADEQ expects it to be significant.	Cost or benefit cannot be easily quantified, but ADEQ expects it to be marginal.

1055(B)(3) - Individual Stakeholder Summaries and Cost/Benefit Analysis

ADEQ/State of Arizona

ADEQ anticipates a cost to the air permitting unit of approximately $200,000 to develop and implement the construction notification online portal system for the nonresidential construction rule. This expense will be a one-time setup cost to create the system, after which the construction rule will require minimal staff time to oversee.

The U.S. EPA recognizes the difficulty and imprecision of assigning a dollar value to improved visibility conditions, given differences in "willingness to pay" for improved conditions and the different values people assign to better visibility either where they live or in a recreational area. There is limited survey data or research specifically concerning the estimated value impact of visibility improvements in Arizona, though previous EPA analyses of the 2005 Clean Air Visibility Rule estimated benefits in the range of $1.75 million to $3.5 million in 2022 dollars for each of the covered National Parks in Arizona.

While the nonpoint control rules proposed here will not likely produce as substantial emission reductions as the 2005 Regional Haze retrofit rule, they are projected to contribute to continual improvement in visibility in Arizona.

County agencies acting as air quality regulatory authorities

Arizona counties with primacy authority to act as air quality regulators (i.e. Maricopa and Pinal) may receive authority under a future delegation agreement to enforce the proposed nonresidential construction rules and collect the relevant records from covered operators.

Because the requirements of the proposed rules are less stringent than many of the rules in place for PM_{10} nonattainment areas in those counties, ADEQ anticipates that those counties will incur only a minimal cost of staff time to review and enforce the new rules.

Since most covered operations within those counties take place in PM_{10} nonattainment areas, there will not likely be a substantial number of projects requiring separate application of these rules, minimizing staff time and related costs.

Public entities that own unpaved roads adjoining paved public roads with at least 2700 daily trips

Under application of the proposed rules, public entities and agencies seeking to construct or modify an unpaved access point adjoining a paved public road with more than 2,700 daily trips will be required to apply dust controls measures to that access point for the full width of the roadway and for 100 ft. from the centerline of the adjoining paved road. The cost of implementing this fugitive dust control will vary based on the material selected as most cost efficient for the agency's needs at that site. Because different treatments last for varying lengths of time, ADEQ's cost analysis normalized costs to the cost of stabilizing one access point for one year.

Stabilizing one unpaved access point using aggregate (gravel) costs approximately $1,235 per application, while pavement costs $1,123 per access on an annualized basis. Chemical stabilizer has a similar effectiveness at controlling fugitive dust as pavement, with a lower cost of around $98 per year for twice yearly application of the stabilizer.

Nonresidential or "ICI" construction sector

The proposed rules for the nonresidential construction sector will apply to construction projects depending on the size of the site or its associated parking and staging areas.

Apply dust controls measures to unpaved parking/staging areas: For nonresidential construction sites with at least one acre of unpaved parking and staging areas, control of these areas will be required using either pavement, gravel, or chemical stabilizer. The cost of implementing this fugitive dust control will vary based on the material selected as most cost efficient for the contractor's needs at that project. Because different treatments last for varying lengths of time, ADEQ's cost analysis normalized costs to the cost of stabilizing one acre for one year.

Stabilizing one acre of parking or staging area is estimated to cost $2,956 per year using acrylic polymer, $1,344 per year using gravel, and $7,843.68 per year using pavement. Each method controls dust emissions to a different degree and the optimal material choice will depend on the duration of the construction project, size of the site, frequency of traffic, and material availability.

Given the limited size of parking and staging areas relative to the whole construction site, the cost of this control is expected to have minimal impact on the costs of construction. Application of these controls will require minimal materials and labor to install and inspect the selected material.

Speed limits: For nonresidential construction sites at least 10 acres in area, operators will be required to implement a maximum 15 miles per hour speed limit, including a minimum of four

speed limit signs per site. This control measure is expected to impose a minimal material cost on operators, with the cost of four speed limit signs estimated at $274 per project. There will be a marginal time cost for operators driving slightly slower between tasks and locations on the construction site, but this cost is expected to be minimal given the short distances driven on a construction site and that heavy equipment already drives at reduced speeds.

People conducting dust generating activities that may create trackout on paved public roads

This rule will impact any dust generating activities that may result in trackout or deposition of bulk material onto a paved roadway. As indicated in the cost analysis, most industries that already operate under dust control rules, such as construction or nonmetallic mineral processing, will already practice trackout cleanup and may not incur any additional costs above the compliance they already practice for existing state, county, or permit rules. Cleanup of trackout is estimated to cost approximately $250 for a few hours of road labor per incident.

1055(B)(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 rule making.

ADEQ anticipates no impact on public or private employment from application of the nonresidential construction rules, as staff time to implement them will amount only to a few hours over the course of a construction project for one-time application of the control and inspection to ensure continued dust suppression. Posting of speed limit signs is not expected to substantially impact labor needs for nonresidential construction, as many locations already require posting of signs with other information on construction sites.

Similarly, ADEQ anticipates no employment impact from the paved road controls, as cleanup of trackout is estimated to cost approximately $250 for a few hours of road labor per incident. Minimal inspection labor will be required to ensure continued dust control from treated access points.

1055(B)(5) - A statement of the probable impact of the rule making on small businesses.

This rulemaking is likely to impact small businesses in the construction sector that work on nonresidential construction projects, who will incur similar minimal material and labor costs to comply with the rule requirements. According to discussions with construction industry stakeholders, ADEQ estimates that the proportion of businesses affected by this rule that qualify

as "small businesses" under the statute ranges from 20% of construction firms near the major metro areas of Arizona (Phoenix and Tucson), increasing to 80% or greater further out into rural counties and areas.

Construction sector stakeholders indicate that many companies large and small will be comfortable with the controls selected for these rules, as they are similar to provisions of other, more stringent county and local requirements for specific areas with dust control rules. While smaller businesses likely have less expansive experience implementing dust controls and creating records of compliance, stakeholders expressed appreciation for the flexibility of controls operators are free to choose from, in order to select the control material that best fits the scope and duration of project. The trackout controls will incur similar costs between large and small construction operations, but as discussed in section 4, the cleanup costs for trackout are projected to be minimal at under $300 per incident.

ADEQ worked to tailor the rule to only the minimum reporting procedures required under general CAA requirements for the establishment of permanent and enforceable emission controls. This will ensure the information requested on the form is non-technical so that administrative staff may complete that task and businesses may minimize compliance costs. The signs required to implement a speed limit on construction sites are industry standard and readily available at negligible cost to the total project.

The proposed rules for paved road turnouts will not impact small businesses as they apply only to places where two public roads connect.

(a) An identification of the small businesses subject to the rule making.

This rulemaking will likely impact small businesses in the construction sector that work on nonresidential construction projects. Discussions with industry stakeholders indicate that there are many construction firms likely to fall under the "small business" definition, depending on the location of the work.

Near Phoenix and the Superstition Wilderness Dust Protection Visibility Areas, it is estimated that 80% of construction projects are completed by the top 10% of firms by size, but analyzing the areas further southeast covered by the rule indicates that small firms make up a larger share of total projects completed. In Cochise County for instance, it is estimated that small firms complete most major construction projects that are not connected to ADOT road projects.

(b) The administrative and other costs required for compliance with the rule making.

Cleanup of trackout is estimated to cost approximately $250 for a few hours of road labor per incident.

The access point control provision is projected to impose $98 to $1,235 in annualized treatment cost for each unpaved access point, depending on the material selected for the control and including labor for installation.

Controlling unpaved parking and staging areas for large construction sites is projected to cost approximately $430 per acre to $7,884 per acre controlled, depending on material selected and including labor for installation.

The cost of signage for speed control is estimated at $280 per project.

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

ADEQ evaluated each of the methods contemplated in A.R.S. § 41-1035 to reduce the impact of the rulemaking on small businesses and determined that the rule requirements already follow these parameters, or an alternative method for small businesses is not feasible. Discussion of each impact reduction method is below:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

The minimal notification requirement for the proposed construction rule is the minimum stringency of compliance required to include these rules in the State Implementation Plan under the CAA.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

The schedule for compliance with the construction notification is already flexible and allows operators to notify ADEQ of new work at any point at least 30 days before work begins, so operators may choose to do a single yearly notification of all projects, similar to a "block" permit, reducing the amount of administrative work and registration time required to comply. The

timeline for trackout cleanup is set at the minimum feasible time allowance that will give regulated operators time to comply based on the conditions of the site, while still working in a timely fashion to prevent dust emissions.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

The minimal notification requirement for the proposed construction rule is the minimum stringency of compliance required to include these rules in the State Implementation Plan under the CAA.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

The rule does not prescribe a single control available for unpaved parking area rule, ensuring that each operator can select the control design best suited for their project.

5. Exempt small businesses from any or all requirements of the rule.

Given the significant contribution of construction conducted by small firms to overall visibility-impairing emissions of PM, it was not feasible to exempt small business from the requirements.

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

As discussed above, EPA recognizes the technical difficulty and imprecision of assigning a dollar value to improved visibility conditions, given differences in "willingness to pay" for improved conditions and the different values people assign to better visibility either where they live or in a recreational area. There is limited survey data or research specifically concerning the estimated value impact of visibility improvements in Arizona.

However, given that these five federal Class I areas see over one million visitors each year, the associated economic impact of recreational and tourist spending is substantial to the state. The visibility improvements from regional haze controls prevents degradation of these natural resources and negative health impacts on visitors, forest workers, and local communities.

1055(B)(6) - A statement of the probable effect on state revenues.

Since the proposed regional raze rules do not substantially affect commercial activity from which the state of Arizona would receive tax revenue, ADEQ projects no effect on state revenues resulting from the rulemaking.

1055(B)(7) - A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

Under the federal Regional Haze Rule, ADEQ conducted an emission control measure analysis that included selection of the most substantially-contributing sectors of fugitive dust and the most cost-effective controls applicable to those source sectors. Based on that analysis and review with the relevant stakeholders, ADEQ determines there is no less intrusive or costly alternative method of achieving these emissions reductions.

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

The nonresidential construction exclusions were moved from R18-2-D1301(6) to (13) for clarity.

Definitions 13 and 22 under R18-2-D1301 were each revised to clarify ADEQ's intent for the rule to apply only to on-site road construction and use.

R18-2-D1302(C) was revised to provide flexibility for operators when notifying ADEQ of changes to construction project information while retaining the requirement to notify of a new start date at least 30 days before construction begins.

R18-2-D1302(D)(3) was revised to reflect ADEQ's intent that the construction site speed limit control will apply only to unpaved traffic areas, including unpaved roads and unpaved parking/staging areas.

R18-2-D1303(C)(2) was revised to replace "mud/dirt" with "bulk material" to clarify the intended applicability of this trackout removal standard to all bulk material, not only mud or dirt.

R18-2-D1303(C)(2)(C) was revised to allow Director-approved extensions to trackout cleanup requirements in certain cases, in recognition of the potential difficulty of timely obtaining state or local agency authority to restrict vehicle traffic and cleanup trackout.

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

ADEQ thanks all commenters for their input and feedback throughout this rule development process.

Comment 1: National Parks Conservation Association (NPCA) and Sierra Club "repeat their request from their June 2022 comments on ADEQ's preliminary analysis for non-point sources that ADEQ conduct robust four-factor analyses for additional non-point source categories—namely, mobile sources."

ADEQ Response 1: ADEQ acknowledges this comment and thanks NPCA and Sierra Club for the feedback. We note that a key flexibility of the federal Regional Haze Rule (RHR) is that a state is not required to evaluate all sources of emissions in each implementation period. 40 Code of Federal Regulations (CFR) 51.308(f)(2)(i) of the RHR requires a state to include in its periodic comprehensive regional haze SIP revision a "description of the criteria it used to determine which sources or groups of sources it evaluated...".

While the nonpoint screening did review one mobile source sector that most significantly contributed to visibility impairment (locomotives), the RHR contains no requirement for states to select a certain number of sources or percentage of visibility impairing pollutants emitted for emission control measure analysis in any given implementation period.

For the sources and source categories that were not selected for an emission control measure analysis during this implementation period, including mobile sources, ADEQ will consider whether measures for such sources are necessary to make reasonable progress in later implementation periods.

Comment 2: Pima County: "Who will enforce the speed limit and how will speeds be determined?"

ADEQ Response 2: The rule prescribes 15 mph speed limits for construction sites to which the rule applies, enforced by the operator of the construction site. As stated in the proposed R18-2-D1302(D)(2), "the owner or operator of a nonresidential construction site with 10 acres or more of disturbed surface area associated with the construction project shall restrict maximum vehicular speeds to 15 miles per hour on all traffic areas of the site."

In addition, R18-2-D1302(F) requires responsible parties to document and affirm the speed limit controls with signage and compliance with the limits. Construction operators will affirm compliance

with these rules using the ADEQ online portal for construction notifications. Inspectors will have authority to visit construction sites and ensure compliance.

Comment 3: Pima: "What is the mechanism for how PDEQ will be given authority to enforce the proposed requirements for nonresidential construction?"

ADEQ Response 3: ADEQ notes that primary enforcement authority for these rules will go only to counties that already have delegated enforcement authority for air quality rules under A.R.S. 49-107, which does not include Pima County.

As the "appropriate local officer" under A.R.S. 49-106, PDEQ will retain authority to enforce the statewide nonresidential construction rule and address complaints related to its provisions, but this rulemaking creates no new enforcement duty or implementation obligation for the County.

Comment 4: Pima: "How will nonresidential construction be differentiated and tracked in a permitting system? PDEQ currently does not have a permitting system setup to differentiate between residential and non-residential construction. Nor does the current tracking system have the ability to determine the acreage of unpaved parking and staging areas. The cost and time to develop and implement a system will be significant."

ADEQ Response 4: ADEQ will create the construction portal in order to track notifications under this rule, so PDEQ will not be required to create its own tracking system or incorporate the state-level construction notification requirements into the county dust permit system.

If Pima County would prefer to fully take over administration and enforcement of these rules, that could be achieved at a later date through a delegation agreement, but this rulemaking creates no obligation for Pima to do so.

Comment 5: Pima: "Has there been an analysis of how many nonresidential construction sites will be affected annually in Pima County? It will be important to determine how the increased cost to PDEQ to implement and enforce the newly proposed regulations will be paid for due to the fact that PDEQ does not have the funds to cover the additional workload."

ADEQ Response 5: ADEQ disagrees that there will be additional workload or financial burden on the counties as a result of implementing this rule. ADEQ will create a construction notification database for this rule, which will handle the notification process. The rule requires operators to provide notification of the project's construction schedule and certification of compliance with recordkeeping. ADEQ will actively provide implementation of the rule, and both ADEQ and Pima County will have enforcement authority to conduct random inspections of the rule provisions but no affirmative obligation to do so.

ADEQ does not currently have an estimate of how many construction sites will be affected in each county. Arizona is not claiming Reasonable Progress credit in the SIP for this rule due to the difficulty of quantifying its impact, but implementation of the rule and resulting data collection will allow ADEQ to better evaluate how many sites are affected. Any emissions reductions credit could be used to demonstrate Reasonable Progress in a future Regional Haze planning period.

As noted above in Response 3, as the "appropriate local officer" under A.R.S. 49-106, Pima will retain authority to enforce the statewide nonresidential construction rule and address complaints related to its provisions, but this rulemaking creates no new affirmative enforcement duty or implementation obligation for the County.

Comment 6: Pima County Department of Transportation: "Has concerns about [the paved road] rules and the additional dust control measures and the extensive impact this will have on our budget and workflow processes.

PCDOT believes the items identified in the proposed rules are not feasible for routine maintenance being performed on a daily basis and are not financially sustainable. There are numerous unpaved transitions within Pima County so the financial and time impacts would be extensive and affect our ability to perform other maintenance tasks causing concerns amongst our tax paying customers.

PCDOT also has concerns about the proposed Recordkeeping and Reporting process due the extensive workflow processes associated with these steps."

ADEQ Response 6: ADEQ thanks PCDOT for its comment but notes that the rule will not apply to routine maintenance, only access points that are new or substantially modified (meaning "a project

where paving operations are an integral part of new construction, reconstruction, or a pavement rehabilitation project on the paved public road.")

For example, substantial modification would be triggered by changes to the design or function of the roadway or other major changes that require ADOT permitting or coordination under its "Minor Project" or other project policy, design or environmental clearances, or modified right of way.

ADEQ anticipates that the number of affected access points each year will be limited and the cost of stabilizing them will be reasonable, based on the control cost effectiveness analysis and economic impact statement used to create the menu of control options in the rule. The applicability of the rule is appropriately narrow in scope to only apply in cases of new roads or substantial modification of existing roads, which reduces the time and cost burden of implementation. Each control that was selected for rule development fell below ADEQ's reasonable cost effectiveness threshold for emission reductions.

Two of the stabilization treatment options (gravel and pavement) last several years once applied, while another choice (chemical dust suppressant) provides stabilization for a shorter term but at a lower cost.

ADEQ disagrees that the recordkeeping requirements to create an inventory of unpaved access points within the county, as well as records of when access points are stabilized, are unreasonable. The inventory will be necessary to analyze the potential and actual emissions impact of the rule, and records of control implementation are required for SIP rules.

Comment 7: Salt River Project (SRP): "Definition 6. "Construction"
The definition of construction differentiates types of construction such as "nonresidential construction", "roadway construction" and "residential construction" in order to exempt roadway construction associated with a residential construction site (R18-2-D1301.6.b) and independent roadway-only construction (R18-2-D1301.6.c). This sets applicability standards in the "construction" definition that would likely provide more clarity if included in the definition of "Nonresidential construction site" (R18-2-D1301.13), given that "roadway construction" is generally considered a form of "construction".
The "Nonresidential construction site" definition currently differentiates nonresidential construction from residential. SRP believes it is more appropriate to provide exclusions for residential and roadway

construction in the "Nonresidential construction site" definition as it is directly referenced in the proposed rule Applicability section (R18-2-D1302.A)."

ADEQ Response 7: ADEQ agrees with this comment and will relocate these exclusions from the Construction definition (6) to the Nonresidential construction site definition (13).

Comment 8: SRP: "Definition 7. "Construction site"
Requests that ADEQ provide clarity in the rule as to when a construction site is considered "active" and subject to the proposed rule and when a construction site is considered "inactive" and exempt from the proposed rule. Many construction sites may undergo cycles of activity and inactivity, and a differentiation is necessary in the rule, given that ADEQ has specified the proposed rule is meant to reduce "activity-based dust emissions"."

ADEQ Response 8: As stated in the proposed R18-2-D1302(E), ADEQ considers a construction site active when dust generating activities occur on the site and intends the rule to apply from the time construction begins on a given site to the time construction completes.

Under the rule provision noted above, compliance inspections are required on days that dust generating activities occur on the site.

Comment 9: SRP: "Definition 11. "Earthmoving activity"
Requests an exemption for regular vegetation management activities that maintain root structure. An example of this type of activity would include, but is not limited to, forest thinning or weed abatement activities that maintain vegetation root structure. These actions are necessary for ecosystem health but maintain soil integrity, minimizing fugitive dust creation."

ADEQ Response 9: Because this definition refers to "earthmoving" activity and includes "activity associated with land development where the objective is to disturb the surface of the earth," ADEQ contends that the rule already adequately exempts "regular vegetation management activities that maintain root structure" and do not disturb the surface of the earth.

As also detailed in Response 19, ADEQ intends that these activities are already exempt under the definition of "construction" and "nonresidential construction site" under R18-2-1301(6) and (13), since restoration-only activities on the landscape would not also involve "building a capital improvement" or modifying an existing structure.

Comment 10: SRP: "Definition 13. "Nonresidential construction site"
Recommends ADEQ specify that this definition only applies to industrial, commercial, or institutional (ICI) road construction taking place "on a project site", rather than "associated with the project". The rule does not provide clarity as to what constitutes roads "associated with the project".

Depending on interpretation, this could either be roads located on the project construction site or roads that provide access to the site, regardless of whether or not those roads were built solely to service and provide access for the particular construction project. Furthermore, in many cases the entity responsible for the nonresidential construction site will not be the owner or operator of the roadways constructed that provide access to the nonresidential construction site."

ADEQ Response 10: ADEQ agrees in part with this comment and will revise the "Nonresidential construction site" definition to read ". . . including roads ~~associated with~~ on the project site and excluding single family or multifamily home construction."

The rule is intended to apply to construction sites with unpaved parking and staging areas above 1 acre, including on-site unpaved access routes to such an area, regardless of whether the unpaved access roads are newly constructed or preexisting.

Definition 22 will also be revised to read ". . . and any conveyances, including on-site unpaved access routes to such an area. ADEQ notes that this provision is less stringent than similar dust control rules applicable to construction sites in the Phoenix and West Pinal PM_{10} nonattainment areas.

Comment 11: SRP: "Definition 22. "Unpaved parking and staging area"
Recommends the removal of the phrase "including unpaved access routes to such an area" from this definition. It is unclear from the rule what constitutes "unpaved access routes", as there is currently no definition for this term. Under the proposed definition, any route used to access an unpaved parking and staging area could be subject to control, regardless of whether it is on the construction site and regardless of the level of traffic experienced on the access route. This could result in additional unintended consequences for rule applicability. For instance, construction sites with parking and staging areas, otherwise significantly smaller than 1 acre, could be required to meet the standards of R18-2-D1302.D, simply because they have rarely utilized "unpaved access routes" that are included in

the calculation of the parking and staging area. This would result in undue burden on the owner/operator of the construction site.

If ADEQ's intention was to reference "Unpaved haul/access road", SRP would still recommend removal of this reference. The use of this term could prove problematic for compliance. The "Unpaved haul/access road" definition does not specify that it is specifically for construction sites. Additionally, the definition does not supply an insignificance threshold for traffic on these roadways. As such, any road that was used at any point in time to access a parking and staging area may be used in the estimate to determine the 1-acre threshold for parking and staging areas."

ADEQ Response 11: See ADEQ Response 10 above to SRP's comment on Definition 13.

Applicability of the rule is limited to construction or use of unpaved haul/access roads on the construction site, regardless of whether those roads are new or existing. The definition for "9. Dust generating operations" includes establishing or using access routes within the construction site. This definition is in line with existing rules that regulate the use of unpaved roads on construction sites such as Maricopa 310.

In fact, limiting this rule's applicability only to road use within the construction site is less expansive than the Maricopa and West Pinal rules that were used for the control analysis, which include access routes to and from the site in control requirements.

Comment 12: SRP: "Section R18-2-D1302.C. Notification
The requirement to notify the Director of any changes to the start or completion dates included in the notification as soon as practicable, but no later than 30 days before the new start or completion date is overly burdensome. Construction timelines often change frequently, and this requirement could significantly raise project costs by creating project delays simply to accommodate a 30-day notification requirement. The impact of this requirement would be reduced if it only applied to changes in a project's start date. SRP recommends the following change to reduce the impact of the rule's notification requirements:
"The owner or operator shall notify the Director of any changes to the start date included in the notification required under subsection (C)(1) as soon as practicable, but no later than 30 days before the new start date.""

ADEQ Response 12: ADEQ agrees in part with this comment but disagrees that the requirement to update the construction portal with a new completion date is unreasonable. This section will be updated to retain the requirement to notify of a new start date within 30 days of construction beginning, but the requirement to notify of a new completion date will now be required "as soon as practicable."

3. The owner or operator shall notify the director of any changes to the start or completion dates included in the notification required under subsection (C)(1) as soon as practicable. Notification of a change to the construction start date must be provided no later than thirty days before the new start date.

Comment 13: SRP: "R18-2-D1302.D.1. Standards – Unpaved parking and staging areas
There may be instances in which a nonresidential construction site operator is separate from the owner and/or is subject to environmental regulations in conflict with the proposed rule. This issue could restrict the use of control measures available in this section of the proposed rule. For example, SRP operates transmission lines on federal or state land management agency lands that may be subject to National Environmental Policy Act (NEPA) regulation. In these instances, some or all of the listed control measures may not be available for use by SRP. SRP requests an exemption to the rule in those instances where compliance with the proposed rule would result in noncompliance with other federal, state, or locally enforced environmental regulations.
If ADEQ will not allow an exemption in these instances, SRP requests that ADEQ provide a fourth compliance option that allows for use of alternative dust control measures, as approved by the Director. This flexibility would allow owners or operators to petition the Director in instances similar to those listed above. This type of flexibility is available for other regulations under AAC Title 18 Chapter 2 (e.g., R18-2-608 – Fugitive dust control from mineral tailings piles). Additionally, to decrease the regulatory burden associated with alternative control petitions to the Director, SRP requests that an alternative control measure approval by the Director apply to future instances of construction where the same environmental regulatory conflicts occur."

ADEQ Response 13: ADEQ is unable to implement the proposal from this comment, as once these rules are revised into the Arizona SIP, they will become federally-enforceable and cannot contain a blanket exemption for unspecified conflicts with other provisions of federal law.

ADEQ also notes that NEPA only requires review and analysis of likely environmental impacts before making a decision, rather than prescribing or prohibiting a particular action or control.

Approvals of alternative compliance methods based on Director discretion are not approvable for SIP purposes and cannot be considered in this rulemaking, which will be submitted as a revision to the Arizona SIP required under the regional haze rule.

To the comment's reference to other ADEQ air quality rules that contain Director discretion provisions, such as certain rules in Article 6, ADEQ notes that those rules are no longer approvable for SIP purposes under current EPA policy. Inclusion of such discretion would threaten the ability to include these rules in Arizona's Regional Haze SIP.

Comment 14: SRP: "R18-2-D1302.D.3. Standards – Speed limit
Recommends the following change to provide additional clarity that the speed limit standard is only applicable to 'unpaved' traffic areas:
"...restrict maximum vehicular speeds to 15 miles per hour on all unpaved traffic areas of the site...""

ADEQ Response 14: ADEQ agrees with this comment and intends the speed limit to apply only to unpaved traffic areas. R18-2-D1302(D)(3) Standards – Speed limit is revised to read in relevant part "...restrict maximum vehicular speeds to 15 miles per hour on all unpaved traffic areas of the site..."

Comment 15: SRP: "R18-2-D1302.E. Monitoring
It is unclear why there is a differentiation between R-18-2-D1302.E.1 and R-18-2-D1302.E.2. The former provides monitoring requirements for (D)(1) and the later provides monitoring requirements for (D)(2). However, (D)(2) is the method by which the (D)(1)(a) standard is achieved, which is only applicable to unpaved parking and staging areas. Therefore, it would appear as though R-18-2-D1302.E.1 and R-18-2-D1302.E.2 are redundant. In order to provide a more clear and concise rule, SRP suggests that ADEQ review this issue and remove R-18-2-D1302.E.2, if appropriate."

ADEQ Response 15: ADEQ is unsure if the citations in this comment refer to the intended sections of the published NPRM, but based on our understanding of the comment, we disagree that the monitoring requirements are redundant because they require different inspection and verification actions of two separate control standards under 1302(D)(1) and (D)(2).

Comment 16: SRP: "R18-2-D1302.F. Recordkeeping and Reporting
Recommends the record retention requirement be two years from the date of when records are established versus five years identified in R-18-2-D1302.F.3. This is consistent with Maricopa County

Rule 310 record retention requirements and would eliminate confusion for companies that conduct these activities in multiple jurisdictions with differing rule requirements."

ADEQ Response 16: ADEQ will retain the proposed retention schedule of five years because the information contained in the records needs to remain available as long as is reasonable throughout the Regional Haze planning period. This five-year retention period is consistent with or shorter than many other ADEQ rules found in A.A.C. Title 18.

Comment 17: SRP: "Section R-18-2-D1303.C.3. Standards - Trackout Cleanup
Recommends the replacement of the term "bulk material" in R-18-2-D1303.C.3.a-d with "mud/dirt". R18-2-D1303.C.3 specifically references the deposition of "mud/dirt". As such, the standards specified in R-18-2-D1303.C.3.a-d should also specify "mud/dirt" for consistency within the rule.
If ADEQ intended for the standard to apply to all bulk material deposition, SRP would recommend the term "mud/dirt" be replaced in R-18-2-D1303.C.3. with "bulk material" to provide consistency and clarity.
Finally, while ADEQ acknowledges that state or local agency permits may be necessary for the cleanup of bulk material on paved public roads (R-18-2-D1303.C.3.d), SRP requests that ADEQ add the following clarification to R-18-2-D1303.C.3.c, in recognition that obtaining state or local agency authority to cleanup bulk materials on paved road may not be available immediately upon request by an owner/operator who caused deposition:

"If needed, restrict vehicles from traveling over the bulk material until such time as the material can be removed from the travel lanes of the paved public roadway pursuant to subsection (C)(2)(a). In the event unsafe travel conditions would result from restricting traffic and removal of such material isn't possible within 72 hours due to a weekend or holiday condition ***or, after reasonable effort, the owner or operator of the property is unable to obtain state or local agency approval to restrict vehicle traffic and removal of such material isn't possible within 72 hours,*** *the provisions of subsection (C)(2)(a) may be extended upon notification to and approval of the Director."*"

ADEQ Response 17: ADEQ agrees with this comment and will revise R18-2-D1303(C)(2) to replace "mud/dirt" with "bulk material" to clarify the intended applicability of this standard to all bulk material, not only mud or dirt.

ADEQ also recognizes the potential difficulty of timely obtaining state or local agency authority to restrict vehicle traffic and cleanup trackout and will revise R18-2-D1303(C)(2)(c) as proposed, with edits to the structure.

Comment 18: SRP: "ADEQ mentions the potential of an owner or operator to obtain a "block" permit in the proposed rule preamble, Section 8. A model for block permit applicability and requirements is found in Maricopa County Rule 310 Section 404. To ensure block notification availability to owners and operators and reduce regulatory burden, SRP requests ADEQ consider similar language in the proposed rule for block notifications."

ADEQ Response 18: ADEQ appreciates this feedback and has reviewed and considered the provided model rule/permit as we develop the online portal to implement this rule. We also note that the rule does not restrict how early an operator provides a construction notification, so operators will have flexibility to submit multiple notifications at once for projects throughout the year if that is easier.

Comment 19: SRP "requests ADEQ provide a general exemption for restoration projects and associated activities (e.g., planting trees, native plant restoration, repairing irrigation systems, etc.). These activities act to restore natural habitats and reduce long-term fugitive emissions."

ADEQ Response 19: ADEQ intends that these activities are already exempt under the definition of "construction" and "nonresidential construction site" under R18-2-1301(6) and (13), since restoration-only activities on the landscape would not also involve "building a capital improvement" or modifying an existing structure.

Comment 20: SRP "requests clarification as to whether an owner or operator is ultimately responsible for compliance with the proposed rule requirements. There are many situations where the owner and operator may be separate entities. The rule, as written, does not provide clarity in these instances."

ADEQ Response 20: As stated in the rule, both the owner and operator will be jointly responsible for compliance, if they are separate entities, regardless of who actively implements the requirements of the rule. This joint liability is typical of regulations on owner/operators and is modeled after similar dust control rules from Maricopa and Pinal Counties.

Comment 21: SRP "requests more clarity as to whether the proposed rule would be applicable in instances when an organization is performing ICI construction on property that contains a residential building."

ADEQ Response 21: Yes, under this rule's definitions, a property with ICI construction on the site is an ICI construction site for purposes of the rule regardless of whether there are also new or existing residential buildings on the property.

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.R.S. § 49-458.01(A)(7) requires that the ADEQ Director submit to EPA SIP revisions to address visibility impairment in mandatory federal Class I areas under the regional haze program. The SIP revisions submitted to EPA must address programs related to emissions from those sources determined to substantially impact visibility in Class I areas.

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:

These rules do not require the issuance of a regulatory permit, license or agency authorization.

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

The federal Clean Air Act § 169(A) and regional haze implementing regulations adopted by EPA (40 CFR 51.308) apply to the subject of this rule, as described in section 6 above. This rulemaking is no more stringent than required by 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 such analysis was submitted.

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

Not applicable.

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

Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS
PART D. ARIZONA REGIONAL HAZE CLASS I AREAS

Section

R18-2-D1301. Definitions for R18-2-D1302 and R18-2-D1303
R18-2-D1302. Fugitive Dust Emissions from Nonresidential Construction
R18-2-D1303. Fugitive Dust Emissions from Paved Roads

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS
PART D. ARIZONA REGIONAL HAZE CLASS I AREAS

R18-2-D1301. Definitions for R18-2-D1302 and R18-2-D1303

The following definitions apply to R18-2-D1302 and R18-2-D1303:

1. "Average Daily Vehicle Trips (ADT)" means the average number of vehicles that cross a given point on a road over a 24-hour period.
2. "Bulk material" means any material, including but not limited to earth, rock, silt, sediment, sand, gravel, soil, fill, aggregate less than 2 inches in length or diameter, dirt, mud, demolition debris, trash, cinders, pumice, saw dust, and dry concrete, which are capable of producing fugitive dust.
3. "Class I area" means any international park, national wilderness area and national memorial park that exceeds 5,000 acres, or any national park that exceeds 6,000 acres, which are designated under the Clean Air Act as mandatory Federal Class I areas in order

to preserve, protect and enhance air quality. The full list of Arizona Federal Class I areas as of the effective date of this Part is defined at 40 CFR 81.403.

4. "Chemical stabilizer/dust suppressant" means hygroscopic material, solution of water and chemical surfactant foam, non-toxic chemical stabilizer or any other dust palliative, which is not prohibited by the U. S. Environmental Protection Agency (EPA), the Arizona Department of Environmental Quality (ADEQ), or any applicable law or regulation, as a treatment material for reducing fugitive dust emissions.

5. "Clean gravel" means a mineral or rock aggregate ranging in size from 0.25 to 3 inches on its longest dimension that is either natural or the product of a mineral processing operation and contains no more than 6% silt by weight.

6. "Construction" means building a capital improvement resting upon, connected to or buried in the earth; modifications to existing structures, including additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements; or installing infrastructure associated with a new or modified structure, such as roads, flood structures, drainage works and irrigation works, and installation of above- or below-ground utilities.

7. "Construction site" means any property or portion of a property upon which dust generating operations occur as a result of construction.

8. "Disturbed Surface Area" means any portion of the earth’s surface that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition.

9. "Dust generating operations" means any activity capable of generating fugitive dust, including but not limited to:

   a) Earthmoving activities;

   b) Land clean-up, leveling, back filling;

   c) Drilling;

   d) Construction;

   e) Demolition;

   f) Bulk material handling, storage or transporting operations;

   g) Operation of motorized machinery used in Construction;

   h) Establishing or using unpaved parking lots, haul/access roads within a construction site; or

   i) Installing initial landscapes using mechanized equipment.

10. "Dust Visibility Protection Areas" means the following townships associated with the Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area, (except those areas in Tribal Nations and Communities land, which has the same meaning as the term defined in 18 U.S.C. 1151):

a. In Cochise County: Township 12 South, Range 19 through 25 East (T12S, R19-25E); T12S, R27-32E; T13S, R19-32E; T14S, R19-32E; T15S, R19-32E; T16S, R19-22E; T16S, R24-32E; T17S, R19-22E; T17S, R24-32E; T18S, R19-21E; T18S, R24-32E; T19S, R19-20E; T19S, R25-32E; T20S, R25-32E; T21S, R26-32E; T22S, R26-32E; T23S, R27-32E; T24S, R28-32E.

b. In Graham County: T4S, R19-21E; T5S, R19-22E; T6S, R19-23E; T7S, R19-24E; T8S, R19-24E; T9S, R19-25E; T10S, R19 – 25E; T11S, R19-25E.

c. In Gila County: T7N, R9-14E; T6N, R9-15E; T5N, R9-15.5E; T4.5N, R15.5-16E; T4N, R10-16E; T3N, R11-17E; T2N, R13-17E; T1N, R13-17E; T1S, R13-17E; T2S, R14-17E; T3S, R14-16E; T4S, R14-16E; T5S, R15-16E.

d. In Maricopa County: T7N, R9E; T6N, R7-10E; T5N, R6-10E; T4N, R5-12E; T3N, R5-12E; T2N, R4-13E; T1N, R4-7E; T1S, R5-7E; T2S, R5-7E.

e. In Pima County: T11S, R7-18E; T12S, R7-18E; T13S, R7-18E; T14S, R7-18E; T15S, R7-18E; T16S, R8-18E; T17S, R9-18E; T18S, R11-18E; T19S, R15-18E.

f. In Pinal County: T1N, R8-13E; T1S, R8-14E; T2S, R8-14E; T3S, R6-14E; T3S, R17-18E; T4S, R7-18E; T5S, R9-18E; T6S, R15-18E; T7S, R15-18E; T8S, R10-18E; T9S, R9-18E; T10S, R8-18E.

11. "Earthmoving activity" means any land clearing, land cutting and filling operations, blasting, trenching, road construction, grading, landscaping, landfill operations, weed abatement through discing, soil mulching, or any other activity associated with land development where the objective is to disturb the surface of the earth.

12. "Modified unpaved access point" means a project where paving operations are an integral part of new construction, reconstruction, or a pavement rehabilitation project on the paved public road.

13. "Nonresidential construction site" means a construction site where industrial, commercial, or institutional construction is taking place, including roads on the project site and excluding single family or multifamily home construction.
Nonresidential construction does not include:

a) dust generating activities associated with the emergency repair of utilities;

b) roadway construction, unless it is associated with a nonresidential construction site; or

c) ongoing mining and quarrying activities, except construction of new structures.

14. "Owner or operator" means any person including, but not limited to, the property owner, lessee, developer, responsible official, general or prime contractor, supervisor, management company, or any person who owns, leases, operates, controls, or supervises a dust generating operation subject to the requirements of this rule.

15. "Pave/Pavement" means the application and maintenance of asphalt, concrete, or other similar material to a roadway surface, such as asphaltic concrete, concrete pavement, chip seal, or rubberized asphalt.

16. "Paved public road" means a public road that is covered with asphalt, recycled asphalt, asphaltic concrete, concrete, or any other pavement.

17. "Private road" means any road, equipment path or travel way used for motorized vehicle travel that is not a "public road" defined in R18-2-D1301.18.

18. "Public road" means any road, equipment path or travel way used for motorized vehicle travel that is owned by federal, state, county, municipal or other governmental or quasi-governmental agencies.

19. "Trackout" means any and all bulk materials that adhere to and agglomerate on the exterior surface of motor vehicles, haul trucks, or equipment (including tires) and that have fallen onto a paved roadway.

20. "Unpaved access point" means a location where an "unpaved public road" intersects with, adjoins, or otherwise connects to a "paved public road."

21. "Unpaved haul/access road" means any on-site unpaved road used by commercial, industrial, institutional, and/or governmental traffic.

22. "Unpaved parking and staging area" means any nonresidential area that is not covered by asphalt, recycled asphalt, asphaltic concrete, concrete, or any other pavement that is used for fueling and servicing; shipping, receiving and transfer; or parking or storing equipment, haul trucks, vehicles, and any conveyances, including on-site unpaved access routes to such an area.

23. "Unpaved public road" means a public road that is not covered with asphalt, recycled asphalt, asphaltic concrete, concrete, or any other pavement.

R18-2-D1302. Fugitive Dust Emissions from Nonresidential Construction

A. Applicability.

1. This Section applies to the owner or operator of a nonresidential construction site, as defined in R18-2-D1301(13), within the Dust Visibility Protection Areas, as defined in R18-2-D1301(10).

2. Effective date. Except as otherwise provided, the provisions of this Section shall take effect on January 1, 2025.

B. Exemptions.

1. This Section shall not apply to:

a. Areas subject to Maricopa County Air Pollution Control Regulations, Rule 310 Fugitive Dust From Dust-Generating Operations (as amended January 27, 2010);

b. Areas subject to Pinal County Air Quality Control District Code of Regulations, Chapter 4, Article 3. Construction Sites - Fugitive Dust (as amended October 28, 2015) and Chapter 4, Article 7. Construction Sites in Nonattainment Areas – Fugitive Dust (as amended June 3, 2009);

C. Notification.

1. The owner or operator of a nonresidential construction site shall notify the Director at least thirty days before beginning any construction activity by submitting a notification form prescribed by the Director.

2. Notification under subsection (C)(1) shall include:

a. Applicant name, organization/company, address, phone number, and email address;

b. Location of the construction site (street address or GPS coordinates of the center of the site);

c. The total area of the property upon which construction activities occur and an estimate of the area expected to be used for parking and staging activities;

d. Expected start and completion date of any construction activities;

e. Control measures selected from subsections (D)(1) and (D)(2).

3. The owner or operator shall notify the director of any changes to the information included in the notification required under subsection (C)(1) as soon as practicable. Notification of a change to the construction start date must be provided no later than thirty days before the new start date.

D. Standards.

1. Unpaved parking and staging areas. The owner or operator of a nonresidential construction site with unpaved parking and staging areas that have a cumulative area of 1 acre or more shall implement and use at least one of the following measures to reduce emissions of fugitive dust:

a. Apply and maintain chemical stabilizers/dust suppressants;

b. Apply and maintain clean gravel to a depth of 2 inches;

c. Install and maintain pavement.

Application and maintenance of chemical stabilizers/dust suppressants under subsection (D)(1)(a) shall be made in accordance with the manufacturer's recommendation.

2. Speed limit. To reduce emissions of fugitive dust, the owner or operator of a nonresidential construction site with 10 acres or more of disturbed surface area associated with the construction project shall restrict maximum vehicular speeds to 15 miles per hour on all unpaved traffic areas of the site including unpaved easements, right of way, unpaved haul/access roads and parking areas by installing speed limit signs at each entrance and along haul/access roads, with a minimum of four signs per site.

E. Monitoring.

1. To demonstrate compliance with subsection (D)(1), the owner or operator shall perform inspections on each day dust-generating operations are conducted of all parking and staging areas, including routinely traveled surfaces as evidenced by tire tracks, to ensure continued implementation of required control measures.

2. To demonstrate compliance with subsection (D)(2), the owner or operator shall perform inspections on each day dust-generating operations are conducted of vehicular traffic at the construction site to ensure continued implementation of required control measures.

F. Recordkeeping and Reporting.

1. The owner or operator shall maintain the following records:

a. Records of control measures implemented and maintained as required by subsection D above including:

i. The types of surface treatments, extent of coverage, and frequency/date of application/installation;

ii. Copies of manufacturer specifications for chemical stabilizers/dust suppressants, if applicable; and

iii. The number and placement of speed limit signs.

b. Written records of self-inspection required by subsections (E)(1) and (E)(2) on each day dust-generating operations are conducted. Inspection records shall, at a minimum, include:

i. Identification of inspector;

ii. Inspection date and time;

iii. General findings of inspection;

iv. Gravel coverage and measurements of depth, if applicable;

v. A description of how vehicle speed limits are restricted and enforced, such as, speed checks with radar guns, or other effective means; and

vi. Any corrective action or preventive measures taken as a result of the self-inspection, such as, application of additional dust suppressants or gravel and maintenance or replacement of speed limit signs.

2. Records required by subsections (F)(1)(a) and (F)(1)(b) shall be kept onsite and made available for review by the Director within two business days of notice to the owner or operator. For onsite requests by the Director, the owner or operator shall provide such records without delay.

3. The owner or operator shall retain all records, including supporting documentation, required by this Section for 5 years from the date of such record.

R18-2-D1303. Fugitive Dust Emissions from Paved Roads

A. Applicability.

1. This Section applies to the owner or operator of an unpaved access point within the Dust Visibility Protection Areas, as defined in R18-2-D1301(10).

B. Exemptions.

1. The provisions of subsection (C)(2) shall not apply to areas subject to Pinal County Air Quality Control District Code of Regulations, Chapter 4, Article 1. West Pinal PM_{10} Moderate Nonattainment Area Fugitive Dust (as amended October 28, 2015).

C. Standards.

1. Application of dust controls measures to unpaved access points. The owner or operator of a new or modified unpaved access point with a paved road exceeding 2,700 ADT shall apply dust controls measures to the unpaved access point by implementing and using at least one of the following measures to reduce trackout onto the paved roadway:

a. Apply and maintain chemical stabilizers/dust suppressants;

b. Apply and maintain clean gravel to a depth of 2 inches;

c. Install and maintain pavement.

Control measures under subsections (C)(1)(a) through (C)(1)(c) shall be applied for the full width of the unpaved roadway and up to the right-of-way limits of the paved road or up to 100 ft. from the centerline of the adjoining paved road, whichever is less. Application and maintenance of chemical stabilizers/dust suppressants under subsection (C)(1)(a) shall be made in accordance with the manufacturer's recommendation.

2. Cleanup of trackout, spillage, and erosion-caused deposition of any bulk material on paved public roadways. The owner or operator of the property within the Dust Visibility Protection Areas from which the trackout, spillage, or erosion caused deposition came shall, upon discovery of bulk material that extends 50 feet or more from the nearest unpaved surface exit onto the paved public roadway:

a. Within 24 hours of discovery, remove the bulk material from the paved public roadway with one of the following control measures:

i. Manual sweeping and pickup; or

ii. Operating a rotary brush or broom accompanied or preceded by sufficient wetting to limit fugitive dust emissions; or

iii. Operating a street sweeper; or

iv. Flushing with water, if curb and gutters are not present and where the use of water will not result in a source of trackout material or result in adverse impacts on storm water drainage systems or violate any Arizona Pollutant Discharge Elimination System permit program.

b. During removal of bulk material, do so in a manner that does not cause another source of fugitive dust.

c. If needed, restrict vehicles from traveling over the bulk material until such time as the material can be removed from the travel lanes of the paved public roadway pursuant to subsection (C)(2)(a). In the event unsafe travel conditions would result from restricting traffic and:

i. removal of such material isn't possible within 72 hours due to a weekend or holiday condition; or

ii. after reasonable effort, the owner or operator of the property is unable to obtain state or local agency approval to restrict vehicle traffic and removal of such material isn't possible within 72 hours,

the provisions of subsection (C)(2)(a) may be extended upon notification to and approval of the Director.

d. The removal of carryout and trackout from paved public roads does not exempt an owner/operator from obtaining state or local agency permits which may be required for the cleanup of bulk material on paved public roads.

D. Recordkeeping and Reporting.

1. The owner or operator shall maintain records of control measures implemented and maintained as required by subsection (C) above including the date and time of application/installation, and copies of manufacturer specifications for chemical stabilizers/dust suppressants, if applicable.

2. Records required by subsection (D)(1) shall be made available for review by the Director within two business days of notice to the owner or operator.

3. The owner or operator shall retain all records, including supporting documentation, required by this Section for 5 years from the date of such record.

4. Initial inventory. Within one year from the effective date of this rule, each city, county, state, or federal agency with primary responsibility for any existing paved public roadway with 2,700 ADT or greater shall provide the Director with a list of all unpaved access points under its jurisdiction. Evaluation of ADT shall be based on actual collected ADT data if available, or estimated based on state roadway functional classification designations or other similar means. The evaluation method shall be reported in the initial inventory.

5. Annual report. By April 1 of each year the owner or operator of a public roadway shall submit to the Director a report containing the following information:

a. Location of any unpaved access points to which control measures were applied during the previous calendar year according to subsection (C)(1) (street address or GPS coordinates);

b. Actual or estimated ADT of the intersecting paved public roadway portion of each access point and the evaluation method used;

c. The control measure applied/installed according to subsection (C)(1);

d. The length and width of the unpaved roadway upon which control measures were applied/installed according to subsection (C)(1);

d. The start and completion date of initial application/installation of controls according to subsection (C)(1); and

e. An update to the list of unpaved access points required under subsection (D)(4) to include any new access points that become subject to this rule due to changes in ADT.

January 13, 2023

Alex Ponikvar
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Re: Comments on Arizona's SIP Revision for Non-Point Source Rules for the Second Planning Period Regional Haze SIP

Dear Mr. Ponikvar:

On behalf of National Parks Conservation Association (NPCA) and Sierra Club, Earthjustice submits the following comments regarding Arizona's proposed revisions for non-point sources for the second planning period regional haze state implementation plan (SIP). We appreciate the Arizona Department of Environmental Quality's (ADEQ) continued stakeholder process for the non-point source SIP revisions, including providing the opportunity to provide comment on its preliminary four-factor analysis for non-point sources released in May 2022.[1] We further commend ADEQ for proposing SIP revisions for the nonresidential construction and paved road non-point source categories.

NPCA and Sierra Club repeat our request from our June 2022 comments on ADEQ's preliminary anlaysis for non-point sources that ADEQ conduct robust four-factor analyses for additional non-point source categories—namely, mobile sources. ADEQ's newly proposed SIP revisions for non-point sources appears unchanged from its preliminary four-factor analysis. In both, ADEQ determined that reasonable progress measures were necessary for only the nonresidential construction and paved road categories.[2] Similarly, ADEQ did not perform any

[1] Ariz. Dep't Env't Quality, Arizona Regional Haze 2022 Potential Nonpoint Rules at slide 8 (May 26, 2022), https://static.azdeq.gov/aqd/sip/regional_haze_05262022p.pdf [hereinafter "Preliminary Non-Point Source Analysis"].

[2] *Compare* Preliminary Non-Point Source Analysis *with* Ariz. Dep't Env't Quality, SIP Revision: Nonpoint Rules to Supplement Arizona's 2022 Regional Haze SIP (Nov. 30, 2022), https://static.azdeq.gov/pn/sip_2022reghazesup.pdf [hereinafter "Proposed Non-Point Source SIP Revision"].

analyses for non-point source mobile sources.[3] However, as noted in our June 2022 comments, ADEQ has determined that on-road mobile sources are one of the biggest contributors to NO_x pollution in the state.[4] We attach our June 2022 comments here for your convenience. *See* Attachment A.

NPCA and Sierra Club continue to support a robust SIP for the second planning period that includes sharp reductions from both point and non-point sources of haze-forming pollution. A strong regional haze plan will protect public health and bolster Arizona's tourism economy by protecting air quality at some of the nation's most iconic natural landscapes, like the Grand Canyon.

Sincerely,

Caitlin Miller
Rumela Roy
Michael Hiatt
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9617
cmiller@earthjustice.org
rroy@earthjustice.org
mhiatt@earthjustice.org

On behalf of National Parks Conservation Association and Sierra Club

CC: Mike Sonenberg, ADEQ, sonenberg.mike@azdeq.gov

Attachments:

Attachment A: Letter from Earthjustice, National Parks Conservation Association, and Sierra Club to ADEQ re: Preliminary Comments on Arizona's Non-point Source Analysis for the Second Planning Period Regional Haze SIP, June 8, 2022.

[3] *Compare* Preliminary Non-Point Source Analysis *with* Proposed Non-Point Source SIP Revision.
[4] *See* Ariz. Dep't Env't Quality, State Implementation Plan Revision: Regional Haze Program (2018-2028) at 53-54 & fig.6-2 (Aug. 15, 2022), https://static.azdeq.gov/aqd/sip/2021_regionalhaze.pdf.

ATTACHMENT A

June 8, 2022

Bruce Friedl
Alex Ponikvar
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Re: Preliminary Comments on Arizona's Non-Point Source Analysis for the Second Planning Period Regional Haze SIP

Dear Mr. Friedl and Mr. Ponikvar:

On behalf of National Parks Conservation Association (NPCA) and Sierra Club, Earthjustice submits the following preliminary comments regarding Arizona's four-factor analysis for non-point sources for the second planning period regional haze state implementation plan (SIP). We appreciate that the Arizona Department of Environmental Quality (ADEQ) has convened a stakeholder process for this rulemaking. We further commend ADEQ for conducting four-factor analyses for the mining and quarrying, non-residential construction, and paved and unpaved roads non-point source categories.

In addition to the non-point source sectors analyzed so far, ADEQ should conduct robust four-factor analyses for additional non-point source categories, specifically mobile sources. Although ADEQ determined that the on-road mobile source sector is one of the biggest contributors to NO_x pollution in Arizona, ADEQ has not conducted any four-factor analyses for non-point mobile sources.[1] California has conducted a four-factor analysis for non-point mobile sources in its second planning period SIP, recognizing that mobile sources are a major driver of the state's NO_x emissions that contribute to regional haze. California examined both on-road and

[1] Ariz. Dep't Env't Quality, Draft State Implementation Plan Revision: Second Regional Haze Plan (2018-2028) at 53-54 & fig.6-2 (Jan. 4, 2022). ADEQ considered conducting a four-factor analysis for non-point locomotive mobile sources, but ultimately declined to conduct that analysis. *Id.* at 78; Ariz. Dep't Env't Quality, Arizona Regional Haze 2022 Potential Nonpoint Rules at slide 8 (May 26, 2022), available at https://static.azdeq.gov/aqd/sip/regional_haze_05262022p.pdf (presenting nonpoint analyses at stakeholder meeting).

off-road mobile source categories in its four-factor analysis, covering heavy-duty trucks, light and medium-duty passenger vehicles, off-road equipment, trains, and ocean-going vessels.[2] NPCA and Sierra Club urge ADEQ to follow California's lead and conduct a robust four-factor analysis for non-point mobile sources.

NPCA and Sierra Club appreciate ADEQ's engagement with stakeholders in this rulemaking process and welcome the opportunity to provide ADEQ with these preliminary comments. We urge ADEQ to adopt a strong regional haze SIP with robust four-factor analyses and reasonable progress measures for non-point sources, including mobile and stationary sources. We also support sharp reductions in point source emission and will provide detailed comments on that topic elsewhere in the second planning period haze SIP revision process. A strong regional haze plan will protect public health and bolster the tourism economy by protecting air quality in the state's popular recreation areas and other frequently visited areas.

Sincerely,

Caitlin Miller
Rumela Roy
Michael Hiatt
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9617
cmiller@earthjustice.org
rroy@earthjustice.org
mhiatt@earthjustice.org

On behalf of National Parks Conservation Association and Sierra Club

CC: Ryan Templton, ADEQ, templeton.ryan@azdeq.gov
Elias Toon, ADEQ, toon.elias@azdeq.gov

[2] Cal. Air Res. Bd., DRAFT California's Regional Haze Plan for the Second Implementation Period at 75-76, 82-105 (May 13, 2022), available at https://ww2.arb.ca.gov/sites/default/files/2022-05/SecondRegionalHazePlanMainDocumentDRAFT.pdf.

Gmail

Alex Ponikvar <ponikvar.alex@azdeq.gov>

Comments from Pima County on proposed Regional Haze Rules

Natalie Shepp <Natalie.Shepp@pima.gov> Fri, Jan 13, 2023 at 4:31 PM
To: "ponikvar.alex@azdeq.gov" <ponikvar.alex@azdeq.gov>
Cc: Judy Tovar <Judy.Tovar@pima.gov>, Francisco Garcia <Francisco.Garcia@pima.gov>, Kathryn Skinner <Kathryn.Skinner@pima.gov>, Paul Casertano <Paul.Casertano@pima.gov>, Rupesh Patel <Rupesh.Patel@pima.gov>, Jacqueline Ronstadt <Jacqueline.Ronstadt@pima.gov>

Hi Alex,

Below are comments provided by Pima County DEQ and DOT that outline our concerns with the proposed Regional Haze Rules. Please let me know if you have any questions. Thank you.

DEQ:

2.2.2 A.A.C. R18-2-D1302 – Nonresidential Construction

Who will enforce the speed limit and how will speeds be determined?

What is the mechanism for how PDEQ will be given authority to enforce the proposed requirements for nonresidential construction?

How will nonresidential construction be differentiated and tracked in a permitting system? PDEQ currently does not have a permitting system setup to differentiate between residential and non-residential construction. Nor does the current tracking system have the ability to determine the acreage of unpaved parking and staging areas. The cost and time to develop and implement a system will be significant.

Has there been an analysis of how many nonresidential construction sites will be affected annually in Pima County? It will be important to determine how the increased cost to PDEQ to implement and enforce the newly proposed regulations will be paid for due to the fact that PDEQ does not have the funds to cover the additional workload.

DOT

Pima County Department of Transportation has concerns about these proposed rules and the additional dust control measures and the extensive impact this will have on our budget and workflow processes. PCDOT believes the items identified in the proposed rules are not feasible for routine maintenance being performed on a daily basis and are not financially sustainable. There are numerous unpaved transitions within Pima County so the financial and time impacts would be extensive and affect our ability to perform other maintenance tasks causing concerns amongst our tax paying customers. PCDOT also has concerns about the proposed Recordkeeping and Reporting process due the extensive workflow processes associated with these steps.

Natalie Shepp, MPH (she/her)

Senior Program Manager

Outreach & Education

Pima County Dept. of Environmental Quality

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Kristin Watt, Manager
Air Quality Services
P.O. Box 52025 | Mail StopPAB359
Phoenix, AZ 85072-2025
(602) 236-5448 | Kristin.Watt@srpnet.com

January 10, 2023

Via E-mail

Alex Ponikvar
Air Quality Division
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Re: Comments on Arizona's Proposed Regional Haze State Implementation Plan (SIP) Revision: Nonpoint Rules to Supplement Arizona's 2022 Regional Haze SIP

Dear Alex Ponikvar,

The Salt River Valley Water Users' Association ("Association") and the Salt River Project Agricultural Improvement and Power District ("District"), collectively "SRP",[1] appreciate the opportunity to provide the enclosed comments on Arizona's draft "SIP Revision: Nonpoint Rules to Supplement Arizona's 2022 Regional Haze SIP" ("Proposed SIP Revision").

SRP is a not-for-profit, community-based, public power provider that provides retail electric services to over 1 million residential, commercial, industrial, agricultural, and mining customers in Arizona. As a vertically integrated utility, SRP provides generation, transmission, and distribution services, as well as metering and billing services. SRP relies on an intentional and beneficial diverse portfolio of owned & operated and purchased generation resources that includes coal, natural gas, hydroelectric, nuclear, solar, wind, biomass, and geothermal. SRP also operates seven dams and reservoirs that are fed from the Verde and Salt rivers and East Clear Creek watersheds which are located on approximately 13,000 square miles located within central and northern Arizona.

The Proposed SIP Revision incorporates measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park (Wilderness Area), and Superstition Wilderness Area. The proposed rules limit emissions from certain dust generating activities at nonresidential construction sites and from paved roads.

[1] Collectively, the District and Association comprise the Salt River Project

SRP has fully evaluated the Proposed SIP Revision and would like to offer comments to address components of the proposed rules.

I. Comments on Section R18-2-D1301: Definitions for R18-2-D1302 and R18-2-D1303

SRP offers comment on the following definitions contained in Section R18-2-D1301 of the proposed rulemaking:

Definition 6. "Construction"
The definition of construction differentiates types of construction such as "nonresidential construction", "roadway construction" and "residential construction" in order to exempt roadway construction associated with a residential construction site (R18-2-D1301.6.b) and independent roadway-only construction (R18-2-D1301.6.c). This sets applicability standards in the "construction" definition that would likely provide more clarity if included in the definition of "Nonresidential construction site" (R18-2-D1301.13), given that "roadway construction" is general considered a form of "construction".

The "Nonresidential construction site" definition currently differentiates nonresidential construction from residential. SRP believes it is more appropriate to provide exclusions for residential and roadway construction in the "Nonresidential construction site" definition as it is directly referenced in the proposed rule Applicability section (R18-2-D1302.A).

Definition 7. "Construction site"
SRP requests that ADEQ provide clarity in the rule as to when a construction site is considered "active" and subject to the proposed rule and when a construction site is considered "inactive" and exempt from the proposed rule. Many construction sites may undergo cycles of activity and inactivity, and a differentiation is necessary in the rule, given that ADEQ has specified the proposed rule is meant to reduce "activity-based dust emissions".

Definition 11. "Earthmoving activity"
Within this definition, SRP requests an exemption for regular vegetation management activities that maintain root structure. An example of this type of activity would include, but is not limited to, forest thinning or weed abatement activities that maintain vegetation root structure. These actions are necessary for ecosystem health but maintain soil integrity, minimizing fugitive dust creation.

Definition 13. "Nonresidential construction site"
SRP recommends ADEQ specify that this definition only apply to industrial, commercial, or institutional (ICI) road construction taking place "on a project site", rather than "associated with the project". The rule does not provide clarity as what constitutes roads "associated with the project".

Depending on interpretation, this could either be roads located on the project construction site or roads that provide access to the site, regardless of whether or not those roads were built solely to service and provide access for the particular construction project. Furthermore, in many cases the entity responsible for the nonresidential construction site will not be the owner or operator of the roadways constructed that provide access to the nonresidential construction site.

Definition 22. "Unpaved parking and staging area"
SRP recommends the removal of the phrase "including unpaved access routes to such an area" from this definition. It is unclear from the rule what constitutes "unpaved access routes", as there is currently no definition for this term. Under the proposed definition, any route used to access an unpaved parking and staging area could be subject to control, regardless of whether it is on the construction site and regardless of the level of traffic experienced on the access route. This could result in additional unintended consequences for rule applicability. For instance, construction sites with parking and staging areas, otherwise significantly smaller than 1 acre, could be required to meet the standards of R18-2-D1302.D, simply because they have rarely utilized "unpaved access routes" that are included in the calculation of the parking and staging area. This would result in undue burden on the owner/operator of the construction site.

If ADEQ's intention was to reference "Unpaved haul/access road", SRP would still recommend removal of this reference. The use of this term could prove problematic for compliance. The "Unpaved haul/access road" definition does not specify that it is specifically for construction sites. Additionally, the definition does not supply an insignificance threshold for traffic on these roadways. As such, any road that was used at any point in time to access a parking and staging area may be used in the estimate to determine the 1-acre threshold for parking and staging areas.

II. Comments on Section R18-2-D1302. Fugitive Dust Emissions from Nonresidential Construction

SRP offers comment on the following sections within Section R18-2-D1302 of the proposed rulemaking:

Section R18-2-D1302.C. Notification
The requirement to notify the Director of any changes to the start or completion dates included in the notification as soon as practicable, but no later than 30 days before the new start or completion date is overly burdensome. Construction timelines often change frequently, and this requirement could significantly raise project costs by creating project delays simply to accommodate a 30-day notification requirement. The impact of this requirement would be reduced if it only applied to changes in a project's start date.

SRP recommends the following change to reduce the impact of the rule's notification requirements:

> *The owner or operator shall notify the Director of any changes to the start date included in the notification required under subsection (C)(1) as soon as practicable, but no later than 30 days before the new start date.*

R18-2-D1302.D.1. Standards – Unpaved parking and staging areas
There may be instances in which a nonresidential construction site operator is separate from the owner and/or is subject to environmental regulations in conflict with the proposed rule. This issue could restrict the use of control measures available in this section of the proposed rule. For example, SRP operates transmission lines on federal or state land management agency lands that may be subject to National Environmental Policy Act (NEPA) regulation. In these instances, some or all of the listed control measures may not be available for use by SRP.

SRP requests an exemption to the rule in those instances where compliance with the proposed rule would result in noncompliance with other federal, state, or locally enforced environmental regulations.

If ADEQ will not allow an exemption in these instances, SRP requests that ADEQ provide a fourth compliance option that allows for use of alternative dust control measures, as approved by the Director. This flexibility would allow owners or operators to petition the Director in instances similar to those listed above. This type of flexibility is available for other regulations under AAC Title 18 Chapter 2 (e.g., R18-2-608 – Fugitive dust control from mineral tailings piles). Additionally, to decrease the regulatory burden associated with alternative control petitions to the Director, SRP requests that an alternative control measure approval by the Director apply to future instances of construction where the same environmental regulatory conflicts occur.

R18-2-D1302.D.3. Standards – Speed limit
SRP recommends the following change to provide additional clarity that the speed limit standard is only applicable to 'unpaved' traffic areas:

> *"…restrict maximum vehicular speeds to 15 miles per hour on all* ***unpaved*** *traffic areas of the site…"*

R18-2-D1302.E. Monitoring
It is unclear why there is a differentiation between R-18-2-D1302.E.1 and R-18-2-D1302.E.2. The former provides monitoring requirements for (D)(1) and the later provides monitoring requirements for (D)(2). However, (D)(2) is the method by which the (D)(1)(a) standard is achieved, which is only applicable to unpaved parking and staging areas. Therefore, it would appear as though R-18-2-D1302.E.1 and R-18-2-D1302.E.2 are redundant.

In order to provide a more clear and concise rule, SRP suggests that ADEQ review this issue and remove R-18-2-D1302.E.2, if appropriate.

R18-2-D1302.F. Recordkeeping and Reporting
SRP recommends the record retention requirement be two years from the date of when records are established versus five years identified in R-18-2-D1302.F.3. This is consistent with Maricopa County Rule 310 record retention requirements and would eliminate confusion for companies that conduct these activities in multiple jurisdictions with differing rule requirements.

III. Comments on Section R-18-2-D1303. Fugitive Dust Emissions from Paved Roads

SRP offers comment on the following section within Section R18-2-D1303 of the proposed rulemaking:

Section R-18-2-D1303.C.3. Standards - Trackout Cleanup
SRP recommends the replacement of the term "bulk material" in R-18-2-D1303.C.3.a-d with "mud/dirt". R18-2-D1303.C.3 specifically references the deposition of "mud/dirt". As such, the standards specified in R-18-2-D1303.C.3.a-d should also specify "mud/dirt" for consistency within the rule.

If ADEQ intended for the standard to apply to all bulk material deposition, SRP would recommend the term "mud/dirt" be replaced in R-18-2-D1303.C.3. with "bulk material" to provide consistency and clarity.

Finally, while ADEQ acknowledges that state or local agency permits may be necessary for the cleanup of bulk material on paved public roads (R-18-2-D1303.C.3.d), SRP requests that ADEQ add the following clarification to R-18-2-D1303.C.3.c, in recognition that obtaining state or local agency authority to cleanup bulk materials on paved road may not be available immediately upon request by an owner/operator who caused deposition:

> *"If needed, restrict vehicles from traveling over the bulk material until such time as the material can be removed from the travel lanes of the paved public roadway pursuant to subsection (C)(2)(a). In the event unsafe travel conditions would result from restricting traffic and removal of such material isn't possible within 72 hours due to a weekend or holiday condition* ***or, after reasonable effort, the owner or operator of the property is unable to obtain state or local agency approval to restrict vehicle traffic and removal of such material isn't possible within 72 hours,*** *the provisions of subsection (C)(2)(a) may be extended upon notification to and approval of the Director."*

IV. General Comments

- ADEQ mentions the potential of an owner or operator to obtain a "block" permit in the proposed rule preamble, Section 8. A model for block permit applicability and requirements is found in Maricopa County Rule 310 Section 404. To ensure block

notification availability to owners and operators and reduce regulatory burden, SRP requests ADEQ consider similar language in the proposed rule for block notifications.

- SRP requests ADEQ provide a general exemption for restoration projects and associated activities (e.g., planting trees, native plant restoration, repairing irrigation systems, etc.). These activities act to restore natural habitats and reduce long-term fugitive emissions.

- SRP requests clarification as to whether an owner or operator is ultimately responsible for compliance with the proposed rule requirements. There are many situations where the owner and operator may be separate entities. The rule, as written, does not provide clarity in these instances.

- SRP requests more clarity as to whether the proposed rule would be applicable in instances when an organization is performing ICI construction on property that contains a residential building.

SRP appreciates the opportunity to provide the enclosed comments on Arizona's draft Proposed SIP Revision. If ADEQ has any questions, please reach out to Kristin Watt at (602) 236-5448 or through email at Kristin.Watt@srpnet.com.

Sincerely,

Kristin Watt

Kristin Watt
Manager, Air Quality Services

Public Hearing Regarding the Regional Haze Notice of Proposed Rulemaking and State Implementation Plan (SIP) Revision

Oral Proceeding

Public Hearing Transcript

January 13, 2023

Alex Ponikvar: Hello, everyone. This is Alex Ponikvar. Speaking, one of the ADQ representatives for the meeting, you are on the right call. We're all here. I just believe that our hearing officer Laura, who was connecting to the meeting using her phone may have been muted or or kicked off by the system. So we'll just hang on for a second and wait for her to rejoin so she can kick us off. Thanks.

Laura Mirtich: Hey, sorry about that. Alex, this is Laura. I'm actually here on the call. And I was going to just make sure and I audible to everybody. So I can hear you. Yes. Awesome. Great. Well, I think we can give it a moment. If anyone else needs to join in we can go ahead and get started in just a minute. Thank you

[One minute later]

Laura: All right, I'll go ahead and get us started. So thank you for coming. I now open this hearing on the proposed rulemaking for Arizona Administrative Code Title 18, Chapter 2, Article 13 and the proposed *SIP Provision Nonpoint Rules to Supplement Arizona's 2022 Regional Haze SIP*.

This proceeding is being recorded and will be preserved for the record.

Today is January 13, 2023 and the time is 2:02PM. This public hearing is being conducted online using GoToWebinar software. My name is Laura Mirtich and I have been appointed by the Director of the Arizona Department of Environmental Quality (ADEQ) to preside at this proceeding.

The purpose of this oral proceedings to provide the public an opportunity to first hear a summary of the proposed rulemaking and SIP revision. Second, ask questions, and third provide comments if they choose to do so.

The department representatives for today's hearing are Alex Ponkivar, Jessica Wood, and Bruce Friedl of the Air Quality Division’s (AQD) Air Quality Improvement Planning (AQIP) Section.

Public notice of the comment period and hearing was published in the *Arizona Republic* on December 6, 2022 and December 7, 2022. Copies of the proposal were made available on ADEQ's website, at the ADEQ Phoenix Record center Flagstaff City Coconino County Public Library, Globe Public Library, Joel D. Valdez Main Library in Tucson, Sierra Vista Public Library, and the Yuma library starting December 6 2022 and will remain available until the close of the comment period which is 5:00PM today January 13, 2023.

If you wish to make a verbal comment, please raise your hand using the GoToWebinar software and you will be called on during this proceeding. You may also submit written comments during today's hearing. Comments may also be mailed to Alex Ponikvar Air Quality Division, Air Quality Improvement Planning Section, Arizona Department of Environmental Quality 1110 West Washington Street, Phoenix, AZ 85007, or email to ponikvar.alex@azdeq.gov. Attendees also have the option of commenting using the GoToWebinar software mailed comments must be postmarked by 5:00PM January 13, 2023.

Comments made during the formal comment period are required by law to be considered by the department when preparing the final submission to the Governor's Regulatory Review Council and to the US Environmental Protection Agency. ADEQ will include a responsiveness summary for written and oral comments received during the formal comment period.

The agenda for this hearing is as follows: First, we will present a brief overview of the proposal followed by an opportunity to ask questions, then I will conduct the oral comment portion at that time we will call speakers in the order that the comments were received. Please be aware that any comments at today's hearing that you want the department to formally consider must be given either in writing or on the record during this oral proceeding. At this time, Alex will give a brief overview of the proposal.

Alex: The Arizona Department of Environmental Quality is proposing to add new sections to Arizona Administrative Code (A.A.C) Title 18, Chapter 2, Article 13 to incorporate measures intended to reduce emissions of fugitive dust from nonpoint sources in and around the following Federal Class I areas: Chiricahua National Monument and Wilderness Area, Galiuro Wilderness Area, Saguaro National Park and Wilderness Area and the Superstition Wilderness Area. This action is necessary to provide reasonable progress toward achieving natural visibility conditions at Federal Class I areas under the Federal Regional Haze Rule.

ADEQ performed an emissions control analysis and evaluation of technical feasibility for nonpoint sources as required under the Federal Rule. Following the analysis, four dust mitigation measures, two for paved roads and two for non residential construction sites, were selected as being necessary to meet reasonable progress goals and suitable for rule development. The proposed paved roads rule requires application of dust control measures to certain unpaved access points where unpaved public roads join public paved public roads. The rule also requires cleanup of trackout, spillage, and erosion-caused deposition of any bulk material on paved public roadways. The proposed nonresidential construction rule requires speed limits for construction sites, 10 acres or larger, and additional dust control measures for parking and staging areas that have a cumulative area of 1 acre or more.

ADEQ will submit the rules to the US Environmental Protection Agency (EPA) with a request to approve them as a revision to the Arizona State Implementation Plan or SIP. These rules are required component of the final "State Implementation Plan Revision for the Regional Haze program 2018 through 2028, which was submitted to EPA on August 15th, 2022, and contained a commitment to submit supplemental nonpoint rules to satisfy federal emissions control requirements.

This concludes the overview portion of this proceeding. If you wish to ask a question or make a comment during this proceeding, please press the raise hand icon on the control panel. We will call on any raised hands and unmute your line. Alternatively, you can type your question or comment into the chat. Are there any questions before we move to the oral comment period?

Alex: Okay, Laura, I'm not seeing any hands for questions or questions in the chat.

Laura: This then concludes the question and answer portion of this proceeding for the proposed rulemaking and SIP Revision. I now open this proceeding for oral comments. I remind you that if you wish to make an oral comments, please use the raise hand feature on the control panel and we will unmute your line. When your line is unmuted. Please state your first and last name and organization if applicable.

Alex: I'm not seeing any raised hands or comments in the chat.

Laura: Thank you. This thing concludes the oral comment portion of this proceeding. If you have not already submitted written comments, you may submit them at this time. Again the comment period towards proposal ends today January 13 2023 at 5:00PM Thank you for attending the time is now 2:08PM. I now close this oral proceeding.

1208 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1209. Exclusion of Emission Reduction Credits from Planning

Except to the extent otherwise required by the act, with regard to credits for emission reductions in an area for which a planning authority has responsibility, the planning authority shall:

1. Include the emissions for which the credits have been issued in the emissions inventory for the area as if reductions in those emissions had not yet occurred;
2. Account for the emissions for which the credits have been issued in any reasonable further progress or attainment demonstration for the area as if the reductions had not yet occurred; and
3. Refrain from relying on the reductions in any revision to the state implementation plan for the area.

Historical Note

New Section R18-2-1209 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1210. Fees

A. The owner or operator of a generator shall pay a non-refundable administrative fee of $200.00 to the Department when submitting an application for certification. This fee is in addition to the fees specified in R18-2-326.

B. An account holder using a credit under R18-2-1207(B) shall pay a non-refundable administrative fee of $200.00 to the Department when submitting the application for use. This fee is in addition to the fees specified in R18-2-326.

Historical Note

New Section R18-2-1210 renumbered from R18-2-1208 and amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS

R18-2-1301. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1302. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1303. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1304. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1305. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1306. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1307. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

PART A. RESERVED

PART B. HAYDEN, ARIZONA, PLANNING AREA

R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter

A. Applicability.

1. This Section applies to the owner or operator of the Hayden Smelter.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this Section:

1. "ACFM" means actual cubic feet per minute.
2. "Anode furnace baghouse stack" means the dedicated stack that vents controlled off-gases from the anode furnaces to the Main Stack.
3. "Blowing" shall mean the introduction of air or oxygen-enriched air into the converter furnace molten bath through tuyeres that are submerged below the level of the molten bath. The flow of air through the tuyeres above the level of the molten bath or into an empty converter shall not constitute blowing.
4. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission units, and to convey the captured gases and fumes to one or more control devices or a stack. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
5. "Control device" means a piece of equipment used to clean and remove pollutants from gases and fumes released from one or more emission units that would otherwise be released to the atmosphere. Control devices may include, but are not limited to, baghouses, Electrostatic Precipitators (ESPs), and sulfuric acid plants.
6. "Hayden Smelter" means the primary copper smelter located in Hayden, Gila County, Arizona at latitude 33º0'15"N and longitude 110º46'31"W.
7. "Main Stack" means the center and annular portions of the 1,000-foot stack, which vents controlled off-gases from the INCO flash furnace, the converters, and anode furnaces and also vents exhaust from the tertiary hoods.
8. "SCFM" means standard cubic feet per minute.

9. "SLAMS monitor" means an ambient air monitor part of the State and Local Air Monitoring Stations network operated by State or local agencies for the purpose of demonstrating compliance with the National Ambient Air Quality Standards.
10. "Smelting process-related fugitive lead emissions" means uncaptured and/or uncontrolled lead emissions that are released into the atmosphere from smelting copper in the INCO flash furnace, converters, and anode furnaces.

C. Emission limit. Main Stack lead emissions shall not exceed 0.683 pound of lead per hour.

D. Operational Standards.

1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission capture and/or control equipment in a manner consistent with good air pollution control practices for minimizing lead emissions to the level required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used shall be based on all information available to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace, including matte tapping, slag skimming and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system; and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
   a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair, and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system, and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.
   b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. Initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
      i. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
      ii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
      iii. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
      iv. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
      v. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
      vi. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
      vii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
      viii. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
      ix. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
   c. Preventative maintenance. The owner or operator shall perform preventative maintenance on each capture system and control device according to written procedures specified in the operations and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with the equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
   d. Inspections. The owner or operator shall perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's, or operator's instructions for each system and device.
   e. Plan development and revisions.

i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's, engineer's or operator's recommendations and/or instructions used for capture system and control device operations and maintenance.

ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).

iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Performance Test Requirements.

1. Main stack performance tests. No later than 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647, the owner or operator shall conduct initial performance tests on the following:
   a. The gas stream exiting the anode furnaces baghouse prior to mixing with other gas streams routed to the Main Stack.
   b. The gas stream exiting the acid plant at a location prior to mixing with other gas streams routed to the Main Stack.
   c. The gas stream exiting the secondary baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
   d. The gas stream collected by the tertiary hooding at a location prior to mixing with other gas streams routed to the Main Stack.
   e. The gas stream exiting the vent gas baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
2. Subsequent performance tests on the gas streams specified in subsection (E)(1) shall be conducted at least annually.
3. Performance tests shall be conducted under such conditions as the Department specifies to the owner or operator based on representative performance of the affected sources and in accordance with 40 CFR 60, Appendix A, Reference Method 29.
4. At least 30 calendar days prior to conducting a performance test pursuant to subsection (E)(1), the owner or operator shall submit a test plan, in accordance with R18-2-312(B) and the Arizona Testing Manual, to the Department for approval. The test plan must include the following:
   a. Test duration;
   b. Test location(s);
   c. Test method(s), including those for test method performance audits conducted in accordance with subsection (E)(6); and
   d. Source operation and other parameters that may affect the test result.
5. The owner or operator may use alternative or equivalent performance test methods as defined in 40 CFR § 60.2 when approved by the Department and EPA Region IX, as applicable, prior to the test.
6. The owner or operator shall include a test method performance audit during every performance test in accordance with 40 CFR § 60.8(g).

F. Compliance Demonstration Requirements.

1. For purposes of determining compliance with the Main Stack emission limit in subsection (C), the owner or operator shall calculate the combined lead emissions in pounds per hour from the gas streams identified in subsection (E)(1) based on the most recent performance tests conducted in accordance with subsection (E).
2. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
   a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
   b. Conducting a fugitive emissions study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive emissions study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP.
3. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

G. Recordkeeping. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
1. All records as specified in the operations and maintenance plan required under subsection (D)(2).
2. All records of major maintenance activities and inspections conducted on emission units, capture systems, monitoring devices, and air pollution control equipment, including those set forth in the operations and maintenance plan required by subsection (D)(2).
3. All records of performance tests, test plans, and audits required by subsection (E).
4. All records of compliance calculations required by subsection (F).
5. All records of fugitive emission studies and study protocols conducted in accordance with Appendix 14.
6. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining, and casting emission units; and any malfunction of the associated air pollution control equipment that is inoperative or not operating correctly.
7. All records of reports and notifications required by subsection (H).

H. Reporting. The owner or operator shall provide the following to the Department:
1. Notification of commencement of construction of any equipment necessary to comply with the operational or emission limits.
2. Semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
3. Notification of initial startup of any such equipment within 15 business days of such startup.
4. Whenever the owner or operator becomes aware of any exceedance of the emission limit set forth in subsection (C), the owner or operator shall notify the Department orally or by electronic or facsimile transmission as soon as practicable, but no later than two business days after the owner or operator first knew of the exceedance.
5. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a quarterly report to the Department for the preceding quarter that shall include dates, times, and descriptions of deviations when the owner or operator operated smelting processes and related control equipment in a manner inconsistent with the operations and maintenance plan required by subsection (D)(2).
6. Reports from performance testing conducted pursuant to subsection (E) shall be submitted to the Department within 60 calendar days of completion of the performance test. The reports shall be submitted in accordance with the Arizona Testing Manual and A.A.C. R18-2-312(A).

Historical Note

New Section R18-2-B1301 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).

R18-2-B1301.01.Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter

A. Applicability.
1. This Section applies to the owner or operator of the Hayden Smelter.
2. Effective Date. Except as otherwise provided, the requirements of this Section shall become applicable on December 1, 2018.

B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this Section:
1. "Acid plant scrubber blowdown drying system" means the process in which Venturi scrubber blowdown solids are dried and packaged via a thickener, filter press, electric dryer, and supersack filling stations.
2. "Control measure" means a piece of equipment used, or actions taken, to minimize lead-bearing fugitive dust emissions that would otherwise be released to the atmosphere. Control equipment may include, but are not limited to, wind fences, chemical dust suppressants, and water sprayers. Actions may include, but are not limited to, relocating sources, curtailing operations, or ceasing operations.
3. "Hayden Lead Nonattainment Area" means the townships in Gila and Pinal Counties, as identified and codified in 40 CFR § 81.303, that are designated nonattainment for the 2008 Lead National Ambient Air Quality Standards.
4. "High wind event" means any period of time beginning when the average wind speed, as measured at a meteorological station maintained by the owner or operator that is approved by the Department, is greater than or equal to 15 mph over a 15 minute period, and ending when the average wind speed, as measured at the approved meteorological station maintained by the owner or operator, falls below 15 mph over a 15 minute period.
5. "Lead-bearing fugitive dust" means uncaptured and/or uncontrolled particulate matter containing lead that is entrained in the ambient air and is caused by activities, including, but not limited to, the movement of soil, vehicles, equipment, and wind.
6. "Material pile" means material, including concentrate, uncrushed reverts, crushed reverts, and bedding material, that is stored in a pile outside a building or warehouse and is capable of producing lead-bearing fugitive dust.
7. "Non-smelting process sources" means sources of lead-bearing fugitive dust that are not part of the hot metal process, which includes smelting in the INCO flash furnace, converting, and anode refining and casting. Non-smelting process sources include storage, handling, and unloading of concentrate, uncrushed reverts, crushed reverts, and bedding material; acid plant scrubber blowdown solids; and paved and unpaved roads.
8. "Ongoing visible emissions" means observed emissions to the outside air that are not brief in duration.
9. "Road" means any surface on which vehicles pass for the purpose of carrying people or materials from one place to another in the normal course of business at the Hayden Smelter.
10. "Slag" means the inorganic molten material that is formed during the smelting process and has a lower specific gravity than copper-bearing matte.
11. "Slag hauler" means any vehicle used to transport molten slag.
12. "Storage and handling" means all activities associated with the handling and storage of materials that take place at the Hayden Smelter, including, but not limited to, stockpiling, transport on conveyor belts, transport or storage in rail cars, crushing and milling, arrival and handling of offsite concentrate, bedding, and handling of reverts.

13. "Trackout/carry-out" means any materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that may then fall onto the road.

C. Operational Standards.

1. Equipment operations. At all times, the owner or operator shall operate and maintain all non-smelting process sources, including all associated air pollution control equipment, control measures, and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing lead-bearing fugitive dust, and in accordance with the fugitive dust plan required by subsection (C)(2) and performance and housekeeping requirements in subsection (D). A determination of whether acceptable operating and maintenance procedures are being used shall be based on all available information to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, review of fugitive dust plans, and inspection of the relevant equipment.
2. Fugitive dust plan. The owner or operator shall develop, implement, and follow a fugitive dust plan that is designed to minimize lead-bearing fugitive dust from non-smelting process sources. At minimum, the fugitive dust plan shall contain the following:
   a. Performance and housekeeping requirements in subsection (D).
   b. Design plans and specifications for each wind fence to be installed to control lead-bearing fugitive dust from non-smelting process sources identified in subsections (D)(11) through (D)(14). The dust plan shall contain height limits for the materials being stored in each wind fence, consistent with the design plans and specifications for that particular wind fence. Wind fence design and specifications shall:
      i. Require full encircling of the source to be controlled, with reasonable and sufficient openings for ingress and egress;
      ii. Consider the orientation of the wind fence to the prevailing winds;
      iii. Consider the strength of the winds in the area where the fence will be located;
      iv. Consider the porosity of the material to be used, which shall not exceed 50%; and
      v. Consider the height of the fence relative to the height of the material being stored. At minimum, wind fence height shall be greater than or equal to the material pile height.
   c. Design plans and specifications for each new or modified water sprayer system used to control lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14). The number, type, location, watering intensity, flow rates, and other operational parameters of the water sprayers must meet moisture content objectives for sources specified in subsections (D)(11) through (D)(14). The owner or operator may include in the dust plan an exemption to the water requirements at times when the materials are sufficiently moist or it is raining and thus there is no need for additional wetting until the next scheduled watering to meet moisture content objectives. The dust plan shall include the following for each water sprayer:
      i. Watering schedule;
      ii. Watering intensity;
      iii. Minimum flow rate or pressure drop;
      iv. Appropriate and/or continuous monitoring;
      v. Schedule for calibration based on the manufacturer's recommended calibration schedule;
      vi. Preventative maintenance schedule; and
      vii. Other applicable operational parameters.
   d. Necessary improvements and/or modifications to material conveyor systems, along with a schedule for implementing improvements or modifications, targeted to minimize lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14), as applicable, to the greatest extent practicable. The improvements or modifications may include, but is not limited to, hooding of transfer points, utilizing water sprayers, and employing scrapers, brushes, or cleaning systems at all points where belts loop around themselves to catch and contain material before it falls to the ground.
   e. Design plans for the concrete pads for the non-smelting process sources specified in subsections (D)(11) and (D)(13). The concrete pads shall be designed to capture, store, and control stormwater or sprayed water to minimize emissions to the greatest extent practicable, including curbing around the outer edges of the concrete pad where feasible.
   f. Additional controls and measures for sources specified in subsections (D)(11) through (D)(14) to be implemented during high wind events. These additional controls or measures, which must include curtailment or other alteration of activity when appropriate, must be implemented at these sources during all periods of high wind.
   g. Sample inspection sheets, checklists, or logsheets for each of the inspections identified in subsection (D)(6), and in accordance with the following:
      i. The inspection sheets or checklists shall include:
         (1) Specific descriptions of the equipment being inspected and the specific functions being evaluated;
         (2) The findings of the inspection;
         (3) The date, time, and location of inspections; and
         (4) An identification of who performed the inspection or logged the results.
      ii. The logsheets for high wind events shall include:
         (1) High wind event start time;
         (2) High wind event end time;
         (3) Description of area or activity inspected; and
         (4) Description of corrective action taken if necessary.
   h. Design plans of the new acid plant scrubber blowdown drying system specified in subsection (D)(15).
   i. The name and location of the meteorological station, which must be approved by the Department, that is to be used by the owner or operator for determining high wind events pursuant to subsection (B)(4) and for implementing control requirements pursuant to subsection (D)(5).
3. Plan development and revisions. The owner or operator shall develop and keep current the fugitive dust plan required by subsection (C)(2). Any plan or plan revision

shall be consistent with this Section and shall be submitted to the Department for review. The initial plan shall be submitted to the Department for review no later than May 1, 2017. Plans and plan revisions shall be consistent with good air pollution control practice for fugitive dust. Except for the meteorological station to be used for high wind events pursuant to subsection (D)(5), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

D. Performance and Housekeeping Requirements. The owner or operator shall comply with these requirements at all times regardless of a fugitive dust plan.

1. Water sprayers. The owner or operator shall implement a recordkeeping system to capture sprayer operations, including identification of the particular operation, lead-bearing fugitive dust source, timing and intensity of watering, and data regarding the quantity of water used at each water sprayer.
2. Wind fences. The owner or operator shall ensure that wind fences used to control lead-bearing fugitive dust from the non-smelting process sources specified in subsections (D)(11) through (D)(14) meet the following requirements:
   a. Wind fence height shall be greater than or equal to the material pile height. The allowed material pile height shall be posted in a readily visible location at each wind fence.
   b. Wind fence porosity shall not exceed 50%.
3. Material conveyor systems. For sources specified in subsections (D)(11) through (D)(14), as applicable, the owner or operator shall:
   a. Minimize conveyor drop heights to the greatest extent practicable.
   b. Clean any spills from conveyors within 30 minutes of discovery. The material collected must be handled in such a way so as to minimize lead-bearing fugitive dust to the maximum extent practicable.
4. Vehicle transport of materials. The owner or operator shall maintain vehicle cargo compartments used to transport materials capable of producing lead-bearing fugitive dust so that the cargo compartment is free of holes or other openings and is covered by a tarp.
5. High wind event requirements.
   a. During high wind events, the owner or operator shall evaluate the non-smelting process sources specified in subsections (D)(11) through (D)(14) for ongoing visible emissions using the appropriate logsheet for each source.
   b. If ongoing visible emissions are observed, the owner or operator shall promptly wet the source of emissions with the objective of mitigating further emissions.
   c. If wetting does not appear to mitigate the ongoing visible emissions to 20% opacity or less, the owner or operator shall postpone associated handling of the source until the high wind event has ceased.
6. Physical inspections. The owner or operator shall conduct physical inspections as follows:
   a. Daily inspections of all water sprayers to make sure they are functioning and are in accordance with the dust plan;
   b. Daily visual inspections of all material piles to make sure they are maintained within areas protected by a wind fence, that they are not higher than allowed for the wind fence, and to verify that moisture content requirements are met;
   c. Daily inspections of all material handling areas to identify and clean up track out or spills of materials;
   d. Daily inspections of conveyor systems to identify and clean up material spills;
   e. Daily inspections of rumble grates sump levels;
   f. Daily spot inspections of vehicles carrying lead-bearing fugitive dust-producing materials when vehicles are in use to ensure that material is not overloaded, is properly covered, and cargo compartments are intact;
   g. Weekly inspections of wind fences for material integrity and structural stability;
   h. Daily inspections of all paved roads to identify and clean up track out or spills of materials;
   i. Daily inspections of unpaved roads in subsection (D)(10)(a) to identify areas where chemical dust suppressant coverage has broken down; and
   j. Bi-weekly inspections of the acid plant scrubber blowdown drying system enclosure.
7. Opacity limit and Method 9 readings.
   a. Opacity from lead-bearing fugitive dust emissions shall not exceed 20% from any part of the facility at any time. Opacity shall be determined by using 40 CFR 60, Appendix A, Reference Method 9, except for unpaved roads, in which opacity shall be determined pursuant to subsection (D)(10)(c).
   b. In the event that an employee observes ongoing visible emissions at a non-smelting process source covered by this Section, that employee shall promptly contact a Reference Method 9-certified observer, who shall promptly evaluate the emissions and conduct a Reference Method 9 reading, if possible.
   c. A Reference Method 9-certified observer shall conduct a weekly visible emissions survey of all non-smelting process sources covered by this Section and perform a Reference Method 9 reading for any plumes that on an instantaneous basis appear to exceed 15% opacity.
8. Corrective actions.
   a. At any time that visible emissions from the non-smelting process sources covered by this Section appear to exceed 15% opacity, the owner or operator shall take prompt corrective action to identify the source of the emissions and abate such emissions, with the corrective action starting within 30 minutes after discovery. For any non-smelting process source that produces visible emissions that appear to exceed 15% opacity, the owner or operator shall perform an analysis of the root cause, and implement a strategy designed to prevent, to the extent feasible, the ongoing recurrence of the source of visible emissions. Within 14 days of completion of its analysis, if appropriate, the owner or operator shall modify the fugitive dust plan in subsection (C)(2) for any changes identified from the analysis differing from the current provisions of the fugitive dust plan.
   b. At any time that the owner or operator becomes aware that provisions of the fugitive dust plan and/or performance and housekeeping provisions required by this Section are not being met, the owner or operator shall take prompt action to return to compliance, which may include modifications to monitoring, recordkeeping, and reporting require-

ments in the fugitive dust plan. This includes, but is not limited to, the following actions:

i. Return water sprayers to full operational status;
ii. Repair damaged conveyor hoodings or other enclosures;
iii. Apply additional water to ensure that sources are meeting moisture content requirements;
iv. Clean any trackout or spillage of dust-producing material, including dropoff of dust producing material from conveyors, using a street sweeper, vacuum, or wet broom with sufficient water and at the speed recommended by the manufacturer;
v. Reapplication of chemical dust suppressants in areas where the coating has broken down on unpaved roads; and
vi. Revisions to the fugitive dust plan to undertake improved monitoring, recordkeeping, and reporting requirements necessary to ensure that the controls contained in the fugitive dust plan are being implemented as contemplated by the fugitive dust plan.

9. Paved Roads. These requirements apply to all roads at the facility currently paved and roads to be paved in the future. The owner or operator shall:
   a. Clean roads at least once daily with a sweeper, vacuum, or wet broom in accordance with applicable manufacturer recommendations.
   b. Maintain the integrity of the road surface.
   c. Clean up trackout and carry-out of material on the following schedule:
      i. As expeditiously as practicable, when trackout and carry-out extends a cumulative distance of 50 linear feet or more; and
      ii. At the end of the workday, for all other trackout and carry-out.
   d. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
10. Unpaved Roads. These requirements apply to the unpaved roads identified in subsections (D)(10)(a)(i) through (D)(10)(a)(iii) below, including any access points where the unpaved roads adjoin paved roads and any areas of vehicular handling of material. The owner or operator shall:
    a. Implement a chemical dust suppressant application intensity and schedule, which at minimum shall be:
       i. For the slag hauler road and all other unpaved roads used or to be used by the slag hauler, chemical dust suppressant shall be applied at least once per week during the summer, and once per every two weeks during the winter.
       ii. For the main road to the secondary crusher, chemical dust suppressant shall be applied at least once every six weeks, year-round.
       iii. For unpaved roads near reverts and silica flux crushing operations, chemical dust suppressant shall be applied at least once per two weeks during the summer, and once per month in the winter.
    b. Increase the frequency of chemical dust suppressant application if necessary to reduce fugitive dust emissions from unpaved roads.
    c. Not allow visible emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft^2. However, if silt loading is equal to or greater than 0.33 oz/ft^2, then the owner or operator shall not allow the average percent silt content to exceed 6%. Compliance with these requirements shall be determined by the test methods described in Appendix 15.
    d. Maintain sufficient watering trucks and personnel to operate such trucks to be employed as an interim measure whenever visible emissions or a breakdown in dust suppressant covering are observed at any point along the treated unpaved road system.
    e. Immediately, but no later than 30 minutes after initial observation of any visible emissions, apply water or chemical dust suppressant to the portion of the unpaved road where the visible emissions were observed.
    f. Reapply chemical dust suppressant within 24 hours of discovery of any area where the surface chemical dust suppressant coverage has broken down.
    g. Collect and prevent from becoming airborne any runoff or material from rinsing or sweeping as soon as practicable.
    h. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
11. Concentrate Storage, Handling, and Unloading. The owner or operator shall:
    a. Consolidate and manage all concentrate storage piles in one or more concrete storage pads.
    b. Store concentrate in an area with a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
    c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of concentrate piles are wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
    d. Minimize the footprint of the concentrate storage piles by pushing into the stockpile with a front end loader and sweeping open areas of the pads with a self-powered vacuum sweeper at least daily during use.
12. Uncrushed Reverts Handling and Storage. The owner or operator shall:
    a. Manage uncrushed revert material only in areas protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
    b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surface of uncrushed revert material is wetted with the objective to minimize lead-bearing fugitive dust emissions to the greatest extent practicable.
13. Reverts Crushing Operations and Crushed Reverts Storage. The owner or operator shall:
    a. Crush revert and store crushed revert only on one or more concrete pads.
    b. Crush revert and store crushed revert only within an area protected by a wind fence in accordance with

requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).

c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of all crushed revert material, including revert managed after it is crushed, is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.

d. By October 2017, relocate all revert crushing operations to 33º 00' 25.84" N, 110º 46' 26.55" W and shall crush revert only at this new location.

14. Bedding Operations, Including Handling, Storage, and Unloading. The owner or operator shall:

a. Perform all bedding activities, including loading and unloading of materials to be blended, only within an area protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2). These activities include the storage and handling areas for potentially lead-bearing fugitive dust-producing material within the bedding plant area.

b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of material in the bedding area is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.

c. Maintain rumble grates at all of the bedding plant's entrances and exits to shake off material on the loader tires as they enter and exit the area. Material that is tracked out of the bedding area must be cleaned up at the end of the workday.

d. Operate its bedding activities in a manner designed to avoid any trackout outside an area protected by a wind fence. Areas of material spillage or trackout, whether inside or outside of an area protected by a wind fence, shall be rinsed or cleaned daily.

15. Acid Plant Scrubber Blowdown Drying System.

a. The owner or operator shall dry acid plant scrubber blowdown solids only in an enclosed system that uses a venturi scrubber, thickener, filter press, and electric dryer that is maintained under negative pressure at all times that materials are being dried.

b. The owner or operator shall maintain the negative pressure of the electric dryer using a 2,500 ACFM dryer ventilation fan that must run at all times the electric dryer is operational. Monitoring of the negative pressure shall be demonstrated through the run and stop states of the ventilation fan and electric dryer.

c. The acid plant scrubber blowdown drying system shall include the following elements:

i. Venturi scrubber slurry that reports to a new thickener.

ii. Underflow from the thickener that goes to a filter press for further liquid removal, with the resulting filter cake sent to two electric dryers operating in parallel to provide final drying of the dust cake.

iii. Exhaust from the dryers sent to the packed gas cooling tower inlet duct.

iv. Dried cake discharged directly into bags.

d. The owner or operator shall clean all areas previously used for scrubber blowdown drying and no longer use previous areas for scrubber blowdown drying.

E. Contingency Requirements.

1. If the owner or operator does not meet the compliance schedule below in subsection (E)(3), or if the Hayden Lead Nonattainment Area does not attain the 2008 Lead National Ambient Air Quality Standards by the attainment date established in the Act, whichever occurs first, then the owner or operator shall increase the paved road cleaning frequency specified in subsection (D)(9) to twice per day.

2. The owner or operator shall implement the contingency measure in subsection (E)(1) within 60 days of notification by EPA Region IX of either a failure to meet the compliance schedule in subsection (E)(3) or a failure to attain by the attainment date established in the Act, whichever occurs first.

3. The compliance schedule is as follows. The Fugitive Dust Plan referred to in the compliance schedule shall mean the Fugitive Dust Plan submitted to the Administrator by the owner or operator to comply with requirements set forth in Consent Decree No. CV-15-02206-PHX-DLR, which became effective on December 30, 2015 in the United States District Court for the District of Arizona, as that plan may be later revised pursuant to subsection (C)(3):

Control Measure	Date of Implementation
Implementation of chemical dust suppression for unpaved roads.	Within 30 days of Administrator approval of application intensity and schedules in Fugitive Dust Plan.
Implementation of wind fences for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of water sprays for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of new acid plant scrubber blowdown drying system.	November 30, 2016
Implementation of new primary, secondary, and tertiary hooding systems for converter aisle for purposes of complying with requirements in R18-2-B1301.	July 1, 2018

Implementation of new ventilation system for matte tapping and slag skimming for flash furnace for purposes of complying with requirements in R18-2-B1301.	July 1, 2018

F. Ambient Air and Meteorological Monitoring Requirements.
1. The owner or operator shall conduct ambient air monitoring and sampling for lead as follows:
   a. At minimum, the owner or operator shall continue to maintain and operate the ambient lead monitors located at ST-14 (the smelter parking lot), ST-23 (Hillcrest area), ST-26 (post office), and ST-18 (next to the concentrate handling area).
   b. Samples must be collected continuously at all monitor sites specified in subsection (F)(1)(a). For the purposes of this requirement, "continuously" means that 24-hour filters are placed and collected at minimum, every six calendar days at all sites consistent with 40 CFR § 58.12.
   c. The owner or operator shall follow the Hayden Smelter's Quality Assurance Project Plan (QAPP) applicable to these monitors.
   d. The monitors must be operated and maintained in accordance with 40 CFR 58, Appendix A.
   e. The owner or operator shall submit each filter removed from each monitor to a certified laboratory for analysis no later than 18 calendar days after the filter's removal. The owner or operator shall ensure that the laboratory performs its analysis and submits the results to the owner or operator no later than 21 calendar days from the lab's receipt of the filter.
   f. The owner or operator shall calculate, update, and maintain as a record the following data within 14 calendar days of receipt of any results pertaining to the monitor filters received from a certified lab:
      i. The total pollutants on the filters collected and analyzed; and
      ii. Calculations of 30-day rolling average ambient air levels of lead for the ST-23, ST-26, and ST-18 monitors, and 60-day rolling average ambient air levels of lead for the ST-14 monitor, expressed as µg/m3.
   g. The owner or operator shall retain lead samples collected pursuant to this Section for at least three years. The samples shall be stored in individually sealed containers and labeled with the applicable monitor and date. Upon request, the samples shall be provided to the Department within five business days.
2. The owner or operator shall conduct meteorological monitoring as follows:
   a. Continuously monitor and record wind speed and direction data using equipment and a meteorological station approved by the Department.
   b. The owner or operator shall calculate and record average wind speed in miles per hour over 15 minutes, rolled each minute.
   c. Conduct wind speed and direction measurements using methods in accordance with EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV, Meteorological Measurements, Version 2.0.
3. The ambient air and meteorological monitoring stations required by this Section may be discontinued at the end of three full calendar years after the Hayden Lead Nonattainment Area is redesignated attainment for the 2008 Lead National Ambient Air Quality Standards.

G. Compliance Demonstration Requirements. The owner or operator shall demonstrate compliance with this Section by complying with all requirements in the fugitive dust plan pursuant to subsection (C)(2) and implementing all housekeeping and performance requirements pursuant to subsection (D).

H. Recordkeeping.
1. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
   a. Current and past fugitive dust plans required by subsection (C)(2).
   b. Physical inspection sheets, checklists, and logsheets for inspections conducted in accordance with subsection (D)(6).
   c. All records of opacity and stabilization tests, if any, conducted in accordance with subsection (D)(10)(c).
   d. All records of surface moisture content tests, if any, conducted in accordance with subsection (D)(11), subsection (D)(13), and subsection (D)(14).
   e. All records of major maintenance activities and inspections conducted on monitors required by subsection (F).
   f. All records of quality assurance and quality control activities for the monitors required by subsection (F).
   g. All air quality monitoring samples, rolling averages of ambient lead concentrations and necessary calculations, and data required by subsection (F).
   h. All records of wind data from the meteorological station required by subsection (F).
   i. All records of any periods during which a monitoring device required by subsection (F) is inoperative or not operating correctly.
   j. All records of reports and notifications required by subsection (I).
2. All of the following records maintained for the purposes of the fugitive dust plan required by subsection (C)(2) must be maintained in a recordkeeping log or recordkeeping system. As part of the records, the owner or operator shall include the dates and times for each of the following observations or activities, the name of the employee documenting each activity or observation, and the nature and location of each observation activity:
   a. Each instance of observed visible emissions of 15% opacity or greater, along with a description of any corrective action undertaken and its success.
   b. Water sprayer operations, including timing and intensity of watering to be captured in the water sprayer recordkeeping system.
   c. Timing, location, type, and amount of chemical suppressant and water applied to unpaved roads, and a description of the nature and timing of any additional corrective action taken, as necessary, to minimize emissions to the greatest extent practicable.
   d. Timing and location of all sweeping and cleaning of trackout or spillage material.
   e. Timing and location of all washdown of concrete areas.
   f. Timing and location of sump cleanouts.
   g. Results of all visible emissions surveys and Reference Method 9 readings.

h. Appropriate records for operating conditions, including electric dryer ventilation fan start and stop times for the newly designed acid plant scrubber blowdown drying system.
i. Calibration records for all measurement devices, including maintenance of manufacturer's manuals or other documentation for suggested calibration schedules and accuracy levels for each measurement device.
j. Dates, times, and descriptions of deviations when the owner or operator's operations was carried out in a manner inconsistent with the fugitive dust plan required by subsection (C)(2).

I. Reporting. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a report to the Department covering the prior quarter that includes the following:
1. All instances where observed fugitive emissions coming from sources covered in this Section were 15% or greater.
2. The date of all high wind events, with an identification of the location of the reading, wind speed, and duration of the event, and a description of actions taken as a result of the event on a source-by-source basis.
3. All instances where corrective action was required with identification of the emission source involved, what triggered the corrective action, what action the owner or operator undertook to abate or mitigate the problem, and whether the corrective action achieved the intended results.
4. A summary of all times when the electronic recordkeeping system was not recording data, and a summary and indication of the period when recorded data was outside of established operating parameters.
5. A summary of progress of all new construction, installation, upgrades, or modifications to equipment or structures at the facility required by the fugitive dust plan and subsection (D), including dates of commencement and completion of construction, dates of operations of new or modified equipment or structures, and dates old or outdated equipment or structures were permanently retired.
6. Raw monitoring data and calculated ambient lead concentrations from the ambient air monitoring stations required by subsection (F).

Historical Note

New Section R18-2-B1301.01 made by final rulemaking at 23 A.A.R. 767, effective December 1, 2018 (Supp. 17-1).

R18-2-B1302. Limits on SO_2 Emissions from the Hayden Smelter

A. Applicability.
1. This Section applies to the owner or operator of the Hayden Smelter. It establishes limits on sulfur dioxide emissions from the Hayden Smelter and monitoring, recordkeeping and reporting requirements for those limits.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this rule.
1. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and to provide, on a continuous basis, a permanent record of emissions.
2. "Operating day" means any calendar day in which any of the following occurs:
   a. Concentrate is smelted in the smelting furnace;
   b. Copper or sulfur bearing materials are processed in the converters;
   c. Blister or scrap copper is processed in the anode furnaces;
   d. Molten metal, including slag, matte or blister copper, is transferred between vessels; or
   e. Molten metal is cast into anodes or other intermediate or final products.
3. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.

C. Sulfur Dioxide Emissions Limitations.
1. Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.
2. The owner and operator shall not cause to be discharged into the atmosphere from any affected unit subject to 40 CFR 60 subpart P any gases which contain sulfur dioxide in excess of the limit set forth in 40 CFR § 60.163(a) (as in effect on July 1, 2016 and no later editions).

D. Operational Standards.
1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control and/or control equipment in a manner consistent with good air pollution control practices for minimizing SO_2 emissions to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on all information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace including matte tapping, slag skimming, and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system, and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
   a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating,

except during periods of monitor calibration, repair and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.

b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. The initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
   i. Identification of those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.
   ii. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
   iii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
   iv. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
   v. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
   vi. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
   vii. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
   viii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
   ix. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
   x. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
   xi. The temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's recommendations.
   xii. The acid plant catalyst replenishment criteria, which shall at minimum, meet the manufacturer's recommendations.

c. Preventative maintenance. The owner or operator must perform preventative maintenance on each capture system and control device according to written procedures specified in the operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.

d. Inspections. The owner or operator must perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's or operator's instructions for each system and device.

e. Plan development and revisions.
   i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's recommendations and/or instructions used for capture system and control device operations and maintenance.
   ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
   iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department

shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Monitoring.

1. To determine compliance with subsection (C)(1) the owner or operator of the Hayden Smelter shall install, calibrate, maintain, and operate a CEMS for continuously monitoring and recording SO_2 concentrations and stack gas volumetric flow rates at the following locations.
   a. The exit of the acid plant;
   b. The exit of the secondary hood particulate control device after the High Surface Area (HSA) lime injection system;
   c. The exit of the flash furnace particulate control device after the HSA lime injection system;
   d. The tertiary ventilation system prior to mixing with any other exhaust streams; and
   e. The anode furnace baghouse stack prior to mixing with any other exhaust streams.
2. Except during periods of systems breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO_2 concentrations and stack gas volumetric flow rates at each location in subsection (E)(1).
3. For purposes of this Section, continuous monitoring means the taking and recording of at least one measurement of SO_2 concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All CEMS required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
4. If the owner or operator can demonstrate to the Director that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO_2 control equipment would yield inaccurate results or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
5. The owner or operator shall demonstrate that the CEMS required by subsection (E)(1) meet all of the following requirements:
   a. The SO_2 CEMS installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 2 and Performance Specification 6. The CEMS on the anode furnace baghouse stack and tertiary ventilation system shall complete an initial Relative Accuracy Test Audit (RATA) in accordance with Performance Specification 2. The RATA runs shall be tied to when the anode furnace is in use and, for the tertiary system, when the converters are in operation and/or material is being transferred in the converter aisle. Asarco may petition the Department and EPA Region IX on the criteria for subsequent RATAs for the anode furnace baghouse stack or tertiary ventilation system CEMS. The petition shall include submittal of CEMS data during the year.
   b. The SO_2 CEMS installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
   c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) performed on the CEMS.
   d. The Director shall approve the location of all sampling points for monitoring SO_2 concentration and stack gas volumetric flow rates and the appropriate span values for the monitoring systems. This approval shall be in writing before installation and operation of the measurement instruments.
   e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per operating day unless the manufacturer specifies or recommends calibration at shorter intervals, in which case the owner or operator shall follow those specifications or recommendations. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
   f. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the CEMS required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
6. The owner or operator of the Hayden Smelter may petition the Department to substitute annual stack testing for the tertiary ventilation or the anode furnace baghouse stack CEMS if the owner or operator demonstrates, for a period of two years, that either CEMS contribute(s) less than 5% individually of the total sulfur dioxide emissions. The Department must determine the demonstration adequate to approve the petition. Annual stack testing shall use EPA Methods 1, 4, and 6C in 40 CFR 60 Appendix A or an alternate method approved by the Department and EPA Region IX. Annual stack testing shall commence no later than the one year after the date the continuous emission monitoring system was removed. The owner or operator shall submit a test protocol to the Department at least 30 days in advance of testing. The protocol shall provide for three or more 24-hour runs unless the owner or operator justifies a different period and the Department approves such different period. Reports of testing shall be submitted to the Department no later than 60 days after testing or 30 days after receipt,

whichever is later. The report shall provide an emissions rate, in the form of a pound per hour or pound per unit of production factor, that shall be used in the compliance demonstration in subsection (F)(1). Except as provided herein, the owner or operator shall otherwise comply with Section R18-2-312 in conducting such testing.

F. Compliance Demonstration Requirements.

1. For purposes of determining compliance with the emission limit in subsection (C)(1) the owner or operator shall calculate emissions for each operating day as follows:
   a. Sum the hourly pounds of SO_2 vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for the current operating day and the preceding 13-operating days to calculate the total pounds of SO_2 emissions over the 14-operating day averaging period, as applicable.
   b. Divide the total amount of SO_2 emissions calculated from subsection (F)(1)(a) by 336 to calculate the 14-operating day average SO_2 emissions.
   c. If the calculation in subsection (F)(1)(b) exceeds 1069.1 pounds per hour, then the owner or operator shall sum the hourly pounds of SO_2 vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for each hour of the current operating day and each hour of the preceding 13-operating days to ascertain if any hour exceeded 1,518 pounds per hour.
2. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
   a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO_2 concentrations recorded by the system for the hour before and the hour after the missing data period.
   b. For a missing data period greater than 24 hours, substitute the greater of:
      i. The 90th percentile hourly SO_2 concentrations recorded by the system during the previous 720 quality-assured monitor operating hours.
      ii. The average of the hourly SO_2 concentrations recorded by the system for the hour before and the four hours after the missing data period.
   c. Notwithstanding subsections (F)(3)(a) and (F)(3)(b), the owner or operator may present any credible evidence as to the quantity or concentration of emissions during any period of missing data.
3. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
   a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
   b. Conducting a fugitive study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP.
4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limits in subsection (C).
5. The owner and operator shall demonstrate compliance with the limit in subsection (C)(2) in accordance with 40 CFR §§ 60.165 and 60.166 (as in effect on July 1, 2016 and not later editions).

G. Recordkeeping.

1. The owner or operator shall maintain a record of each operation and maintenance plan required under subsection (D)(2).
2. The owner or operator shall maintain the following records for at least five years:
   a. All measurements from the continuous monitoring system required by subsection (E)(1), including the date, place, and time of sampling or measurement; parameters sampled or measured; and results. All measurements will be calculated daily.
   b. All records of quality assurance and quality control activities for emissions measuring systems required by subsection (E)(1).
   c. All records of calibration checks, adjustments, maintenance, and repairs conducted on the continuous monitoring systems required by subsection (E); including records of all compliance calculations required by subsection (F).
   d. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining and casting emission units; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) is inoperative or not operating correctly.
   e. All records of planned and unplanned shutdown ventilation flue utilization events and calculations used to determine emissions from shutdown ventilation flue utilization events if the owner or operator chooses to use the alternative compliance determination method.
   f. All records of major maintenance activities and inspections conducted on emission units, capture system, air pollution control equipment, and CEMS, including those set forth in the operations and maintenance plan required by subsection (D)(2).
   g. All records of operating days and production records required for calculations in subsection (F).
   h. All records of fugitive emissions studies and study protocols conducted in accordance with Appendix 14.
   i. All records of reports and notifications required by subsection (H).

H. Reporting.

1. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring systems required by subsection (E)(1).
2. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F for the continuous monitoring systems required by subsection (E).

3. The owner or operator shall submit an excess emissions and monitoring systems performance report or summary report form in accordance with 40 CFR § 60.7(c) to the Director quarterly for the continuous monitoring systems required by subsection (E)(1). Excess emissions means any 14-operating day average as calculated in subsection (F) in excess of the emission limit in subsection (C)(1), any period in which the capture and control system was operating outside of its parameters specified in the capture system and control device operation and maintenance plan in subsection (D)(2). For any 14-operating day period exceeding 1069.1 pounds per hour that the owner or operator claims does not exceed the limit in subsection (C)(1) because all hours in the operating period are below 1,518 pounds per hour, the owner or operator shall submit the CEMS data for each hour during that period. All reports shall be postmarked by the 30th day following the end of each calendar quarter time period.
4. The owner or operator shall provide the following to the Director:
   a. The owner or operator shall notify the Director of commencement of construction of any equipment necessary to comply with the operational or emission limits.
   b. The owner or operator shall submit semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
   c. The owner or operator shall submit notification of initial startup of any such equipment within 15 business days of such startup.

I. Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO_2 emissions from the operations subject to subsection (C) for purposes of minor source NSR requirement addressed in R18-2-334.

Historical Note

New Section R18-2-B1302 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).

PART C. MIAMI, ARIZONA, PLANNING AREA

R18-2-C1301. Reserved

Historical Note

New Section R18-2-C1301 reserved at 23 A.A.R. 767 (Supp. 17-1).

R18-2-C1302. Limits on SO_2 Emissions from the Miami Smelter

A. Applicability.
1. This Section applies to the owner or operator of the Miami Smelter. It establishes limits on SO_2 emissions from the Miami Smelter and monitoring, recordkeeping and reporting requirements for those limits.
2. Effective date. Except as otherwise provided, the provisions of this Section shall take effect on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this rule.
1. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
2. "Electric furnace" means a furnace in which copper matte and slag are heated by electrical resistance without the mechanical introduction of air or oxygen.
3. "IsaSmelt® furnace" means a furnace in which air, oxygen, and fuel are injected through a top-submerged lance into a molten slag bath to produce slag and copper matte.
4. "Miami Smelter" means the primary copper smelter located near Miami, Gila County, Arizona at latitude 33°24'50"N and longitude 110°51'25"W.
5. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.
6. "Operating day" means any calendar day in which any of the following occurs:
   a. Concentrate is smelted in the Electric furnace or IsaSmelt® furnace;
   b. Copper or sulfur bearing materials are processed in the converters;
   c. Blister or scrap copper is processed in the anode furnaces or mold vessel;
   d. Molten metal, including slag, matte or blister copper, is transferred between vessels;
   e. Molten metal is cast into molds, anodes, or other intermediate or final products;
   f. Power is provided to the electric furnace to make or maintain a molten bath; or
   g. The anode furnace is heated to make or maintain a molten bath.

C. Sulfur Dioxide Emission Limitations. Combined SO_2 emissions from the tail gas stack, vent fume stack, aisle scrubber stack, bypass stack, and smelter roofline fugitives shall not exceed 142.45 pounds per hour on a 30-day rolling average basis.

D. Operational Standards.
1. Process Equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control devices in a manner consistent with good air pollution control practices for minimizing SO_2 emissions from the process gases associated with the IsaSmelt® furnace, electric furnace, and converters at least to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.

2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and control device used to ventilate or control process gas or emissions associated with the IsaSmelt® furnace, electric furnace, and converters. The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.
   a. The operations and maintenance plan must address the following requirements as applicable to each capture system and control device:
      i. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit or range values at all times the required system is operating. Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements.
      ii. Operational limits and ranges. The owner or operator shall establish operating limits and ranges in the plan for each capture system and control device that are representative and reliable indicators of capture system performance and control device operation. If selected as an operational limit or range, capture system damper position settings shall be specified in the plan.
      iii. Preventative maintenance. The owner or operator must perform preventative maintenance for each capture system and control device according to written procedures in the plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions and specified frequency for routine and long-term maintenance.
      iv. Inspections. The owner or operator must perform inspections in accordance with written procedures in the plan for each capture system and control device, including position verification of any manual damper settings specified in the plan, that are consistent with the manufacturer's or engineer's instructions for each system and device.
   b. The owner or operator shall operate and maintain each capture system and each control device in accordance with the plan required by subsection (D)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain each capture system and each control device in accordance with the plan as initially submitted pursuant to subsection (D)(2). The owner or operator shall submit plan revisions for review by the Department and EPA Region IX. At any time, the Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (D)(2)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency. The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request.

E. Monitoring.
1. To determine compliance with subsection (C), the owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems to monitor and record SO_2 concentrations and stack gas volumetric flow rates at the following locations.
   a. The acid plant tail gas stack;
   b. The vent fume stack;
   c. The aisle scrubber stack; and
   d. The bypass stack.
2. To determine compliance with the emission limit in subsection (C), the owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record fugitive SO_2 concentrations at the Miami Smelter roofline.
3. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO_2 concentrations and stack gas volumetric flow rates at each location specified in subsection (E)(1) and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO_2 emission limit in subsection (C) in accordance with subsection (F).
4. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks and zero and span adjustments, the owner or operator shall continuously monitor fugitive SO_2 emissions at the Miami Smelter roofline and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO_2 emission limit in subsection (C) in accordance with subsection (F).
5. For purposes of subsections (E)(3) and (E)(4), continuous monitoring means the taking and recording of at least one measurement of SO_2 concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All continuous monitoring systems required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
6. If the owner or operator can demonstrate to the Director and EPA Region IX that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO_2 control equipment would yield inaccurate results or would be technologically infeasible, then the Director and EPA Region IX may allow measurement of the flow rate at an alternative sampling point.
7. The owner or operator shall demonstrate that the continuous monitoring systems required by subsection (E)(1) meet all of the following requirements:
   a. Each SO_2 continuous monitoring system shall meet the specifications under 40 CFR 60, Appendix B, Performance Specification 6.
   b. Each SO_2 continuous monitoring system installed and operated under this Section shall also meet the quality assurance requirements of 40 CFR 60, Appendix F, Procedure 1.
   c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the

relative accuracy test audit (RATA) procedures performed on each continuous monitoring system.

d. The Director shall approve the location of all sampling points for monitoring SO_2 concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.

e. The span of each continuous monitoring system for the acid plant tail stack, vent fume stack, and aisle scrubber stack shall be set at a SO_2 concentration of zero to 0.20% by volume.

f. The span of the continuous monitoring system for the bypass stack shall be set at a SO_2 concentration of zero to 20% by volume.

g. The zero (or low-level value between 0 and 20% of the span value) and span (50% to 100% of span value) calibration drifts shall be checked at least once each operating day in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit in 40 CFR Part 60, Appendix B, Performance Specification 2. The system must allow the amount of the excess zero and span drift to be recorded and quantified.

h. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring system equipment required by this Section to allow for the replacement within six hours of any monitoring system equipment part that fails or malfunctions during operation.

8. The owner or operator shall develop and implement a roofline fugitive emissions monitoring plan for the continuous monitoring system required by subsection (E)(2). The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.

a. The roofline fugitive emissions monitoring plan must address the following requirements:

i. The continuous monitoring system required by subsection (E)(2) must include measurement of fugitive emissions from, at a minimum, the Converter, Electric Furnace, Anode Furnace, and IsaSmelt® systems that is representative of total fugitive emissions.

ii. Each measurement system shall include at least one SO_2 analyzer and sufficient sampling locations that ensure collection of a representative sample along the roof monitor for each monitor system. The number of sample probes and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.

iii. Each measurement system shall include validation of adequate velocity for flow measurements and sufficient flow and temperature sensors to ensure calculation of representative exhaust flows through each vent. The number of such sensors and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.

iv. Each measurement system shall include an on-site data collection system that continuously logs and stores the measured SO_2 concentration, the measured flow velocity, and the measured temperature.

v. An appropriate range for zero-span drift shall be established for all SO_2 analyzers to ensure proper calibration and operation. Unless otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8), the zero (or low-level) value determination shall be made using a gas containing between zero to 20% of the span value for SO_2 and the span (or high-level) value determination shall be made using a certified gas with a value between 50% and 100% of the span value for SO_2. For each SO_2 analyzer, a daily zero-span check shall be performed by introducing zero gas and a known concentration of span gas to the analyzer. If the zero or span drift for an analyzer is greater than 5% of the span gas concentration for five consecutive days or greater than 10% of the span gas concentration for one day, the analyzer shall be found to be operating improperly and appropriate measures shall be taken to return the analyzer to proper operation. The zero-span check shall be repeated after any such corrective action is taken.

vi. All SO_2 analyzers shall be inspected quarterly by the owner or operator and inspected annually by an independent auditor. The inspections shall be conducted in accordance with the data accuracy assessment requirements of 40 CFR 60, Appendix F, Procedure 1, Section 5 or as otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8). The quarterly inspections consist of two certified concentrations of SO_2 to each sample probe system and comparing the known concentrations to the concentrations logged by the corresponding on-site data collection system to generate a relative error for each system.

vii. The flow and temperature data shall be checked daily for proper operation of flow and temperature sensors in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow or temperature sensor is found to be operating improperly, appropriate measures shall be taken to return the sensor to proper operation.

viii. All temperature sensors shall be inspected annually. The inspection shall be conducted according to the manufacturer's specification. A temperature sensor tolerance range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a temperature sensor is found to measure outside of an established tolerance range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.

ix. All flow sensors shall be calibrated semi-annually with calibration tools according to the manufacturer's specifications. A calibration tool range representative of proper sensor oper-

ation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow sensor is found to measure outside of an established range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.

b. The owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the plan as initially submitted pursuant to subsection (E)(2). The owner or operator shall keep the plan current and consistent with subsection (E)(8)(a). The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request. The Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (E)(8)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency.

F. Compliance Demonstration Requirements.

1. Within 180 days of the effective date set forth in subsection (A)(2), the owner or operator shall demonstrate compliance with the emission limit in subsection (C) by calculating SO_2 emissions for each operating day as follows:
   a. Sum the hourly pounds of SO_2 measured by the continuous monitoring systems required by subsection (E)(1) and (E)(2) for the current operating day and the preceding 29 operating days to calculate the total pounds of SO_2 emissions over the 30-operating day averaging period.
   b. Multiply the operating days occurring during a 30-day averaging period by 24 to calculate the total operating hours over the most recent 30-operating day period.
   c. Divide the total amount of SO_2 emissions calculated from subsection (F)(1)(a) by the total operating hours calculated from subsection (F)(1)(b) to calculate the 30-day rolling hourly average SO_2 emissions.
2. For the continuous monitoring systems required by subsections (E)(1) and (E)(2), hourly emissions shall be computed as follows:
   a. Except as provided under subsection (F)(2)(c), for a full operating hour (any clock hour with 60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, i.e., one data point in each of the 15-minute quadrants of the hour.
   b. Except as provided under subsection (F)(2)(c), for a partial operating hour (any clock hour with less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.
   c. For any operating hour in which required maintenance or quality-assurance activities are performed:
      i. If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or
      ii. If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.
   d. If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and the requirements of subsection (F)(2)(c) are met, based solely on valid data recorded after the successful calibration.
   e. For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.
   f. Data recorded during periods of continuous monitoring system breakdown, repair, maintenance, out of control periods, calibration checks, and zero and span adjustments shall not be included in the data averages computed under subsection (F)(3).
   g. Either arithmetic or integrated averaging of all data may be used to calculate the hourly average. The data may be recorded in reduced or non-reduced form.
3. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
   a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO_2 concentrations recorded by the system for the hour before and the hour after the missing data period.
   b. For a missing data period greater than 24 hours, substitute the greater of:
      i. The 90th percentile hourly SO_2 concentrations recorded by the system during the previous 720 quality-assured monitor operating hours; or
      ii. The average of the hourly SO_2 concentrations recorded by the system for the hour before and the hour after the missing data period.
4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

G. Recordkeeping.

1. The owner or operator shall maintain records as specified in the capture system and control device operations and maintenance plan required under subsection (D)(2) and the roofline fugitive emissions monitoring plan required under subsection (E)(8).
2. The owner or operator shall maintain the following records for at least five years:
   a. All measurements from the continuous monitoring systems required by subsection (E)(1) and (E)(2); including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.
   b. All records of all compliance calculations required by subsection (F).
   c. All records of quality assurance and quality control activities conducted on the continuous monitoring systems required by subsection (E)(1) and (E)(2).

d. All records of continuous monitoring system breakdowns, repairs, maintenance, out of control periods, calibration checks, and zero and span adjustments for the continuous monitoring systems required by subsection (E)(1) and (E)(2).
e. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of Smelter processes; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) and (E)(2) is inoperative.
f. All records of all major maintenance activities conducted on emission units, capture system, air pollution control equipment, and continuous monitoring systems; including those set forth in the operations and maintenance plan required by subsection (D)(2).
g. All records of reports and notifications required by subsection (H).

H. Reporting
1. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F, Procedure 1 for the continuous monitoring systems required by subsection (E).
2. The owner or operator shall submit an excess emissions and monitoring systems performance report and-or summary report form in accordance with 40 CFR § 60.7(c) to the Director semiannually for the continuous monitoring systems required by subsection (E)(1) and (E)(2). All reports shall be postmarked by the 30th day following the end of each six-month period.
3. The owner or operator shall provide the following to the Director:
a. Notification of commencement of construction of the project improvements and equipment authorized by Significant Permit Revision No. 53592 to comply with the operational or emission limits in this Section no later than 30 days after such date.
b. Semiannual progress reports on construction of any such improvements and equipment on January 1 and July 1 of each calendar year until construction is complete.
c. Notification of initial startup of any such improvements and equipment within 15 days after such date.

I. Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO_2 emissions from the operations subject to subsection (C) for purposes of minor source NSR requirements addressed in R18-2-334.

Historical Note
New Section R18-2-C1302 made by final rulemaking at 23 A.A.R. 767, on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

ARTICLE 14. CONFORMITY DETERMINATIONS

R18-2-1401. Definitions
Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:
1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADOT" means the Arizona Department of Transportation.
3. "Applicable implementation plan" is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
4. "CAA" means the Clean Air Act, as amended.
5. "Cause or contribute to a new violation" for a project means either of the following:
a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented.
b. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.
6. "Consultation" means that one party confers with another identified party, provides access to all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds in accordance with the procedures established in R18-2-1405.
7. "Control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
8. "Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, or ozone, as appropriate. This period ends when the state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.
9. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
10. "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
11. "EPA" means the United States Environmental Protection Agency.
12. "FHWA" means the Federal Highway Administration of USDOT.
13. "FHWA or FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit

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

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic

competitiveness of this state and of the Arizona-Mexico region.

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

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

B. The department, through the director, shall:

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

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

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

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

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

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

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

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

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

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

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

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

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

sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

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

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

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

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

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

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

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

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

C. The department may:

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

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

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

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

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

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

Authorizing Statute

A.R.S. § 49-404

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

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

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

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

Authorizing Statute

A.R.S. § 49-458

A.R.S. § 49-458. *Regional haze Program; authority*

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.

Authorizing Statute

A.R.S. § 49-458.01

A.R.S. § 49-458.01. *State implementation plan revision; regional haze; rules*

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.

2. A monitoring strategy for regional haze visibility impairment.

3. Calculations of baseline visibility conditions and natural visibility conditions.

4. Comprehensive emissions tracking strategies for clean air corridors.

5. Implementation of stationary source emissions reduction strategies.

6. Provisions addressing mobile source emissions.

7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.

8. Provisions addressing the impact of dust emissions on visibility impairment.

9. Provisions relating to pollution prevention.

10. Best available retrofit technology requirements.

11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.

12. A long-term strategy that addresses regional haze visibility impairment.

13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.

14. For the Arizona Grand Canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.

15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.

16. Periodic progress reports.

B. The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

C. The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

D. Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 Code of Federal Regulations section 51.308 or section 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations section 51.309 only if the revision contains a determination pursuant to 40 Code of Federal Regulations section 51.309 (d)(5)(ii) that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon visibility transport commission class I areas.

for ''Illegal Trafficking in Native American Human Remains and Cultural Items'' in item 1170.

1990—Pub. L. 101–647, title XXXV, § 3536, Nov. 29, 1990, 104 Stat. 4925, struck out item 1157 ''Livestock sold or removed''.

Pub. L. 101–644, title I, § 104(b), Nov. 29, 1990, 104 Stat. 4663, substituted ''Misrepresentation of Indian produced goods and products'' for ''Misrepresentation in sale of products'' in item 1159.

Pub. L. 101–630, title IV, § 404(a)(2), Nov. 28, 1990, 104 Stat. 4548, as amended, effective on the date section 404(a)(2) of Pub. L. 101–630 took effect, by Pub. L. 103–322, title XXXIII, § 330011(d), Sept. 13, 1994, 108 Stat. 2144, as amended by Pub. L. 104–294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, added item 1169.

Pub. L. 101–601, § 4(b), Nov. 16, 1990, 104 Stat. 3052, added item 1170.

1988—Pub. L. 100–497, § 24, Oct. 17, 1988, 102 Stat. 2488, added items 1166, 1167, and 1168.

1960—Pub. L. 86–634, § 3, July 12, 1960, 74 Stat. 469, added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, § 1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, § 1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, § 1, 67 Stat. 588, added item 1162.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term ''Indian country'', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§ 2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§ 2145, 2146 (U.S.C., title 25, §§ 217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S. v. McBratney*, 104 U.S. 622 and *Draper v. U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, ''Indian country'' was defined but once. (See act June 30, 1834, ch. 161, § 1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v. McGowan*, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser's note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase ''except as otherwise provided in sections 1154 and 1156 of this title'', incorporates in this section the limitations of the term ''Indian country'' which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of term ''Indian country'' which are contained in sections 1154 and 1156 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–297, § 1, May 29, 1976, 90 Stat. 585, provided: ''That this Act [amending sections 113, 1153, and 3242 of this title] may be cited as the 'Indian Crimes Act of 1976'.''

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§ 1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser's note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing

BOARD OF BEHAVIORAL HEALTH EXAMINERS
Title 4, Chapter 6

Amend: R4-6-101, R4-6-211, R4-6-212, R4-6-214, R4-6-215, R4-6-216, R4-6-301, Table 1, R4-6-304, R4-6-305, R4-6-306, R4-6-403, R4-6-404, R4-6-1501, R4-6-503, R4-6-601, R4-6-603, R4-6-702, R4-6-703, R4-6-705, R4-6-706, R4-6-801, R4-6-802, R4-6-1101, R4-6-1102, R4-6-1105, R4-6-1106

New Section: R4-6-217

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 8, 2023**

SUBJECT: **BOARD OF BEHAVIORAL HEALTH EXAMINERS**
Title 4, Chapter 6

Amend: R4-6-101, R4-6-211, R4-6-212, R4-6-214, R4-6-215, R4-6-216, R4-6-301, Table 1, R4-6-304, R4-6-305, R4-6-306, R4-6-403, R4-6-404, R4-6-1501, R4-6-503, R4-6-601, R4-6-603, R4-6-702, R4-6-703, R4-6-705, R4-6-706, R4-6-801, R4-6-802, R4-6-1101, R4-6-1102, R4-6-1105, R4-6-1106

New Section: R4-6-217

Summary:

This regular rulemaking from the Arizona Board of Behavioral Health Examiners (Board) seeks to amend twenty-seven (27) rules and add one (1) new section to Title 4, Chapter 6. Under Laws 2021, Chapter 320, the legislature amended the following statutes: A.R.S. § 32-3251 to provide that direct client contact includes providing therapeutic or clinical care by telehealth and A.R.S. § 36-3606 regarding registration of out-of-state providers of telehealth services. Under Laws 2021, Chapter 62, the legislature amended the following statutes: A.R.S. §§ 32-3293 (social work), 32-3301 (counseling), 32-3311 (marriage and family therapy), and 32-3321 (substance abuse counseling) to remove the requirement that an applicant provide evidence of indirect client hours obtained during training. The Board is also removing provisions regarding supervised private practice from R4-6-211 to R4-6-217, and amending R4-6-306 regarding an application for a temporary license.

In addition to statutory changes, this rulemaking is related to and amending the issues identified in a 5YRR approved by the Council on March 3, 2020.

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?

The Board indicates that the rulemaking does not contain a fee increase but establishes a new fee to register as an out-of-state health care provider of telehealth services as allowed under A.R.S. § 36-3606(A)(3) and applies an existing fee of $250 to obtaining a license by universal recognition.

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 rulemaking has minimal economic impact because it makes no substantive changes other than those required to be consistent with statute. Out-of-state providers of telehealth services who choose to register to provide services in Arizona will have to pay a newly established fee.

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 has made several changes that reduce regulatory burdens: reducing the time a clinical supervisor must maintain records; clarifying that clinical supervision in a face-to-face setting includes virtual teleconferencing; eliminating a charge for a duplicate license; allowing documentation to be made electronically; and allowing verbal informed consent when providing care by telehealth.

The Board states that there is one provision that will have more than minimal economic impact: the $250 one-time fee charged to register as an out-of-state provider of telehealth in Arizona. The Board determined the fee charged is reasonable compared to work required by the agency and necessary to support the functions of the agency.

6. What are the economic impacts on stakeholders?

The Board currently licenses 6,724 social workers, 6,570 counselors, 1,179 marriage and family therapists, and 1,313 substance abuse counselors.

Licensees who wish to be licensed at a more independent level of practice are required to obtain hours of supervised work experience including hours of clinical supervision.

The Board incurred the cost of completing this rulemaking and will have the benefit of rules that are consistent with statute and agency practice.

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

The Boards indicates that generally, the finals rules are not substantially changed, considered as a whole, from the supplemental proposed rulemaking, but did make the following amendments:

R4-6-305: The Board amended three (3) months to ninety (90) days.

R4-6-101: The Board removed the definition of "indirect client service" to be consistent with statute.

R4-6-215(A)(2) and R4-6-306(A)(1): The Board added the definition of "universal recognition".

R4-6-304(B): amended the rule to be consistent with A.R.S. § 32-4302.

R4-6-403(A), R4-6-503(A), and R4-6-603(A): added clarifying language to the rules.

R4-6-1106(B): the Board amended the subsection to include language from A.R.S. § 32-3271(A)(2) and made grammatical and typographical changes.

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

The Board indicates that the comments on the proposed rules were adequately addressed as identified in the table on subsection 11 of the NFR.

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

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.

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

The Board states that none of the rules is more stringent than federal law. No federal law is directly applicable to the subject of any of the rules in this rulemaking.

11. Conclusion

This regular rulemaking from the Arizona Board of Behavioral Health Examiners seeks to amend twenty-seven (27) rules and add one (1) new section to Title 4, Chapter 6. In addition

to statutory changes, This rulemaking is related to the issues identified in a 5YRR approved by the Council on March 3, 2020 and statutory changes required by Laws 2021, Chapter 62.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

STATE OF ARIZONA
BOARD OF BEHAVIORAL HEALTH EXAMINERS
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KATIE HOBBS
Governor

TOBI ZAVALA
Executive Director

May 2, 2023

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 6. Board of Behavioral Health Examiners

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 March 21, 2023, 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 from Executive Order 2022-01 was provided by Tony Hunter, of the Governor's office, in an e-mail dated March 4, 2022. Approval to submit the rulemaking to the Council was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated April 26, 2023.

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 March 3, 2020.

C. New fee: The rulemaking establishes a new fee that is specifically authorized under A.R.S. § 36-3606(A)(3). It also applies an existing fee to obtaining a license by universal recognition.

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;
   4. Public comments

Sincerely,

Tobi Zavala
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-6-101	Amend
R4-6-211	Amend
R4-6-212	Amend
R4-6-214	Amend
R4-6-215	Amend
R4-6-216	Amend
R4-6-217	New Section
R4-6-301	Amend
Table 1	Amend
R4-6-304	Amend
R4-6-305	Amend
R4-6-306	Amend
R4-6-403	Amend
R4-6-404	Amend
R4-6-501	Amend
R4-6-503	Amend
R4-6-601	Amend
R4-6-603	Amend
R4-6-702	Amend
R4-6-703	Amend
R4-6-705	Amend
R4-6-706	Amend
R4-6-801	Amend
R4-6-802	Amend
R4-6-1101	Amend
R4-6-1102	Amend
R4-6-1105	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. § 32-3253(A)(1)

Implementing statute: A.R.S. §§ 32-3275, 32-3279, 32-3251, 32-3291, 32-3292, 32-3293, 32-3301, 32-3303, 32-3311, 32-3313, 32-3321, and 36-3606

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. 1659, July 15, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 1627, July 15, 2022

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 2009, August 12, 2022

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

Name: Erin Yabu, Deputy Director

Address: 1740 W Adams Street; Suite 3600

Phoenix, AZ 85007

Telephone: 602-542-1882

E-mail: erin.yabu@azbbhe.us

Web site: www.azbbhe.us

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 amending rules to address issues identified in a 5YRR approved by the Council on March 3, 2020, and to make the rules consistent with statutory changes. Under Laws 2021, Chapter 320, the legislature amended A.R.S. § 32-3251 to provided that direct client contact includes

providing therapeutic or clinical care by telehealth. The legislation also added A.R.S. § 36-3606 regarding registration of out-of-state providers of telehealth services. Under Laws 2021, Chapter 62, the legislature amended A.R.S. §§ 32-3293 (social work), 32-3301 (counseling), 32-3311 (marriage and family therapy), and 32-3321 (substance abuse counseling) to remove the requirement that an applicant provide evidence of indirect client hours obtained during training. The applicant must provide evidence of direct client hours and clinical supervision. The Board is also removing provisions regarding a supervised private practice from R4-6-211 and moving them to a new Section, R4-6-217, and amending R4-6-306 regarding an application for a temporary license. An exemption from Executive Order 2022-01 was provided by Tony Hunter, of the Governor's office, in an e-mail dated March 4, 2022. Approval to submit the rulemaking to the Council was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated April 26, 2023.

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 any 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 Board believes the rulemaking has minimal economic impact because it makes no substantive changes other than those required to be consistent with statute. Out-of-state providers of telehealth services who choose to register to provide services in Arizona will have to pay the newly established fee. The amendment to R4-6-306 clarifies when a temporary license expires.

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

Between the Notice of Supplemental Proposed Rulemaking and the final notice, the Board added R4-6-305 to the rulemaking and changed "three months" to "90 days."

The Board removed the definition of "indirect client service" from R4-6-101to be consistent with the statutory changes made under Laws 2021, Chapter 62, and relabeled the remaining definitions.

The Board also added "universal recognition" to R4-6-215(A)(2) and R4-6-306(A)(1); amended R4-6-304(B) to be consistent with A.R.S. § 32-4302; and added clarifying language to R4-6-403(A), R4-6-503(A), and R4-6-603(A).

The Board received numerous comments regarding R4-6-1106(B) that indicated the commenters' concern about the subsection was caused by the commenters not reading or understanding the cross-referenced statute, A.R.S. § 32-3271(A)(2). In response, the Board amended the subsection to include language from the cross-referenced statute.

The Board appreciates the commenters' careful review of the proposed rules and corrected all typographical errors called to the Board's attention. The Board considered the numerous comments regarding word choice and formatting but, except as noted in item 11, did not change the rules in line with the comments. In response to public comments, the Board made non-substantive changes 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:

In addition to the numerous comments received regarding R4-6-1106(B), the Board received comments from the following:

- Rachel Bentley, Licensed Marriage and Family Therapist
- Halina Brooke, AZ Sensible Therapy Practices Coalition
- Michele Chinichian, Licensed Clinical Social Worker
- Keith Cross, Licensed Marriage and Family Therapist
- Laura Fontaine, Licensed Independent Substance Abuse/Licensed Professional Counselor
- Courtney Glenny, Licensed Professional Counselor
- Sofia Hassid, Licensed Clinical Social Worker
- Casey Heinsch, AZ Interest Network
- Sheana Kupitz, Licensed Master Social Worker
- Pallavi Lal, Licensed Associate Counselor
- Vic Meadow, Licensed Associate Counselor
- EJ Millston, Licensed Professional Counselor
- Julia Poole, Licensed Master Social Worker
- Joan Rapine, Licensed Professional Counselor
- Erin Stone, Licensed Associate Marriage and Family Therapist
- Troy Stone, Licensed Associate Marriage and Family Therapist

- Shelly Thome, Licensed Professional Counselor
- Dana Vargas, Licensed Professional Counselor

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
R4-6-101(50): Remove "operates" to align the definition with R4-6-217.	The Board agrees.	Change made
R4-6-211(A): Delete the last five words.	The Board agrees.	Change made
R4-6-211(B)(1): the "and" between 6 and 7 should be "or."	The Board agrees	Change made
R4-6-212: A requirement should be added that the clinical supervision verification form must be completed within 30 days after a clinical supervision contract is terminated. This will ensure accurate and timely verification of supervised hours	The Board considered the comment and decided the change was not needed.	No change
R4-6-212(A)(1)(a): It is overly restrictive to require two years of licensure before being qualified to provide clinical supervision.	The Board agrees.	The rule was changed to require only one year of licensure before being qualified to provide clinical supervision.
R4-6-212(C)(4): A cross reference to the definition of "contemporaneous" is needed.	The Board disagrees that a cross reference to an existing definition is needed.	No change
R4-6-212(C)(6): Provide additional explanation of the term "personal relationship."	The Board considered the suggestion and decided no change was needed.	No change
R4-6-212(D)(1): To be consistent with subsection (E), clarify that clinical supervision	The Board agrees. However, the original subsection (D)(1) was deleted. The issue of virtual	Subsection (D)(1) was deleted.

may be provided face-to-face or by virtual teleconferencing.	teleconferencing is addressed in subsection (E).	
R4-6-214(A)(1)(a)(v): Clarify that the requirement in R4-6-217 deals with supervised private practice.	The Board agrees.	Clarifying language was added.
R4-6-214(A)(1)(a)(vi): The new language needs to be more specific to ensure clarity for all clinical supervisors.	The Board considered the suggestion and decided no change was needed.	No change
R4-6-214(D): The language does not clearly indicate that (A) must be retaken if non-compliant with (B) and (C).	The Board considered the suggestion and decided no change was needed.	No change
R4-6-217: Throughout the Section, change “clinical supervisor” to “supervised-private-practice supervisor” and “licensed supervisee” to “supervised licensee.”	The Board agrees.	The recommended changes were made throughout the Section.
R4-6-217(A)(4): Remove this subsection because all noncompliance is subject to disciplinary action.	The Board believes emphasizing the consequence of noncompliance is justified.	No change
R4-6-217(B)(1)(a): It may not be necessary for the supervisee and supervisor to be in the same discipline.	The Board considered the comment but disagrees.	No change
R4-6-217(B)(1)(c): Suggests this subsection is unnecessary because it is an understood standard.	The Board believes emphasizing that a consent agreement applies to a	No change

	supervised private practice agreement is necessary.	
R4-6-217(B)(2)(a)(i): The change from one hour of supervision for every 20 hours of direct client contact to one hour of supervision for every ten hours of direct client contact is unnecessarily burdensome. It seems designed to prevent clinicians from opening a private practice.	The Board has a statutory responsibility to protect public health and safety. The Board believes the increased amount of supervision is necessary to fulfill this responsibility.	No change
R4-6-217(B)(2)(a)(ii): Consider shifting the supervised private practice site visits from a variable metric (every 60 days) to a fixed, calendar-based metric. Add language specific to telehealth, such as a requirement for a home-based practice.	The Board considered the recommendation but decided a change was not needed. The Board considered the recommendation but decided a change was not needed.	No change No change
R4-6-217(B)(2)(c) and (D)(3): Suggests adding a description of report requirements.	The Board considered the recommendation but decided a change was not needed.	No change
R4-6-217(C)(1): A supervised licensee in private practice should be allowed to employ and provide clinical oversight of other licensees.	The Board considered the recommendation but decided a change was not needed.	No change

R4-6-217(D)(1): It may not be reasonable for a supervisor to be responsible for all aspects of a supervised private practice—such as non-clinical aspects.	The Board disagrees with the comment. The Board believes it is reasonable to expect a supervisor to supervise all aspect of a supervised private practice.	The Board clarified that "all aspects" of a supervised private practice includes both clinical and non-clinical aspects.
R4-6-217(D)(4): It was recommended that requiring the supervisor of a supervised private practice to obtain three CEs related to supervision during each biennial period be deleted because it duplicates the requirement at R4-6-214. Another commenter expressed concern that requiring three CEs regarding supervision of a supervised private practice may be impossible to obtain because no courses are currently offered. Another commenter suggested the supervised private practice CE requirement should be kept separate from other CE requirements and should apply to the supervisee as well as the supervisor.	The Board agrees there is duplication and decided to eliminate the duplicative requirement.	R4-6-217(D)(4) was removed from the rulemaking.
R4-6-304(B): Add that a degree in a behavioral health field from a regionally accredited	The suggestion exceeds the Board's statutory authority.	No change

university is required for licensure by universal recognition.		
R4-6-601(B)(5): Suggests clarifying that the requirements may consist of either three semester or four quarter credit hours.	The Board agrees.	The clarifying language was added.
R4-6-802(C)(1)(c): How does an individual provide evidence of a negative? What evidence does the Board want to show that a licensee does not practice telehealth?	The Board agrees the provision is burdensome and unenforceable.	The requirement to provide evidence of not practicing telehealth was removed.
R4-6-1102(1): Suggested it is more reasonable to require the treatment plan be completed by the fourth visit rather than the third.	The Board agrees.	The requirement was changed as suggested.
R4-6-1106(D)(1): Suggested adding a subsection requiring information regarding local emergency contacts.	The Board agrees.	A new subsection (e) that includes local emergency contacts or services was added.
R4-6-1106(D)(2): Opposes requiring a licensee to obtain contact information regarding a local emergency contact from clients receiving telehealth because of the potential for breach of confidentiality.	The Board believes the change made to subsection (D)(1) adequately addresses the concern.	No change
R4-6-1106(D)(3)(b)(ii): Opposes obtaining the address of a local emergency contact	The Board believes obtaining the address is necessary.	No change

because a telephone number is sufficient. The licensee would not be sending emergency services to the address of the local contact.		

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. §§ 32-3275, 32-3291, 32-3292, 32-3293, 32-3301, 32-3303, 32-3311, 32-3313, and 32-3321) 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:

None of the rules is more stringent than federal law. No federal law is directly applicable to the subject of any of the rules in 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:

None of the rules in this rule package was previously made, amended, or repeals as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-6-101. Definitions

ARTICLE 2. GENERAL PROVISIONS

Section

R4-6-211. ~~Direct Supervision:~~ Supervised Work Experience~~: General~~

R4-6-212. Clinical Supervision Requirements

R4-6-214. Clinical Supervisor Educational Requirements

R4-6-215. Fees and Charges

R4-6-216. Foreign Equivalency Determination

R4-6-217. Supervised Private Practice

ARTICLE 3. LICENSURE

Section

R4-6-301. Application for a License by Examination

Table 1. Time Frames (in Days)

R4-6-304. Application for a License by Endorsement; Application for a License by Universal Recognition

R4-6-305. Inactive Status

R4-6-306. Application for a Temporary License

ARTICLE 4. SOCIAL WORK

Section

R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure

R4-6-404. Clinical Supervision for Clinical Social Worker Licensure

ARTICLE 5. COUNSELING

Section

R4-6-501. Curriculum

R4-6-503. Supervised Work Experience for Professional Counselor Licensure

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

Section

R4-6-601. Curriculum

R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure

ARTICLE 7. SUBSTANCE ABUSE COUNSELING

Section

R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum

R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum

R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure

R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

Section

R4-6-801. Renewal of Licensure

R4-6-802. Continuing Education

ARTICLE 11. STANDARDS OF PRACTICE

Section

R4-6-1101. Consent for Treatment

R4-6-1102. Treatment Plan

R4-6-1105. Confidentiality

R4-6-1106. ~~Telepractice~~ Telehealth

ARTICLE 1. DEFINITIONS

R4-6-101. Definitions

A. The definitions at A.R.S. § 32-3251 apply to this Chapter. Additionally, the following definitions apply to this Chapter, unless otherwise specified:

1. "Applicant" means:
   a. An individual requesting a license by examination, endorsement, or universal recognition or a temporary license~~, or a license by endorsement~~ by submitting a completed application packet to the Board; or
   b. A regionally accredited college or university seeking Board approval of an educational program under R4-6-307.
2. "Application packet" means the ~~required~~ documents, forms, fees, and additional information required by the Board of an applicant.
3. "ARC" means an academic review committee established by the Board under A.R.S. § 32-3261(A).
4. "Assessment" means the collection and analysis of information to determine an individual's behavioral health treatment needs.
5. "ASWB" means the Association of Social Work Boards.
6. "Behavioral health entity" means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.
7. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
8. "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.
9. "Client record" means collected documentation of the behavioral health services provided to and information gathered regarding a client.
10. "Clinical social work" means social work involving clinical assessment, diagnosis, and treatment of individuals, couples, families, and groups.
11. "Clinical supervision" means direction or oversight provided either face to face or by ~~videoconference~~ virtual teleconference or telephone by an individual qualified to evaluate, guide, and direct all behavioral health services provided by a licensee to assist the licensee to develop and improve the necessary knowledge, skills, techniques, and abilities to allow the licensee to engage in the practice of behavioral health ethically, safely, and competently.
12. "Clinical supervisor" means ~~an~~ a qualified individual who provides clinical supervision.

13. “COAMFTE” means the Commission on Accreditation for Marriage and Family Therapy Education.
14. “Clock hour” means 60 minutes of instruction, not including breaks or meals.
15. “Contemporaneous” means documentation is made within 10 business days after service is provided.
16. “Continuing education” means training that provides an understanding of current developments, skills, procedures, or treatments related to the practice of behavioral health, as determined by the Board.
17. “Co-occurring disorder” means a combination of substance use disorder or addiction and a mental or personality disorder.
18. “CORE” means the Council on Rehabilitation Education.
19. “Counseling related coursework” means education that prepares an individual to provide behavioral health services, as determined by the ARC.
20. “CSWE” means Council on Social Work Education.
21. “Date of service” means the postmark date applied by the U.S. Postal Service to materials addressed to an applicant or licensee at the address the applicant or licensee last placed on file in writing with the Board.
22. “Day” means calendar day.
23. *“Direct client contact” means the performance of therapeutic or clinical functions related to the applicant’s professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients, including through the use of telehealth pursuant to title 36, chapter 36, article 1.* A.R.S. § 32-3251.
24. “Direct supervision” means responsibility and oversight for all services provided by a supervisee as prescribed in R4-6-211.
25. “Disciplinary action” means any action taken by the Board against a licensee, based on a finding that the licensee engaged in unprofessional conduct, including refusing to renew a license ~~and~~ or suspending or revoking a license.
26. “Documentation” means written or electronic ~~supportive~~ evidence.
27. “Educational program” means a degree program in counseling, marriage and family therapy, social work, or substance use or addiction counseling that is:
    a. Offered by a regionally accredited college or university, and
    b. Not accredited by an organization or entity recognized by the Board.

28. "Electronic signature" means an electronic sound, symbol, or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
29. "Family member" means a parent, sibling, half-sibling, child, cousin, aunt, uncle, niece, nephew, grandparent, grandchild, and present and former spouse, in-law, stepchild, stepparent, foster parent, or significant other.
30. "Gross negligence" means careless or reckless disregard of established standards of practice or repeated failure to exercise the care that a reasonable practitioner would exercise within the scope of professional practice.
31. "Inactive status" means the Board has granted a licensee the right to suspend behavioral health practice temporarily by postponing license renewal for a maximum of 48 months.
32. "Independent practice" means engaging in the practice of marriage and family therapy, professional counseling, social work, or substance abuse counseling without direct supervision.
~~33. *"Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.* A.R.S. § 32-3251.~~
~~34.~~33. "Individual clinical supervision" means clinical supervision provided by a clinical supervisor to one supervisee.
~~35.~~34. "Informed consent for treatment" means a ~~written~~ document authorizing treatment of a client that~~:~~
   ~~a. Contains~~ meets the requirements of R4-6-1101~~;~~.
   ~~b. Is dated and signed by the client or the client's legal representative, and~~
   ~~c. Beginning on July 1, 2006, is dated and signed by an authorized representative of the behavioral health entity.~~
~~36.~~35. "Legal representative" means an individual authorized by law to act on a client's behalf.
~~37.~~36. "License" means written authorization issued by the Board that allows an individual to engage in the practice of behavioral health in Arizona.
~~38.~~37. "License period" means the two years between the dates on which the Board issues a license and the license expires.
~~39.~~38. "NASAC" means the National Addiction Studies Accreditation Commission.

~~40.~~39. *"Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this Chapter.* A.R.S. § 32-3251.

~~41.~~40. *"Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:*

a. Assessment, appraisal and diagnosis.

b. The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.

~~42.~~41. *"Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:*

a. Facilitate human development and adjustment throughout the human life span.

b. Assess and facilitate career development.

c. Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.

d. Manage symptoms of mental illness.

e. Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.

~~43.~~42. *"Practice of social work" means the professional application of social work theories, principles, methods and techniques to:*

a. Treat mental, behavioral and emotional disorders.

b. Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

c. Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.

~~44.~~43. *"Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:*

a. Assessment, appraisal, and diagnosis.

b. The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of

individuals, couples, families and groups. A.R.S. § 32-3251.

~~45.~~44. "Progress note" means contemporaneous documentation of a behavioral health service provided to an individual that is dated and signed or electronically acknowledged by the licensee.

~~46.~~45. *"Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health."* A.R.S. § 32-3251.

~~47.~~46. "Quorum" means a majority of the members of the Board or an ARC. Vacant positions do not reduce the quorum requirement.

~~48.~~47. "Regionally accredited college or university" means the institution has been approved by an entity recognized by the Council for Higher Education Accreditation as a regional accrediting organization.

~~49.~~48 "Significant other" means an individual whose participation a client considers to be essential to the effective provision of behavioral health services to the client.

49. "Supervised private practice" means a master's level licensee:

    a. Owns a behavioral health entity,

    b. Is responsible for the behavioral health services provided by the supervised licensee, and

    c. Provides the behavioral health services under direct supervision.

50. "Supervised work experience" means practicing clinical social work, marriage and family therapy, professional counseling, or substance abuse counseling for remuneration or on a voluntary basis under direct supervision and while receiving clinical supervision as prescribed in R4-6-212 and Articles 4 through 7.

~~51. *"Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between a behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to A.R.S. § 36-3602.* A.R.S. § 32-3251.~~

~~52.~~51. "Treatment" means the application by a licensee of one or more therapeutic practice methods to improve, eliminate, or manage a client's behavioral health issue.

~~53.~~52. "Treatment goal" means the desired result or outcome of treatment.

~~54.~~53. "Treatment method" means the specific approach a licensee ~~used~~ uses to achieve a treatment goal.

~~55.~~54. "Treatment plan" means a description of the specific behavioral health services that a licensee will provide to a client that is documented in the client record, and meets the requirements found in R4-6-1102.

B. For the purposes of this Chapter, notifications or communications required to be "written" or "in writing" may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and may not be transmitted or received orally. Documents requiring a signature may include a written signature or electronic or digital signature ~~as defined in subsection (A)(28)~~.

ARTICLE 2. GENERAL PROVISIONS

R4-6-211. ~~Direct Supervision:~~ Supervised Work Experience~~: General~~

A. A ~~license~~ licensee subject to practice limitations ~~pursuant to~~ under R4-6-210 shall practice in ~~an~~ a behavioral health entity ~~with responsibility and~~ that is responsible for and provides clinical oversight of the behavioral health services provided by the licensee.

~~**B.** A masters level licensee working under direct supervision who operates or manages their own entity with immediate responsibility for the behavioral health services provided by the licensee shall provide the following to the board for approval prior to providing behavioral health services:~~

~~1. The name of their clinical supervisor who meets the following:~~

~~a. Is independently licensed by the board in the same discipline as the supervisee, and who has practiced as an independently licensed behavioral health professional for a minimum of two years beyond the supervisor's licensure date;~~

~~b. Is in compliance with the clinical supervisor educational requirements specified in R4-6-214;~~

~~c. Is not prohibited from providing clinical supervision by a board consent agreement; and~~

~~2. A copy of the agreement between the clinical supervisor and supervisee demonstrating:~~

~~a. The supervisee and supervisor will meet individually for one hour for every 20 hours of direct client contact provided, to include an onsite meeting every 60 days;~~

~~b. Supervisee's clients will be notified of clinical supervisor's involvement in their treatment and the means to contact the supervisor;~~

~~c. Supervision reports will be submitted to the board every six months;~~

~~d. A 30 day notice is required prior to either party terminating the agreement;~~

~~e. The supervisor and supervisee will notify the board within 10 days of the agreement termination date; and~~

~~f. The supervisee will cease practicing within 60 days of the agreement termination date until such time as a subsequent agreement is provided to the board and approved.~~

~~**C.** A licensee complying with subsection (B) shall not provide clinical oversight and responsibility for the behavioral health services of another licensee subject to the practice limitations pursuant to R4-6-210.~~

~~**D.**~~**B.** To meet the supervised work experience requirements for licensure, an applicant shall ensure the applicant's direct supervision ~~shall~~:

1. ~~Meet~~ Meets the specific supervised work experience requirements contained in Articles 4, 5, 6, ~~and~~ or 7, as applicable;
2. ~~Be acquired after completing the degree required for licensure and receiving certification or licensure from a state regulatory entity;~~
3. ~~2.~~ ~~Be~~ Is acquired before January 1, 2006, if acquired as an unlicensed professional practicing under an exemption provided in A.R.S. § 32-3271;
4. ~~3.~~ ~~Involve~~ Involves the practice of behavioral health; and
5. ~~4.~~ ~~Be for a term of~~ Occurs in no fewer than 24 months.

C. To meet the supervised work experience requirements for licensure, an applicant shall ensure that while working under direct supervision, the applicant:

1. Does not have an ownership interest in, operate, or manage the entity with immediate responsibility for the behavioral health services provided by the applicant unless the Board has approved the applicant for supervised private practice under R4-6-217;
2. Does not receive supervision from:
   a. A family member,
   b. An individual whose objective assessment may be limited by a relationship with the applicant; or
   c. An individual not employed or contracted by the same behavioral health entity as the applicant;
3. Does not engage in the independent practice of behavioral health; and
4. Is not directly compensated by behavioral health clients.

~~**E.**~~**D.** An applicant who acquired supervised work experience outside of Arizona may submit that experience for approval as it relates to the qualifications of the supervisor and the behavioral health entity in which the supervision was acquired. The ~~board~~ Board may accept the supervised work experience as it relates to the supervisor and the behavioral health entity if ~~it~~ the supervised work experience met the requirements of the state in which the supervised work experience occurred. ~~Nothing in this provision shall~~ This subsection does not apply to the supervision requirements ~~set forth~~ in R4-6-403, R4-6-503, R4-6-603 and R4-6-705.

~~**F.**~~**E.** If the Board determines ~~that~~ an applicant engaged in unprofessional conduct related to services ~~rendered~~ provided while acquiring hours ~~under~~ of supervised work experience, including clinical supervision, the Board shall not accept the hours to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706. Hours accrued before and after the time during which the conduct that was

the subject of the finding of unprofessional conduct occurred, as determined by the Board, may be used to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706 ~~so long as the hours are not the subject of an additional finding of unprofessional conduct~~.

R4-6-212. Clinical Supervision Requirements

A. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, and was provided by one of the following:

1. A clinical social worker, professional counselor, independent marriage and family therapist, or independent substance abuse counselor who:
   a. Holds an active and unrestricted license issued by the Board <u>at least one year before the clinical supervision is provided</u>, and
   b. Has complied with the educational requirements specified in R4-6-214;
2. A mental health professional who holds an active and unrestricted license issued under A.R.S. Title 32, Chapter 19.1 as a psychologist and has complied with the educational requirements specified in R4-6-214; or
3. An individual who:
   a. Holds an active and unrestricted license to practice behavioral health,
   b. Is providing behavioral health services in Arizona:
      i. Under a contract or grant with the federal government under the authority of 25 U.S.C. § 5301 or § 1601-1683, or
      ii. By appointment under 38 U.S.C. § 7402 (8-11), and
   c. Has complied with the educational requirements specified in R4-6-214.

B. Unless an exemption was obtained under R4-6-212.01, the Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision was provided by an individual who:

1. Was qualified under subsection (A), and
2. Was employed by the behavioral health entity at which the applicant obtained hours of clinical supervision.

C. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision includes all of the following:

1. Reviewing ethical and legal requirements applicable to the supervisee's practice, including unprofessional conduct as defined in A.R.S. § 32-3251;
2. Monitoring the supervisee's activities to verify the supervisee is providing services safely and competently;

3. Verifying in writing that the supervisee provides clients with appropriate written notice of clinical supervision, including the means to obtain the name and telephone number of the supervisee's clinical supervisor;
4. Contemporaneously written documentation by the clinical supervisor of at least the following for each clinical supervision session at each entity:
   a. Date and duration of the clinical supervision session;
   b. A detailed description of topics discussed to include themes and demonstrated skills;
   c. Beginning on July 1, 2006, name and signature of the individual receiving clinical supervision;
   d. Name and signature of the clinical supervisor and the date signed; and
   e. Whether the clinical supervision occurred on a group or individual basis;
5. Maintaining by the clinical supervisor the documentation ~~of clinical supervision~~ required under subsection (C)(4) for ~~at least seven~~ the greater of six years or until the supervisee is independently licensed;
6. Verifying that clinical supervision was not acquired from a family member, as prescribed in R4-6-101(A)(29), or someone with a personal relationship to the supervisee.
7. Conducting on-going compliance review of the supervisee's clinical documentation to ensure the supervisee maintains adequate written documentation;
8. Providing instruction regarding:
   a. Assessment,
   b. Diagnosis,
   c. Treatment plan development, and
   d. Treatment;
9. Rating the supervisee's overall performance as at least satisfactory, using a form approved by the Board; and
10. Complying with the discipline-specific requirements in Articles 4 through 7 regarding clinical supervision.

D. The Board shall accept hours of clinical supervision submitted by an applicant for licensure if:

~~1. At least two hours of the clinical supervision were provided in a face-to-face setting during each six-month period;~~

~~2. No more than 90 hours of the clinical supervision were provided by videoconference and telephone;~~

~~3.~~1. No more than 15 ~~of the 90~~ hours of clinical supervision ~~provided by videoconference and telephone~~ were provided by telephone;

2. The hours of clinical supervision occurred during a month in which the applicant provided direct client contact; and

~~4.~~3. Each clinical supervision session was at least 30 minutes long.

E. Effective July 1, 2006, the Board shall accept hours of clinical supervision submitted by an applicant if at least 10 of the hours involve the clinical supervisor observing the supervisee providing treatment and evaluation services to a client. The clinical supervisor may conduct the observation:

1. In a face-to-face or virtual teleconference setting,
2. By ~~videoconference~~ virtual teleconference,
3. By teleconference, or
4. By review of audio or video recordings.

F. The Board shall accept hours of clinical supervision submitted by an applicant from a maximum of six clinical supervisors.

G. The Board shall accept hours of clinical supervision obtained by an applicant in both individual and group sessions, subject to the following restrictions:

1. At least 25 of the clinical supervision hours involve individual supervision, and
2. Of the minimum 100 hours of clinical supervision required for licensure, the Board may accept:
   a. Up to 75 of the clinical supervision hours involving a group of two supervisees, and
   b. Up to 50 of the clinical supervision hours involving a group of three to six supervisees.

H. If an applicant provides evidence that a catastrophic event prohibits the applicant from obtaining documentation of clinical supervision that meets the standard specified in subsection (C), the Board may consider alternate documentation.

R4-6-214. Clinical Supervisor Educational Requirements

A. The Board shall consider hours of clinical supervision submitted by an applicant only if the individual who provides the clinical supervision is qualified under R4-6-212(A) and complies with the following:

1. Completes one of the following:
   a. At least 12 hours of training, completed within the last three years, ~~that~~ which meets the standard specified in R4-6-802(D), addresses clinical supervision, and includes the following:
      i. Role and responsibilities of a clinical supervisor;
      ii. Skills in providing effective oversight of and guidance to supervisees who diagnose, create treatment plans, and treat clients;
      iii. Supervisory methods and techniques; ~~and~~
      iv. Fair and accurate evaluation of a supervisee's ability to plan and implement clinical assessment and treatment;

v. Knowledge of the provision of supervised private practice as described in R4-6-217; and

vi. Knowledge of statutes and rules of the Arizona Department of Health Services relating to exemptions to licensure.

b. An approved clinical supervisor certification from the National Board for Certified Counselors/Center for Credentialing and Education;

c. A clinical supervisor certification from the International Certification and Reciprocity Consortium; or

d. A clinical member with an approved supervisor designation from the American Association of Marriage and Family Therapy; and

2. Completes the three clock hour Clinical Supervision Tutorial on Arizona Statutes/Regulations.

B. To continue providing clinical supervision, an individual qualified under subsection (A)(1)(a) shall, at least every three years, complete a minimum of nine hours of continuing training that:

1. Meets the standard specified in R4-6-802(D);
2. Concerns clinical supervision;
3. Addresses the topics listed in subsection (A)(1)(a); and
4. Includes the three clock hour Clinical Supervision Tutorial on Arizona Statutes/Regulations.

C. To continue providing clinical supervision, an individual qualified under subsections (A)(1)(b) through (d) shall:

1. Provide documentation that the national certification or designation was renewed before it expired, and
2. Complete the Clinical Supervision Tutorial on Arizona Statutes/Regulations.

D. The Board shall not accept hours of clinical supervision provided by an individual who fails to remain qualified by complying with subsection (B) or (C) until the individual becomes qualified again by complying with subsection (A).

~~**D.**~~**E.** An applicant submitting hours of clinical supervision by an individual qualified by meeting the clinical supervision education requirements in effect before the effective date of this Section shall provide documentation that the clinical supervisor was compliant with the education requirements during the period of supervision.

R4-6-215. Fees and Charges

A. Under the authority provided by A.R.S. § 32-3272, the Board establishes and shall collect the following fees:

1. Application for license by examination: $250;
2. Application for license by endorsement or universal recognition: $250;
3. Application for a temporary license: $50;

4. Application for approval of educational program: $500;
5. Application for approval of an educational program change: $250;
6. Biennial renewal of first area of licensure: $325;
7. Biennial renewal of each additional area of licensure if all licenses are renewed at the same time: $163;
8. Late renewal penalty: $100 in addition to the biennial renewal fee;
9. Inactive status request: $100; and
10. Late inactive status request: $100 in addition to the inactive status request fee.

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: $250.

~~**B.**~~**C.** The Board shall charge the following amounts for the services it provides:

~~1.~~ ~~Issuing a duplicate license: $25;~~

~~2.~~1. Criminal history background check: $40 unless waived under A.R.S. § 32-3280(B);

~~3.~~2. Paper copy of records: $.50 per page after the first four pages;

~~4.~~3. Electronic copy of records: $25;

~~5.~~4. Copy of a Board meeting audio recording: $20;

~~6.~~5. Verification of licensure: $20 per discipline or free if downloaded from the Board's web site;

~~7.~~6. Board's rules and statutes book: $10 or free if downloaded from the Board's web site;

~~8.~~7. Mailing list of licensees: $150, and

~~9.~~8. Returned check due to insufficient funds: $50.

~~**C.**~~**D.** The application fees in subsections (A)(1) and (2) are non-refundable. Other fees established in ~~subsection~~ subsections (A) and (B) are not refundable unless the provisions of A.R.S. § 41-1077 apply.

~~**D.**~~**E.** The Board shall accept payment of fees and charges as follows:

1. For an amount of $40 or less, a personal or business check;
2. For amounts greater than $40, a certified check, cashier's check, or money order; and
3. By proof of online payment by credit card for the following:
   a. All fees in subsection (A);
   b. The charge in subsection ~~(B)(2)~~ (C)(1) for a criminal history background check; and
   c. The charge in subsection ~~(B)(8)~~ (C)(7) for a mailing list of licensees.

R4-6-216. Foreign Equivalency Determination

The Board shall accept as qualification for licensure a degree from an institution of higher education in a foreign country if the degree is substantially equivalent to the educational standards required in this Chapter for professional counseling, marriage and family therapy, and substance abuse counseling

licensure. To enable the Board to determine whether a foreign degree is substantially equivalent to the educational standards required in this Chapter, the applicant shall, at the applicant's expense, have ~~the~~ a course-by-course evaluation of the foreign degree ~~evaluated~~ performed by an evaluation service that is a member of the National Association of Credential Evaluation Services, Inc.

1. Any document that is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness;
2. The translation shall be completed by an individual, other than the applicant, and demonstrates no conflict of interest; and
3. The individual providing the translation may be college or university language faculty, a translation service, or an American consul.

R4-6-217. Supervised Private Practice

A. General provisions regarding supervised private practice:

1. A supervised private practice, the supervised licensee, and the supervised-private-practice supervisor shall be physically located in Arizona;
2. A supervised licensee shall have only one supervised-private-practice supervisor at any given time;
3. A supervised-private-practice supervisor shall not supervise more than five supervised private practices at any given time; and
4. Failure to comply fully with this Section may result in disciplinary action against both the supervised licensee and the supervised-private-practice supervisor.

B. Before providing behavioral health services in a supervised private practice, as defined at R4-6-101, the supervised licensee shall provide the following to the Board for approval:

1. The name of the supervised licensee's supervised-private-practice supervisor who meets the following:
   a. Is independently licensed by the Board in the same discipline as the supervised licensee and has practiced as an independently licensed behavioral health professional for at least two years after initial licensure;
   b. Is in compliance with the supervised-private-practice supervisor educational requirements specified in R4-6-214;
   c. Is not prohibited from providing clinical supervision by a Board consent agreement; and
2. A copy of the agreement between the supervised-private-practice supervisor and supervised licensee demonstrating:
   a. The supervised licensee and supervised-private-practice supervisor will meet individually:
      i. For one hour for every 10 hours of direct client contact provided, and

ii. At the location of the supervised private practice at least once every 60 calendar days;

b. The supervised licensee will notify clients of the supervised-private-practice supervisor's involvement in the client's treatment and the means to contact the supervised-private-practice supervisor;

c. The supervised-private-practice supervisor will submit supervision reports to the Board every six months;

d. The supervised licensee and supervised-private-practice supervisor will provide 30-days's notice to the other before terminating the agreement;

e. The supervised licensee and supervised-private-practice supervisor will notify the Board within 10 days after terminating the agreement; and

f. The supervised licensee will cease providing behavioral health services within 60 days after termination of the agreement unless another agreement is provided to and approved by the Board.

C. Supervised licensee responsibilities. A supervised licensee providing behavioral health services in a supervised private practice, as defined at R4-6-101, shall:

1. Not employ, contract with, provide clinical oversight of, or have any responsibility for the behavioral health services of another licensee;
2. Before Board approval of the supervised private practice, include notice in all advertising, marketing, and practice materials that clients are not being accepted; and
3. After Board approval of the supervised private practice, include notice in all advertising, marketing, and practice materials of the supervised-private-practice supervisor's involvement in the supervised private practice and the means to contact the supervised-private-practice supervisor.

D. Supervised-private-practice supervisor responsibilities. A supervised-private-practice supervisor of a supervised private practice shall:

1. Supervise all clinical and non-clinical aspects of the supervised private practice;
2. Regularly review the clinical and non-clinical documentation maintained by the licensed supervisee and attest to the Board that the review was thorough and the documentation complete; and
3. Submit all required reports to the Board within two weeks after the reports are due.

ARTICLE 3. LICENSURE

R4-6-301. Application for a License by Examination

An applicant for a license by examination shall submit a completed application packet that contains the following:

1. A statement by the applicant certifying that all information submitted in support of the application is true and correct;
2. Identification of the license for which application is made;
3. The license application fee required under R4-6-215;
4. The applicant's name, date of birth, social security number, and contact information;
5. Each name or alias previously or currently used by the applicant;
6. The name of each college or university the applicant attended and an official transcript for all education used to meet requirements;
7. Verification of current or previous licensure or certification from the licensing or certifying entity as follows:
   a. Any license or certification ever held in the practice of behavioral health; and
   b. Any professional license or certification not identified in subsection (7)(a) held in the last 10 years;
8. Background information to enable the Board to determine whether, as required under A.R.S. § 32-3275(A)(3), the applicant is of good moral character;
9. A list of every entity for which the applicant has worked during the last 7 years;
10. If the relevant licensing examination was previously taken, an official copy of the score the applicant obtained on the examination;
11. A report of the results of a ~~self-query~~ query of the National Practitioner Data Bank;
12. Documentation required under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
13. A completed and legible fingerprint card for a state and federal criminal history background check and payment as prescribed under R4-6-215 if the applicant has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Arizona Department of Public Safety; and
14. Other documents or information requested by the Board to determine the applicant's eligibility.

Table 1. Time Frames (in Days)

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
License by	A.R.S. § 32-3253	270	90	180

Examination	A.R.S. § 32-3275			
Temporary License	A.R.S. § 32-3253 A.R.S. § 32-3279	90	30	60
License by Endorsement; License by Universal Recognition	A.R.S. § 32-3253 A.R.S. § 32-3274 A.R.S. § 32-4302	270	90	180
License Renewal	A.R.S. § 32-3253 A.R.S. § 32-3273	270	90	180
Application for registration as an out-of-state health care provider of telehealth services	A.R.S. § 32-3253 A.R.S. § 36-3606	270	90	180

R4-6-304. Application for a License by Endorsement; Application for a License by Universal Recognition

A. License by endorsement. An applicant who meets the requirements specified under A.R.S. § 32-3274 for a license by endorsement shall submit a completed application packet, as prescribed in R4-6-301, and the following:

1. The name of one or more other jurisdictions where the applicant is certified or licensed as a behavioral health professional by a state or federal regulatory entity, and has been for at least three years;
2. A verification of each certificate or license identified in subsection (1) by the state regulatory entity issuing the certificate or license that includes the following:
   a. The certificate or license number issued to the applicant by the state regulatory entity;
   b. The issue and expiration date of the certificate or license;
   c. Whether the applicant has been the subject of disciplinary proceedings by a state regulatory entity; and
   d. Whether the certificate or license is active and in good standing;
3. If applying at a practice level listed in A.R.S. § 32-3274(B), include:

a. An official transcript as prescribed in R4-6-301(6); and

b. If applicable, a foreign degree evaluation prescribed in R4-6-216 or R4-6-401; and

4. Documentation of completion of the Arizona Statutes/Regulations Tutorial.

B. License by universal recognition. An applicant who meets the requirements specified under A.R.S. § 32-4302 for a license by universal recognition shall submit:

1. An application provided by the Board;
2. A list of all states in which the applicant is currently and has been licensed for at least one year and certification from the licensing states that the applicant's license is in good standing;
3. Proof of Arizona residency;
4. A completed and legible fingerprint card for a state and federal criminal history background check and payment as prescribed under R4-6-215 if the applicant has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Arizona Department of Public Safety; and
5. Documentation of completion of the Arizona Statutes/Regulations Tutorial.

R4-6-305. Inactive Status

A. A licensee seeking inactive status shall submit:

1. A written request to the Board before expiration of the current license, and
2. The fee specified in R4-6-215 for inactive status request.

B. To be placed on inactive status after license expiration, a licensee shall, within ~~three months~~ 90 days after the date of license expiration, comply with subsection (A) and submit the fee specified in R4-6-215 for late request for inactive status.

C. The Board shall grant a request for inactive status to a licensee upon receiving a written request for inactive status. The Board shall grant inactive status for a maximum of 24 months.

D. The Board shall not grant a request for inactive status that is received more than ~~three months~~ 90 days after license expiration.

E. Inactive status does not change:

1. The date on which the license of the inactive licensee expires, and
2. The Board's ability to start or continue an investigation against the inactive licensee.

F. To return to active status, a licensee on inactive status shall:

1. Comply with all renewal requirements prescribed under R4-6-801; and
2. Establish to the Board's satisfaction that the licensee is competent to practice safely and competently. To assist with determining the licensee's competence, the Board may order a mental or physical evaluation of the licensee at the licensee's expense.

G. Upon a showing of good cause, the Board shall grant a written request for modification or reduction of the continuing education requirement received from a licensee on inactive status. The Board shall consider the following to show good cause:

1. Illness or disability,
2. Active military service, or
3. Any other circumstance beyond the control of the licensee.

H. The Board may, upon a written request filed before the expiration of the original 24 months of inactive status and for good cause, as described in subsection (G), permit an inactive licensee to remain on inactive status for one additional period not to exceed 24 months. To return to active status after being placed on a 24-month extension of inactive status, a licensee shall, comply with the requirements in subsection (F) and complete an additional 30 hours of continuing education during the 24-month extension.

I. A licensee on inactive status shall not engage in the practice of behavioral health.

R4-6-306. Application for a Temporary License

A. To be eligible for a temporary license, an applicant shall:

1. Have applied under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement or universal recognition,
2. Have submitted an application for a temporary license using a form approved by the Board and paid the fee required under R4-6-215, and
3. Be one of the following:
   a. Applying for a license by endorsement;
   b. Applying for a license by examination, not currently licensed or certified by a state behavioral health regulatory entity, and:
      i. Within 12 months after obtaining a degree from the education program on which the applicant is relying to meet licensing requirements,
      ii. Has completed all licensure requirements except passing the required examination, and
      iii. Has not previously taken the required examination; or
   c. Applying for a license by examination and currently licensed or certified by another state behavioral health regulatory entity.

B. An individual is not eligible for a temporary license if the individual:

1. Is the subject of a complaint pending before any state behavioral health regulatory entity,
2. Has had a license or certificate to practice a health care profession suspended or revoked by any state regulatory entity,

3. Has a criminal history or history of disciplinary action by a state behavioral health regulatory entity unless the Board determines the history is not of sufficient seriousness to merit disciplinary action, or
4. Has been previously denied a license by the Board.

C. A temporary license issued to an applicant expires one year after issuance by the Board.

D. A temporary license issued to an applicant who has not previously passed the required examination for licensure expires immediately if the temporary licensee:

1. Fails to take the required examination by the expiration date of the temporary license; or
2. ~~Takes but fails~~ Fails to pass the required examination by the expiration date of the authorization to test.

E. A temporary licensee shall provide written notice and return the temporary license to the Board if the temporary licensee fails the required examination.

F. An applicant who is issued a temporary license shall practice as a behavioral health professional only under direct supervision. The temporary license may contain restrictions as to time, place, and supervision that the Board deems appropriate.

G. The Board shall issue a temporary license only in the same discipline for which application is made under subsection (A).

H. The Board shall not extend the time of a temporary license or grant an additional temporary license based on the application submitted under subsection (A).

I. A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3281. A temporary license may be summarily revoked without a hearing under A.R.S. § 32-3279(C)(4).

J. If the Board denies a license by examination or endorsement to a temporary licensee, the temporary licensee shall return the temporary license to the Board within five days of receiving the Board's notice of the denial.

K. If a temporary licensee withdraws the license application submitted under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement, the temporary license expires.

ARTICLE 4. SOCIAL WORK

R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure

A. An applicant for licensure as a clinical social worker ~~licensure~~ shall demonstrate completion of at least ~~3200 hours of supervised work experience in the practice of clinical social work in no less than~~ 24 months~~. Supervised work experience in the practice of clinical social work shall include~~ of supervised work experience in the practice of clinical social work that includes:

1. At least 1600 hours of direct client contact involving the use of psychotherapy;

2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation; and
3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-404~~; and~~
~~4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services~~.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required ~~3200~~ hours of supervised work experience for consideration by the Board.

D. During the period of required supervised work experience specified in subsection (A), an applicant for clinical social worker licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as a baccalaureate or master social worker.

R4-6-404. Clinical Supervision for Clinical Social Worker Licensure

A. An applicant for clinical social worker licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-403.

B. The Board shall accept hours of clinical supervision for clinical social worker licensure if the hours required under subsection (A) meet the following:
1. At least 50 hours are supervised by a clinical social worker licensed by the Board, and
2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
3. The hours are supervised by an individual ~~for whom an exemption was obtained under R4-6-212.01~~ who meets the educational requirements under R4-6-214.

C. The Board shall not accept hours of clinical supervision for clinical social worker licensure provided by a substance abuse counselor.

ARTICLE 5. COUNSELING

R4-6-501. Curriculum

A. An applicant for licensure as an associate or professional counselor shall have a master's or higher degree with a major emphasis in counseling from:
1. A program accredited by CACREP or CORE that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E);

2. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E); or
3. A program from a regionally accredited college or university that consists of at least 60 semester or 90 quarter credit hours, meets the requirements specified in subsections (C) and (D), and includes a supervised counseling practicum as prescribed under subsection (E).

B. To assist the Board to evaluate a program under subsection (A)(3), an applicant who obtained a degree from a program under subsection (A)(3) shall attach the following to the application required under R4-6-301:

1. Published college or university course descriptions for the year and semester enrolled for each course submitted to meet curriculum requirements,
2. Verification, using a form approved by the Board, of completing the supervised counseling practicum required under subsection (E); and
3. Other documentation requested by the Board.

C. The Board shall accept for licensure the curriculum from a program not accredited by CACREP or CORE if the curriculum includes at least 60 semester or 90 quarter credit hours in counseling-related coursework, of which at least three semester or 4 quarter credit hours are in each of the following eight core content areas:

1. Professional orientation and ethical practice: Studies that provide a broad understanding of professional counseling ethics and legal standards, including but not limited to:
   a. Professional roles, functions, and relationships;
   b. Professional credentialing;
   c. Ethical standards of professional organizations; and
   d. Application of ethical and legal considerations in counseling;
2. Social and cultural diversity: Studies that provide a broad understanding of the cultural context of relationships, issues, and trends in a multicultural society, including but not limited to:
   a. Theories of multicultural counseling, and
   b. Multicultural competencies and strategies;
3. Human growth and development: Studies that provide a broad understanding of the nature and needs of individuals at all developmental stages, including but not limited to:
   a. Theories of individual and family development across the life-span, and
   b. Theories of personality development;
4. Career development: Studies that provide a broad understanding of career development and related life factors, including but not limited to:

a. Career development theories, and
b. Career decision processes;

5. Helping relationship: Studies that provide a broad understanding of counseling processes, including but not limited to:
   a. Counseling theories and models,
   b. Essential interviewing and counseling skills, and
   c. Therapeutic processes;
6. Group work: Studies that provide a broad understanding of group development, dynamics, counseling theories, counseling methods and skills, and other group work approaches, including but not limited to:
   a. Principles of group dynamics,
   b. Group leadership styles and approaches, and
   c. Theories and methods of group counseling;
7. Assessment: Studies that provide a broad understanding of individual and group approaches to assessment and evaluation, including but not limited to:
   a. Diagnostic process including differential diagnosis and use of diagnostic classification systems such as the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases,
   b. Use of assessment for diagnostic and intervention planning purposes, and
   c. Basic concepts of standardized and non-standardized testing; and
8. Research and program evaluation: Studies that provide a broad understanding of recognized research methods and design and basic statistical analysis, including but not limited to:
   a. Qualitative and quantitative research methods, and
   b. Statistical methods used in conducting research and program evaluation.

D. In evaluating the curriculum required under subsection (C), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

E. The Board shall accept a supervised counseling practicum <u>and internship</u> that is part of a master's or higher degree program if the supervised counseling practicum <u>and internship</u> meets the following standards:

1. Consists of at least 700 clock hours in a professional counseling setting,

2. Includes at least 240 hours of direct client contact,
3. Provides an opportunity for the supervisee to perform all activities associated with employment as a professional counselor,
4. Oversight of the counseling practicum is provided by a faculty member, and
5. Onsite supervision is provided by an individual approved by the college or university.

F. The Board shall require that an applicant for professional counselor licensure who received a master's or higher degree before July 1, 1989, from a program that did not include a supervised counseling practicum complete three years of post-master's or higher degree work experience in counseling under direct supervision. One year of a doctoral-clinical internship may be substituted for one year of supervised work experience.

G. The Board shall accept for licensure only courses that the applicant completed with a passing grade.

H. The Board shall deem an applicant to meet the curriculum requirements for professional counselor licensure if the applicant:

1. Holds an active and in good standing associate counselor license issued by the Board; and
2. ~~Met the curriculum requirements with~~ Has a master's degree in a behavioral health field from a regionally accredited university ~~when the associate counselor license was issued~~.

R4-6-503. Supervised Work Experience for Professional Counselor Licensure

A. An applicant for licensure as a professional counselor ~~licensure~~ shall demonstrate completion of at least ~~3200 hours of supervised work experience in the practice of professional counseling in no less than~~ 24 months~~. The applicant shall ensure that the~~ of supervised work experience in the practice of professional counseling that includes:

1. At least 1600 hours of direct client contact involving the use of psychotherapy;
2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation; and
3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-504~~; and~~
4. ~~For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services~~.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required ~~3200~~ hours of supervised work experience for consideration by the Board.

D. During the period of supervised work experience specified in subsection (A), an applicant for professional counselor licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as an associate counselor.

ARTICLE 6. MARRIAGE AND FAMILY THERAPY

R4-6-601. Curriculum

A. An applicant for licensure as an associate marriage and family therapist or a marriage and family therapist shall have a master's or higher degree from a regionally accredited college or university in a behavioral health science program that:

1. Is accredited by COAMFTE;
2. Was previously approved by the Board under A.R.S. § 32-3253(A)(14); or
3. Includes at least three semester or four quarter credit hours in each of the ~~number of~~ courses specified in the six core content areas listed in subsection (B).

B. A program under subsection (A)(3) shall include:

1. Marriage and family studies: ~~Three~~ At least nine semester or 12 quarter credit hours in no fewer than three courses from a family systems theory orientation that collectively contain at minimum the following elements:
   a. Introductory family systems theory;
   b. Family development;
   c. Family systems, including marital, sibling, and individual subsystems; and
   d. Gender and cultural issues;
2. Marriage and family therapy: ~~Three~~ At least nine semester or 12 quarter credit hours in no fewer than three courses that collectively contain at minimum the following elements:
   a. Advanced family systems theory and interventions;
   b. Major systemic marriage and family therapy treatment approaches;
   c. Communications; and
   d. Sex therapy;
3. Human development: ~~Three~~ At least nine semester or 12 quarter credit hours in no fewer than three courses that may integrate family systems theory that collectively contain at minimum the following elements:
   a. Normal and abnormal human development;
   b. Human sexuality; and
   c. Psychopathology and abnormal behavior;
4. Professional studies: At least three semester or four quarter credit hours in no fewer than ~~One~~ one course including at minimum:
   a. Professional ethics as a therapist, including legal and ethical responsibilities and liabilities; and

b. Family law;

5. Research: ~~One course~~ At least three semester or four quarter credit hours in no fewer than one course in research design, methodology, and statistics in behavioral health science; and
6. Supervised practicum: Two courses that supplement the practical experience gained under subsection (D).

C. In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

D. A program's supervised practicum shall meet the following standards:

1. Provides an opportunity for the enrolled student to provide marriage and family therapy services to individuals, couples, and families in an educational or professional setting under the direction of a faculty member or supervisor designated by the college or university;
2. Includes at least 300 client-contact hours provided under direct supervision; and
3. Has supervision provided by a designated licensed marriage and family therapist.

E. An applicant may submit a written request to the ARC for an exemption from the requirement specified in subsection (D)(3). The request shall include the name of the behavioral health professional proposed by the applicant to act as supervisor of the practicum, a copy of the proposed supervisor's transcript and curriculum vitae, and any additional documentation requested by the ARC. The ARC shall grant the exemption if the ARC determines the proposed supervisor is qualified by education, experience, and training to provide supervision.

F. The Board shall deem an applicant to meet the curriculum requirements for marriage and family therapist licensure if the applicant:

1. Holds an active and in good standing associate marriage and family therapist license issued by the Board; and
2. ~~Met the curriculum requirements with~~ Has a master's degree in a behavioral health field from a regionally accredited university ~~when the associate marriage and family therapist license was issued~~.

R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure

A. An applicant for licensure as a marriage and family therapist shall demonstrate completion of at least ~~3200 hours of supervised work experience in the practice of marriage and family therapy in no less~~

~~than~~ 24 months~~. The applicant shall ensure that the~~ of supervised work experience in the practice of marriage and family therapy that includes:

1. At least 1600 hours of direct client contact involving the use of psychotherapy:
   a. At least 1000 of the 1600 hours of direct client contact are with couples or families; and
   b. No more than 400 of the 1600 hours of direct client contact are in psychoeducation and at least 60 percent of psychoeducation hours are with couples or families; and
2. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-604~~; and~~
3. ~~For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services~~.

B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.

C. An applicant may submit more than the required ~~3200~~ hours of supervised work experience for consideration by the Board.

D. During the period of supervised work experience specified in subsection (A), an applicant for marriage and family therapist licensure shall practice behavioral health under the limitations specified in R4-6-210.

E. There is no supervised work experience requirement for licensure as an associate marriage and family therapist.

ARTICLE 7. SUBSTANCE ABUSE COUNSELING

R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum

A. An applicant for licensure as an associate substance abuse counselor shall have one of the following:

1. A bachelor's degree from a regionally accredited college or university in a program accredited by NASAC and supervised work experience that meets the standards specified in R4-6-705(A);
2. A master's or higher degree from a regionally accredited college or university in a program accredited by NASAC;
3. A bachelor's degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and supervised work experience that meets the standards specified in R4-6-705(A);
4. A master's or higher degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (C); or

5. A bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and supervised work experience that meets the standards specified in R4-6-705(A); or
6. A master's or higher degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and includes at least 300 hours of supervised practicum as prescribed under subsection (C).

B. In evaluating the curriculum required under subsection (A)(3) or (4), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

C. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.

D. The Board shall deem an applicant to meet the curriculum requirements for associate substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing substance abuse technician license issued by the Board; and
2. ~~Met the curriculum requirements with~~ Has a bachelor's degree ~~when the substance abuse technician license was issued~~ in a behavioral health field from a regionally accredited university.

E. An applicant for licensure as an associate substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum

A. An applicant for licensure as an independent substance abuse counselor shall have a master's or higher degree from a regionally accredited college or university in one of the following:
1. A program accredited by NASAC;
2. A behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (D); or

3. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that includes at least 300 hours of supervised practicum as prescribed under subsection (D).

B. In addition to the degree requirement under subsection (A), an applicant for licensure as an independent substance abuse counselor shall complete the supervised work experience requirements prescribed under R4-6-705(B).

C. In evaluating the curriculum required under subsection (A)(2), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.

D. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.

E. The Board shall deem an applicant to meet the curriculum requirements for independent substance abuse counselor licensure if the applicant:

1. Holds an active and in good standing associate substance abuse counselor license issued by the Board; and
2. ~~Met the curriculum requirements with~~ Has a master's degree ~~when the associate substance abuse counselor license was issued~~ in a behavioral health field from a regionally accredited university.

F. An applicant for licensure as an independent substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure

A. An applicant for associate substance abuse counselor licensure who has a bachelor's degree and is required under R4-6-702(A) to participate in a supervised work experience shall complete at least ~~3200 hours of supervised work experience in substance abuse counseling in no less than~~ 24 months~~.~~ ~~The applicant shall ensure that the~~ of supervised work experience that relates to substance use disorder and addiction and meets the following standards:

1. At least 1600 hours of direct client contact involving the use of psychotherapy related to substance use disorder and addiction issues,

2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation,
3. ~~For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services,~~
~~4.~~3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706, and
~~5.~~4. At least one hour of clinical supervision in any month in which the applicant provides direct client contact.

B. An applicant for independent substance abuse counselor licensure shall demonstrate completion of at least ~~3200 hours of supervised work experience in substance abuse counseling in no less than~~ 24 months of supervised work experience in substance abuse counseling. The applicant shall ensure that the supervised work experience meets the standards specified in subsection (A).

C. An applicant for substance abuse technician qualifying under R4-6-701(C) shall complete at least 6400 hours of supervised work experience in no less than 48 months. The applicant shall ensure that the supervised work experience includes:
1. At least 3200 hours of direct client contact;
2. Using psychotherapy to assess, diagnose, and treat individuals, couples, families, and groups for issues relating to substance use disorder and addiction; and
3. At least 200 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706.

D. An applicant may submit more than the required number of hours of supervised work experience for consideration by the Board.

E. During the period of required supervised work experience, an applicant for substance abuse licensure shall practice behavioral health under the limitations specified in R4-6-210.

F. There is no supervised work experience requirement for an applicant for licensure as:
1. A substance abuse technician qualifying under R4-6-701(A), or
2. An associate substance abuse counselor qualifying under R4-6-702(A) with a master's or higher degree.

R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure

A. During the supervised work experience required under R4-6-705, an applicant for substance abuse counselor licensure shall demonstrate that the applicant received, for the level of licensure sought, at least the number of hours of clinical supervision specified in R4-6-705 that meets the requirements in subsection (B) and R4-6-212.

B. The Board shall accept hours of clinical supervision for substance abuse licensure if the focus of the supervised hours relates to substance use disorder and addiction and:
1. At least 50 hours are supervised by:
   a. An independent substance abuse counselor licensed by the Board; or

b. An independently licensed behavioral health professional who:
   i. Provides evidence of knowledge and experience in substance use disorder treatment; and
   ii. Is approved by the ARC or designee, and
2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
3. The hours are supervised by an individual ~~for whom an exemption was obtained under R4-6-212.01~~ who meets the educational requirements under R4-6-214.

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

R4-6-801. Renewal of Licensure

A. Under A.R.S. § 32-3273, a license issued by the Board under A.R.S. Title 32, Chapter 33 and this Chapter is renewable every two years. A licensee who has more than one license may request in writing that the Board synchronize the expiration dates of the licenses. The licensee shall pay any prorated fees required to accomplish the synchronization.

B. A licensee holding an active license to practice behavioral health in this state shall complete 30 clock hours of continuing education as prescribed under R4-6-802 between the date the Board received the licensee's last renewal application and the next license expiration date. A licensee may not carry excess continuing education hours from one license period to the next.

C. To renew licensure, a licensee shall submit the following to the Board on or before the date of license expiration or as specified in A.R.S. § 32-4301:
1. A renewal application form, approved by the Board. The licensee shall ensure that the renewal form:
   a. Includes a list of 30 clock hours of continuing education that the licensee completed during the license period;
   b. If the documentation previously submitted under R4-6-301(12) was a limited form of work authorization issued by the federal government, includes evidence that the work authorization has not expired; and
   c. Is signed by the licensee attesting that all information submitted is true and correct;
2. Payment of the renewal fee as prescribed in R4-6-215; and
3. Other documents requested by the Board to determine that the licensee continues to meet the requirements under A.R.S. Title 32, Chapter 33 and this Chapter.

D. The Board may audit a licensee to verify compliance with the continuing education requirements under subsection (B). A licensee shall maintain documentation verifying compliance with the continuing education requirements as prescribed under R4-6-803.

E. A licensee whose license expires shall immediately stop the practice of behavioral health. A licensee whose license expires may have the license reinstated by complying with subsection (C) and paying a late renewal penalty within 90 days of the license expiration date. A license reinstated under this subsection is effective with no lapse in licensure. However, a licensee who engages in the practice of behavioral health between the dates of license expiration and license reinstatement may be subject to disciplinary action.

R4-6-802. Continuing Education

A. A licensee who maintains more than one license may apply the same continuing education hours for renewal of each license if the content of the continuing education relates to the scope of practice of each license.

B. For each license period, a licensee may report a maximum of:

1. Ten clock hours of continuing education for first-time presentations by the licensee that deal with current developments, skills, procedures, or treatments related to the practice of behavioral health. The licensee may claim one clock hour for each hour spent preparing, writing, and presenting information;
2. Six clock hours of continuing education for attendance at a Board meeting where the licensee is not:
    a. A member of the Board,
    b. The subject of any matter on the agenda, or
    c. The complainant in any matter that is on the agenda; and
3. Ten clock hours of continuing education for service as a Board or ARC member.

C. For each license period, a licensee shall report:

1. A minimum of three clock hours of continuing education sponsored, approved, or offered by an entity listed in subsection (D) in:
    a. Behavioral health ethics or mental health law~~, and~~ ;
    b. Cultural competency and diversity; and
    c. Telehealth, unless the licensee does not practice behavioral health by telehealth; and
2. Completion of the three clock hour Arizona Statutes/Regulations Tutorial.

D. A licensee shall participate in continuing education that relates to the scope of practice of the license held and to maintaining or improving the skill and competency of the licensee. The Board has determined that in addition to the continuing education listed in subsections (B) and (C), the following continuing education meets this standard:

1. Activities sponsored or approved by national, regional, or state professional associations or organizations in the specialties of marriage and family therapy, professional counseling, social

work, substance abuse counseling, or in the allied professions of psychiatry, psychiatric nursing, psychology, or pastoral counseling;

2. Programs in behavioral health sponsored or approved by a regionally accredited college or university;
3. In-service training, courses, or workshops in behavioral health sponsored by federal, state, or local social service agencies, public school systems, or licensed health facilities or hospitals;
4. Graduate or undergraduate courses in behavioral health offered by a regionally accredited college or university. One semester-credit hour or the hour equivalent of one semester hour equals 15 clock hours of continuing education;
5. Publishing a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of behavioral health. For the license period in which publication occurs, the licensee may claim one clock hour for each hour spent preparing and writing materials; and
6. Programs in behavioral health sponsored by a state superior court, adult probation department, or juvenile probation department.

E. The Board has determined that a substance abuse technician, associate substance abuse counselor, or an independent substance abuse counselor shall ensure that at least 20 of the 30 clock hours of continuing education required under R4-6-801(B) are in the following categories:

1. Pharmacology and psychopharmacology,
2. Addiction processes,
3. Models of substance use disorder and addiction treatment,
4. Relapse prevention,
5. Interdisciplinary approaches and teams in substance use disorder and addiction treatment,
6. Substance use disorder and addiction assessment and diagnostic criteria,
7. Appropriate use of substance use disorder and addiction treatment modalities,
8. Substance use disorder and addiction as it related to diverse populations,
9. Substance use disorder and addiction treatment and prevention,
10. Clinical application of current substance use disorder and addiction research, or
11. Co-occurring disorders.

ARTICLE 11. STANDARDS OF PRACTICE

R4-6-1101. Consent for Treatment

A licensee shall:

1. Provide treatment to a client only in the context of a professional relationship based on informed consent for treatment;
2. Document in writing, including by electronic means, for each client the following elements of informed consent for treatment:
    a. Purpose of treatment;
    b. General procedures to be used in treatment, including benefits, limitations, and potential risks;
    c. The client's right to have the client's records and all information regarding the client kept confidential and an explanation of the limitations on confidentiality;
    d. Notification of the licensee's supervision or involvement with a treatment team of professionals;
    e. Methods for the client to obtain information about the client's records;
    f. The client's right to participate in treatment decisions and in the development and periodic review and revision of the client's treatment plan;
    g. The client's right to refuse any recommended treatment or to withdraw consent to treatment and to be advised of the consequences of refusal or withdrawal; and
    h. The client's right to be informed of all fees that the client is required to pay and the licensee's refund and collection policies and procedures; and
3. ~~Obtain a dated and signed~~ Except as provided in subsection (5), obtain written informed consent for treatment from a client or the client's legal representative before providing treatment to the client and when a change occurs in an element listed in subsection (2) that might affect the client's consent for treatment;
4. ~~Obtain a dated and signed~~ Except as provided in subsection (5), obtain written informed consent for treatment from a client or the client's legal representative before audio or video taping the client or permitting a third party to observe treatment provided to the client; ~~and~~
5. ~~Include a dated signature from an authorized representative of the behavioral health entity~~ If treatment of a client is by telehealth, the informed consent for treatment required under subsections (3) and (4) shall be:
    a. Obtained verbally, and
    b. Contemporaneously documented in the client's record.

R4-6-1102. Treatment Plan

A licensee shall:

1. ~~Work~~ By the fourth session, work jointly with each client or the client's legal representative to prepare an integrated, individualized, written treatment plan, based on the licensee's provisional

or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of the client, that includes:

a. One or more treatment goals;
b. One or more treatment methods;
c. The date when the client's treatment plan will be reviewed;
d. If a discharge date has been determined, the aftercare needed;
e. The dated signature of the client or the client's legal representative; and
f. The dated signature of the licensee;

2. Review and reassess the treatment plan:
   a. According to the review date specified in the treatment plan as required under subsection (1)(c); and
   b. At least annually with the client or the client's legal representative to ensure the continued viability and effectiveness of the treatment plan and, where appropriate, add a description of the services the client may need after terminating treatment with the licensee;
3. Ensure that all treatment plan revisions include the dated signature of the client or the client's legal representative and the licensee;
4. Upon written request, provide a client or the client's legal representative an explanation of all aspects of the client's condition and treatment; and
5. Ensure that a client's treatment is in accordance with the client's treatment plan.

R4-6-1105. Confidentiality

A. A licensee shall release or disclose client records or any information regarding a client only:
1. In accordance with applicable federal or state law that authorizes release or disclosure; or
2. With written authorization from the client or the client's legal representative.

B. A licensee shall ensure that written authorization for release of client records or any information regarding a client is obtained before a client record or any information regarding a client is released or disclosed unless otherwise allowed by state or federal law.

C. Written authorization includes:
1. The name of the person disclosing the client record or information;
2. The purpose of the disclosure;
3. The individual, agency, or entity requesting or receiving the record or information;
4. A description of the client record or information to be released or disclosed;
5. A statement indicating authorization and understanding that authorization may be revoked at any time;
6. The date or circumstance when the authorization expires, not to exceed 12 months;

7. The date the authorization was signed; and
8. The dated signature of the client or the client's legal representative.

D. A licensee shall ensure that any written authorization to release a client record or any information regarding a client is maintained in the client record.

E. If a licensee provides behavioral health services to multiple members of a family, each legally competent, participating family member shall independently provide written authorization to release client records regarding the family member. Without authorization from a family member, the licensee shall not disclose the family member's client record or any information obtained from the family member unless otherwise allowed by state or federal law.

R4-6-1106. ~~Telepractice~~ Telehealth

A. Except as ~~otherwise~~ provided ~~by statute~~ under A.R.S. § 32-3271(A)(2), an individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling ~~via telepractice~~ by telehealth to a client located in Arizona shall: ~~be~~

1. Be licensed by the Board,
2. Be competent in providing behavioral health services by telehealth, and
3. Ensure that providing behavioral health services by telehealth is appropriate for the client's needs.

B. Under A.R.S. § 32-3271(A)(2), an individual who is licensed in good standing in another state but who is not licensed by the Board shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year.

~~B.~~C. Except as otherwise provided by statute, ~~a licensee~~ an individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling ~~via telepractice~~ by telehealth only to a client located outside Arizona shall comply with ~~not only A.R.S. Title 32, Chapter 33, and this Chapter but also~~ the laws and rules of the jurisdiction in which the client is located.

~~C.~~D. An individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling ~~via telepractice~~ by telehealth shall:

1. In addition to complying with the requirements in R4-6-1101, document the limitations and risks associated with ~~telepractice~~ telehealth, including but not limited to the following;
   a. Inherent confidentiality risks of electronic communication,
   b. Potential for technology failure,
   c. Emergency procedures when the licensee is unavailable, ~~and~~
   d. Manner of identifying the client when using electronic communication that does not involve

video; and

e. Local emergency contacts or services;

2. Document the name, address, and telephone number of an individual the client identifies as a local emergency contact; and

~~2.~~3. In addition to complying with the requirements in R4-6-1103, include the following in the progress note required under R4-6-1103(H):

a. Mode of session, whether interactive audio, video, or electronic communication; and

b. Verification of the client's~~:~~

~~i. Physical~~ physical location during the session~~; and~~

~~ii. Local emergency contacts~~.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

1. Identification of the rulemaking:

   The Board is amending rules to address issues identified in a 5YRR approved by the Council on March 3, 2020, and to make the rules consistent with statutory changes. Under Laws 2021, Chapter 320, the legislature amended A.R.S. § 32-3251 to provided that direct client contact includes providing therapeutic or clinical care by telehealth. The legislation also added A.R.S. § 36-3606 regarding registration of out-of-state providers of telehealth services. Under Laws 2021, Chapter 62, the legislature amended A.R.S. §§ 32-3293 (social work), 32-3301 (counseling), 32-3311 (marriage and family therapy), and 32-3321 (substance abuse counseling) to remove the requirement that an applicant provide evidence of indirect client hours obtained during training. The applicant must provide evidence of direct client hours and clinical supervision. The Board is also removing provisions regarding a supervised private practice from R4-6-211 and moving them to a new Section, R4-6-217, and amending R4-6-306 regarding an application for a temporary license. An exemption from Executive Order 2022-01 was provided by Tony Hunter, of the Governor's office, in an e-mail dated March 4, 2022. Approval to submit the rulemaking to the Council was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated April 26, 2023.

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

      Until the rulemaking is completed, the Board's rules will remain inconsistent with recent statutory changes.

   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:

      Failure to comply with statutory changes is not good government practice and creates potential confusion for those who have to comply with the rules.

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

      When the rulemaking is completed, the rules will be consistent with statute and no longer a source of potential confusion or regulatory burden.

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

The Board believes the rulemaking has minimal economic impact because it makes no substantive changes other than those required to be consistent with statute. Out-of-state providers of telehealth services who choose to register to provide services in Arizona will have to pay the newly established fee. The amendment to R4-6-306 clarifies when a temporary license expires.

The Board has made several changes that reduce regulatory burdens: reducing the time a clinical supervisor must maintain records; clarifying that clinical supervision in a face-to-face setting includes virtual teleconferencing; eliminating a charge for a duplicate license; allowing documentation to be made electronically; and allowing verbal informed consent when providing care by telehealth.

The Board also made clarifications to strengthen professional ethics: a licensee may not have an interest in the entity at which the licensee works under direct supervision; direct supervision may not be provided by someone with whom the licensee has a relationship; and an individual may not provide behavioral health services if the individual's license has expired.

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: Erin Yabu, Deputy Director
   Address: 1740 W Adams Street; Suite 3600
   Phoenix, AZ 85007
   Telephone: 602-542-1882
   E-mail: erin.yabu@azbbhe.us
   Web site: www.azbbhe.us

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

   Licensees, including those who supervise the work of others, applicants, and the Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking.

   The Board currently licenses 6,724 social workers, 6,570 counselors, 1,179 marriage and family therapists, and 1,313 substance abuse counselors. During the last year, the Board received 3,020 applications for licensure. One hundred sixty-eight of these were for licensure by universal recognition and 471 were for a temporary license.

Licensees who wish to be licensed at a more independent level of practice are required to obtain hours of supervised work experience including hours of clinical supervision. During the last year, 1,354 licensees submitted the required evidence of supervised work experience and clinical supervision to qualify for the more independent level of practice.

It is possible for an associate-level licensee to operate a private practice under approved clinical supervision. During the last year, 66 licensees obtained Board approval of a supervised private practice. Independent licensees served as clinical supervisor of a supervised private practice, which required the clinical supervisor to supervise the entire practice.

The Board incurred the cost of completing this rulemaking and will have the benefit of rules that are consistent with statute and agency practice.

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's costs and benefits are described in item 4. The Board will not require a new full-time employee to implement and enforce the rules.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:
    No political subdivisions are directly affected by the rulemaking.
    c. Costs and benefits to businesses directly affected by the rulemaking:
    All behavioral health providers are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4. Many behavioral health providers provide services within a business entity. However, the Board does not regulate the business entities.
6. Impact on private and public employment:
    The rulemaking will not have impact on private or public employment.
7. Impact on small businesses[1]:
    a. Identification of the small business subject to the rulemaking:
    Licensees are small businesses subject to the rulemaking.
    b. Administrative and other costs required for compliance with the rulemaking:
    All licensees are required to meet education, examination, and work experience requirements. To work at a more independent level of practice, a licensee is required to obtain additional education and work under clinical supervision. To obtain a license, an applicant is required to submit an application, be fingerprinted and subject to a criminal background check, and pay fees. Licensees are required to renew their licenses biennially, which requires submitting an application, paying a fee, and completing 30 hours of continuing education. Licensees are required to conform to

[1] Small business has the meaning specified in A.R.S. § 41-1001(23).

standards of practice designed to protect the health and safety of those obtaining behavioral health services and are subject to potential disciplinary action for failure to conform.

c. Description of methods that may be used to reduce the impact on small businesses:
Because all licensees are small businesses, it is not possible to reduce the impact on small businesses and achieve the regulatory goal of protecting public health and safety.

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. Consumers of behavioral health services are indirectly affected.

9. Probable effects on state revenues:
A new fee is established for registration as an out-of-state provider of telehealth services. The fee is a one-time charge of $250. Under A.R.S. § 32-3254, 10 percent of the amount collected will be deposited in the state's general fund.

10. Less intrusive or less costly alternative methods considered:
The rulemaking contains one provision the Board believes will have more than minimal economic impact:
    - The $250 one-time fee charged to register as an out-of-state provider of telehealth in Arizona. For this one-time fee, the Board is required to evaluate the application information submitted by the out-of-state provider, supervise compliance for as long as the out-of-state provider may choose to provide telehealth services to residents of Arizona, and receive and evaluate an annual update from the out-of-state provider. The Board determined the fee charged is reasonable compared to work required by the agency and necessary to support the functions of the agency.

As of May 4, 2023

32-3251. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.

2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.

3. "Direct client contact" means the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients, including through the use of telehealth pursuant to title 36, chapter 36, article 1.

4. "Equivalent" means comparable in content and quality but not identical.

5. "Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.

6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, 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.

7. "Licensee" means a person who is licensed pursuant to this chapter.

8. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this chapter.

9. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

10. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:

(a) Facilitate human development and adjustment throughout the human life span.

(b) Assess and facilitate career development.

(c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.

(d) Manage symptoms of mental illness.

(e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.

11. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:

(a) Treat mental, behavioral and emotional disorders.

(b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

(c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.

12. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.

14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.

15. "Telehealth" has the same meaning prescribed in section 36-3601.

16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Being convicted of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.

(b) Using fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.

(c) Making any oral or written misrepresentation of a fact:

(i) To secure or attempt to secure the issuance or renewal of a license.

(ii) In any statements provided during an investigation or disciplinary proceeding by the board.

(iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.

(d) Making any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.

(e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.

(f) Engaging in active habitual intemperance in the use of alcohol or active habitual substance abuse.

(g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.

(h) Obtaining a fee by fraud, deceit or misrepresentation.

(i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.

(j) Engaging in conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.

(k) Engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.

(l) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

(m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional education, training or experience.

(n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.

(p) Failing to conform to minimum practice standards as developed by the board.

(q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.

(r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.

(s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.

(t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or permitted by a legally valid written release.

(u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.

(v) Engaging in any sexual conduct between a licensee and a client or former client.

(w) Providing behavioral health services to any person with whom the licensee has had sexual contact.

(x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.

(y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.

(z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.

(aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

(bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.

(cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.

(dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic means in all governmental jurisdictions where the client receiving these services resides.

(ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.

(ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.

(gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.

(hh) Failing to retain records pursuant to section 12-2297.

(ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.

(jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee 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.

(kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative 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.

(ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or

certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.

(mm) Engaging in any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.

(nn) Violating the security of any licensure examination materials.

(oo) Using fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

32-3252. Board of behavioral health examiners; appointment; qualifications; terms; compensation; immunity; training program

A. The board of behavioral health examiners is established consisting of the following members appointed by the governor:

1. The following professional members:

(a) Two members who are licensed in social work pursuant to this chapter, at least one of whom is a licensed clinical social worker.

(b) Two members who are licensed in counseling pursuant to this chapter, at least one of whom is a licensed professional counselor.

(c) Two members who are licensed in marriage and family therapy pursuant to this chapter, at least one of whom is a licensed marriage and family therapist.

(d) Two members who are licensed in substance abuse counseling pursuant to this chapter, at least one of whom is a licensed independent substance abuse counselor.

2. Four 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. Each professional board member shall:

1. Be a resident of this state for not less than one year before appointment.

2. Be an active licensee in good standing.

3. Have at least five years of experience in an area of behavioral health licensed pursuant to this chapter.

D. Each public member shall:

1. Be a resident of this state for not less than one year before appointment.

2. Be at least twenty-one years of age.

3. Not be licensed or eligible for licensure pursuant to this chapter unless the public member has been retired from active practice for at least five years.

4. Not currently have a substantial financial interest in an entity that directly provides behavioral health services.

5. Not have a household member who is licensed or eligible for licensure pursuant to this chapter unless the household member has been retired from active practice for at least five years.

E. The term of office of board members is three years to begin and end on the third Monday in January. A member shall not serve more than two full consecutive terms.

F. The board shall annually elect a chairman and secretary-treasurer from its membership.

G. Board members are eligible to receive compensation of not more than eighty-five dollars for each day actually and necessarily spent in the performance of their duties.

H. Board members and personnel 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.

I. Each board member must complete a twelve-hour training program that emphasizes responsibilities for administrative management, licensure, judicial processes and temperament within one year after appointment to the board.

32-3253. Powers and duties

A. The board shall:

1. Adopt rules consistent with and necessary or proper to carry out the purposes of this chapter.

2. Administer and enforce this chapter, rules adopted pursuant to this chapter and orders of the board.

3. Issue a license by examination, endorsement or temporary recognition to, and renew the license of, each person who is qualified to be licensed pursuant to this chapter. The board must issue or deny a license within one hundred eighty days after the applicant submits a completed application.

4. Establish fees by rule, except that the board is exempt from the rulemaking requirements of title 41, chapter 6 for the purposes of reducing or eliminating fees.

5. Collect fees and spend monies.

6. Keep a record of all persons who are licensed pursuant to this chapter, actions taken on all applications for licensure, actions involving renewal, suspension, revocation or denial of a license or probation of licensees and the receipt and disbursal of monies.

7. Adopt an official seal for attestation of licensure and other official papers and documents.

8. Conduct investigations and determine on its own motion whether a licensee or an applicant has engaged in unprofessional conduct, is incompetent or is mentally or physically unable to engage in the practice of behavioral health.

9. Conduct disciplinary actions pursuant to this chapter and board rules.

10. Establish and enforce standards or criteria of programs or other mechanisms to ensure the continuing competence of licensees.

11. Establish and enforce compliance with professional standards and rules of conduct for licensees.

12. Engage in a full exchange of information with the licensing and disciplinary boards and professional associations for behavioral health professionals in this state and other jurisdictions.

13. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

14. Adopt rules regarding the application for and approval of educational curricula of regionally accredited colleges or universities with a program not otherwise accredited by an organization or entity recognized by the board that are consistent with the requirements of this chapter and maintain a list of those programs. Approvals are valid for a period of five years if no changes of curricula are made that are inconsistent with the requirements of this chapter or board rule.

15. Maintain a registry of licensees who have met the educational requirements to provide supervision as required pursuant to this chapter to applicants in the same profession.

16. Adopt rules to allow approval of persons who wish to provide supervision pursuant to this chapter and who are not licensed by the board and who are licensed in a profession other than the profession in which the applicant is seeking licensure.

17. Recognize not more than four hundred hours of psychoeducation for work experience required pursuant to sections 32-3293, 32-3301, 32-3311 and 32-3321.

18. Adopt rules regarding the use of telepractice.

19. If an applicant is required to pass an examination for licensure, allow the applicant to take the examination three times during a twelve-month period.

B. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of behavioral health, protect the health and welfare of the public or assist and facilitate the work of the board.

C. The board may enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency or psychiatric, psychological or behavioral health disorders in a program provided pursuant to subsection D of this section. A licensee who materially fails to comply with a program shall be terminated from the confidential program. Any records of the licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law, notwithstanding any law to the contrary. Stipulated agreements are not public records if the following conditions are met:

1. The licensee voluntarily agrees to participate in the confidential program.

2. The licensee complies with all treatment requirements or recommendations, including participation in approved programs.

3. The licensee refrains from professional practice until the return to practice has been approved by the treatment program and the board.

4. The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.

5. The licensee's professional employer is notified of the licensee's chemical dependency or medical, psychiatric, psychological or behavioral health disorders and participation in the confidential program and is provided a copy of the stipulated agreement.

D. The board shall establish a confidential program for the monitoring of licensees who are chemically dependent or who have psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice and who enroll in a rehabilitation program that meets the criteria prescribed by the board. The licensee is responsible for the costs associated with rehabilitative services and monitoring. The board may take further action if a licensee refuses to enter into a stipulated agreement or fails to comply with the terms of a stipulated agreement. In order to protect the public health and safety, the confidentiality requirements of this subsection do not apply if a licensee does not comply with the stipulated agreement.

E. The board shall audio record all meetings and maintain all audio and video recordings or stenographic records of interviews and meetings for a period of three years from when the record was created.

32-3254. Board of behavioral health examiners fund

A. A board of behavioral health examiners fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies received by the board in the state general fund and deposit the remaining ninety per cent in the board of behavioral health examiners fund.

B. All monies deposited in the board of behavioral health examiners fund are subject to section 35-143.01.

32-3255. Executive director; compensation; duties

A. On or after January 31, 2014 and subject to title 41, chapter 4, article 4, the board shall appoint an executive director who shall serve at the pleasure of the board. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

B. The executive director shall:

1. Perform the administrative duties of the board.

2. Subject to title 41, chapter 4, article 4, employ personnel as the executive director deems necessary, including professional consultants and agents necessary to conduct investigations. An investigator must complete a nationally recognized investigator training program within one year after the date of hire. Until the investigator completes this training program, the investigator must work under the supervision of an investigator who has completed a training program.

32-3256. Executive director; complaints; dismissal; review

A. If delegated by the board, the executive director may dismiss a complaint if the investigative staff's review indicates that the complaint is without merit and that dismissal is appropriate.

B. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director dismissed pursuant to subsection A of this section since the last board meeting.

C. A person who is aggrieved by an action taken by the executive director pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty-five days after that person is provided written notification of the executive director's action. At the

next regular board meeting, the board shall review the executive director's action and, on review, shall approve, modify or reject the executive director's action.

32-3257. Written notifications and communications; methods of transmission

For the purposes of this chapter, notifications or communications required to be written or in writing may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and shall not be transmitted or received orally.

32-3261. Academic review committees; members; appointment; qualifications; terms; compensation; immunity; training

A. The board shall establish an academic review committee for each professional area licensed pursuant to this chapter to do the following:

1. Review applications referred to the committee by the board or the executive director to determine whether an applicant, whose curriculum has not been approved pursuant to section 32-3253, subsection A, paragraph 14 or whose program is not accredited by an organization or entity approved by the board, has met the educational requirements of this chapter or board rules.

2. On referral by the executive director, make recommendations to the board regarding whether an applicant has met the requirements of supervised work experience required for licensure pursuant to this chapter or board rules.

3. Make specific findings concerning an application's deficiencies.

4. Review applications and make recommendations to the board for curriculum approval applications made pursuant to section 32-3253, subsection A, paragraph 14.

5. At the request of the board, make recommendations regarding examinations required pursuant to this chapter.

6. Review applications for and make determinations regarding exemptions related to clinical supervision requirements.

B. If an application is referred to an academic review committee for review and the academic review committee finds that additional information is needed from the applicant, the academic review committee shall provide a comprehensive written request for additional information to the applicant.

C. An academic review committee shall be composed of three members who have been residents of this state for at least one year before appointment, at least one of whom is licensed in the professional area pursuant to this chapter and have five years of experience in the applicable profession. At least one member must have served within the previous ten years as core or full-time faculty at a regionally accredited college or university in a program related to the applicable profession and have experience in the design and development of the curriculum of a related program. If qualified, a faculty member may serve on more than one academic review committee. A board member may not be appointed to serve on an academic review committee.

D. Committee members shall initially be appointed by the board. From and after January 1, 2016, the governor shall appoint the committee members. A committee member who is initially appointed by the board may be reappointed by the governor. A committee member who is initially appointed by the board shall continue to serve until appointed or replaced by the governor.

E. Committee members serve at the pleasure of the governor for terms of three years. A member shall not serve more than two full consecutive terms.

F. Committee members are eligible to receive compensation of not more than eighty-five dollars for each day actually and necessarily spent in the performance of their duties.

G. An academic review committee shall annually elect a chairman and secretary from its membership.

H. Committee members 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.

I. Committee members shall receive at least five hours of training as prescribed by the board within one year after the member is initially appointed and that includes instruction in ethics and open meeting requirements.

32-3271. Exceptions to licensure; jurisdiction

A. This chapter does not apply to:

1. A person who is currently licensed, certified or regulated pursuant to another chapter of this title and who provides services within the person's scope of practice if the person does not claim to be licensed pursuant to this chapter.

2. A person who is not a resident of this state if the person:

(a) Performs behavioral health services in this state for not more than ninety days in any one calendar year as prescribed by board rule.

(b) Is authorized to perform these services pursuant to the laws of the state or country in which the person resides or pursuant to the laws of a federally recognized tribe.

(c) Informs the client of the limited nature of these services and that the person is not licensed in this state.

3. A rabbi, priest, minister or member of the clergy of any religious denomination or sect if the activities and services that person performs are within the scope of the performance of the regular or specialized ministerial duties of an established and legally recognizable church, denomination or sect and the person performing the services remains accountable to the established authority of the church, denomination or sect.

4. A member run self-help or self-growth group if no member of the group receives direct or indirect financial compensation.

5. A behavioral health technician or behavioral health paraprofessional who is employed by an agency licensed by the department of health services.

6. A person contracting with the supreme court or a person employed by or contracting with an agency under contract with the supreme court who is otherwise ineligible to be licensed or who is in the process of applying to be licensed under this chapter as long as that person is in compliance with the supreme court contract conditions regarding professional counseling services and practices only under supervision.

7. A person who is employed by the department of economic security or the department of child safety and who practices social work, marriage and family therapy, substance abuse counseling, counseling and case management within the scope of the person's job duties and under direct supervision by the employer department.

8. A student, intern or trainee who is pursuing a course of study in social work, counseling, marriage and family therapy, substance abuse counseling or case management in a regionally accredited institution of higher education or training institution if the person's activities are performed under qualified supervision and are part of the person's supervised course of study.

9. A person who is practicing social work, counseling and case management and who is employed by an agency licensed by the department of economic security or the department of child safety.

10. A paraprofessional employed by the department of economic security or by an agency licensed by the department of economic security.

11. A Christian Science practitioner if all of the following are true:

(a) The person is not providing psychotherapy.

(b) The activities and services the person performs are within the scope of the performance of the regular or specialized duties of a Christian Science practitioner.

(c) The person remains accountable to the established authority of the practitioner's church.

12. A person who is not providing psychotherapy.

B. A person who provides services pursuant to subsection A, paragraph 2 is deemed to have agreed to the jurisdiction of the board and to be bound by the laws of this state.

32-3272. Fees

A. For issuance of a license pursuant to this chapter, including application fees, the board shall establish and charge reasonable fees not to exceed five hundred dollars.

B. For renewal of a license pursuant to this chapter, the board shall establish and charge reasonable fees not to exceed five hundred dollars. The board shall not increase fees pursuant to this subsection more than twenty-five dollars each year.

C. The board by rule may adopt a fee for applications for approval of educational curricula pursuant to section 32-3253, subsection A, paragraph 14.

D. The board shall establish fees to produce monies that approximate the cost of maintaining the board.

E. The board shall waive the application fee for an independent level license if an applicant has paid the fee for an initial or renewal associate level license in this state and within ninety days after payment of the fee the applicant applies for an independent level license.

32-3273. License renewal; continuing education

A. Except as provided in section 32-4301, a license issued pursuant to this chapter is renewable every two years by paying the renewal fee prescribed by the board and submitting documentation prescribed by the board by rule of completion of relevant continuing education experience as determined by the board during the previous twenty-four-month period.

B. The board shall send notice in writing of required relevant continuing education experience to each licensee at least ninety days before the renewal date.

C. A licensee must satisfy the continuing education requirements that are prescribed by the board by rule and that are designed to provide the necessary understanding of ethics, cultural competency, current developments, skills, procedures and treatments related to behavioral health and to ensure the continuing competence of licensees. The board shall adopt rules to prescribe the manner of documenting compliance with this subsection.

D. At the request of a licensee who has been issued two or more licenses, the board shall establish the same renewal dates for those licenses. The board may prorate any fees due as necessary to synchronize the dates.

32-3274. Licensure by endorsement

A. The board may issue a license by endorsement to a person in that person's behavioral health discipline if the person is licensed or certified by the regulatory agency of one or more other states or federal jurisdictions at a substantially 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. The person is currently licensed or certified in behavioral health by the regulatory agency of one or more other states or federal jurisdictions and each license or certification is current and in good standing.

2. The person has been licensed or certified for at least three years in one or more jurisdictions in the discipline and practice level for which an application is submitted. The practice level of the jurisdictions must be substantially equivalent, as determined by the board, to the practice level for which the application is submitted.

3. The person meets the basic requirements for licensure prescribed by section 32-3275.

4. The person submits to the board all of the following:

(a) A listing of every jurisdiction in the United States in which the person has been licensed or certified in the practice of behavioral health and any disciplinary action taken by any regulatory agency or any instance in which a license has been surrendered in lieu of discipline.

(b) Verification of licensure or certification from every jurisdiction in which the person is licensed or certified for the discipline and practice level for which the person applies.

(c) Any other procedural application requirements adopted by the board in rule.

B. In addition to the requirements of subsection A of this section, a person seeking license by endorsement for the following practice levels must have earned a master's or higher degree in the applicable field of practice granted by a regionally accredited college or university:

1. Licensed clinical social worker.

2. Licensed professional counselor.

3. Licensed marriage and family therapist.

4. Licensed independent substance abuse counselor.

C. Except for licenses by endorsement issued in the practice levels prescribed in subsection B of this section, a person issued a license pursuant to this section shall practice behavioral health only under the direct supervision of a licensee.

D. The board by rule may prescribe a procedure to issue licenses pursuant to this section.

32-3275. Requirements for licensure; withdrawal of application

A. 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. Pay all applicable fees prescribed by the board.

4. Have the physical and mental capability to safely and competently engage in the practice of behavioral health.

5. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this chapter.

6. Not have had a professional license or certificate refused, revoked, suspended or restricted by this state or any other regulatory jurisdiction in the United States or any other country for reasons that relate to unprofessional conduct.

7. Not have voluntarily surrendered a professional license or certificate in this state or another regulatory jurisdiction in the United States or any other country while under investigation for conduct that relates to unprofessional conduct.

8. Not have a complaint, allegation or investigation pending before the board or another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaint, allegation or investigation 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.

B. Before the board considers denial of a license based on a deficiency pursuant to subsection A, paragraph 4, 5, 6 or 7 of this section, the applicant shall be given thirty-five days' notice of the time and place of a meeting at which the applicant may provide in person, by counsel or in written form information and evidence related to any deficiency relating to subsection A, paragraph 4, 5, 6 or 7 of this section, including any evidence that the deficiency has been corrected or monitored or that a mitigating circumstance exists. In any notice of denial, the board shall provide notice of the applicant's right to a hearing pursuant to title 41, chapter 6, article 10.

C. If the board finds that an applicant is subject to subsection A, paragraphs 4, 5, 6 or 7 of this section, the board may determine to its satisfaction that the conduct or condition has been corrected, monitored and resolved and may issue a license. If the conduct or condition has not been resolved, the board may determine to its satisfaction that mitigating circumstances exist that prevent its resolution and may issue a license.

D. An applicant for licensure may withdraw the application unless the board has sent to the applicant notification that the board has initiated an investigation concerning professional misconduct. Following that notification, the applicant may request that the board review the applicant's request to withdraw the application. In considering the request the board shall determine whether it is probable that the investigation would result in an adverse action against the applicant.

E. After a final board order of denial has been issued, the board shall report the denial if required by the health care quality improvement act of 1986 (42 United States Code chapter 117). For the purposes of this subsection and except as required by federal law, "final board order" means:

1. For an applicant who seeks a hearing pursuant to title 41, chapter 6, article 10, when a final administrative decision has been made.

2. For an applicant who does not timely file a notice of appeal, after the time for the filing expires pursuant to section 41-1092.03.

32-3276. Notice of address and telephone number changes; penalties

A. A licensee must provide the board with the licensee's current home address and telephone number and office address and telephone number and promptly and in writing inform the board of any change in this information.

B. The board may assess the costs it incurs in locating a licensee and impose a penalty of not to exceed one hundred dollars against a licensee who does not notify the board pursuant to subsection A of this section within thirty days after the change of address or telephone number.

32-3277. Expired licenses; reinstatement

A. A person who does not renew a license is ineligible to practice pursuant to this chapter.

B. The board may reinstate an expired license if the person submits an application for reinstatement within ninety days after the expiration of the license. The application must document to the board's satisfaction that the applicant has met the renewal requirements prescribed by this chapter and include a late renewal penalty prescribed by the board by rule.

32-3278. Inactive license

A. The board by rule may establish procedures for a licensee to delay renewal of the license for good cause and to place the licensee on inactive status. A person on inactive status shall not practice behavioral health or claim to be a licensee.

B. A licensee on inactive status may request reinstatement of the license to active status by submitting a license renewal application.

32-3279. Probationary and temporary licenses

A. If an applicant does not meet the basic requirements for licensure prescribed in section 32-3275, the board may issue a probationary license that is subject to any of the following:

1. A requirement that the licensee's practice be supervised.

2. A restriction on the licensee's practice.

3. A requirement that the licensee begin or continue medical or psychiatric treatment.

4. A requirement that the licensee participate in a specified rehabilitation program.

5. A requirement that the licensee abstain from alcohol and other drugs.

B. If the board offers a probationary license, the board shall notify the applicant in writing of the:

1. Applicant's specific deficiencies.

2. Probationary period.

3. Applicant's right to reject the terms of probation.

4. Applicant's right to a hearing on the board's denial of the application.

C. The board by rule may prescribe a procedure to issue temporary licenses. At a minimum, these rules must include the following provisions:

1. A person issued a temporary license may practice behavioral health only under the direct supervision of a licensee.

2. A temporary license expires on the date specified by the board and not more than one year after the date of issuance.

3. A temporary license may contain restrictions as to time, place and supervision that the board deems appropriate.

4. The board may summarily revoke a temporary license without a hearing.

5. The board's denial of a licensure application terminates a temporary license.

32-3280. Fingerprinting

A. An applicant for licensure under this article other than for a temporary license must submit a full set of fingerprints to the board, at the applicant's own expense, 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 shall waive the records check required in subsection A of this section for an applicant who provides evidence acceptable to the board that the applicant holds a valid fingerprint clearance card issued by the department of public safety.

32-3281. Disciplinary action; investigations; hearings; civil penalty; timely complaints; burden of proof

A. The board, on its own motion or on a complaint, may investigate any evidence that appears to show that a licensee is or may be 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 behavioral health. A motion by the board to initiate an investigation shall be made at an open and properly noticed board meeting and shall include the basis on which the investigation is being initiated and the name of the board member making the motion. The board's vote on the motion to initiate an investigation shall be recorded. As part of its investigation, the board may hold an investigational meeting pursuant to this chapter. Any person may, and a licensee and any entity licensed by the department of health services shall, report to the board any information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any licensee to fail to report as required by this section. The board shall report to the department of health services any entity licensed by the department of health services that fails to report as required by this section. For complaints related to conduct that is inconsistent with professional standards or ethics, scope of practice or standard of care, the board may consult with one or more licensed or retired behavioral health

professionals of the same profession as the licensee to review complaints and make recommendations to the board.

B. On determination of reasonable cause, the board shall require, at the licensee's own expense, any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the licensee's competence or ability to safely engage in the practice of behavioral health and conduct necessary investigations, including investigational interviews between representatives of the board and the licensee, to fully inform the board with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing. The board may require the licensee, at the licensee's expense, to undergo assessment by a rehabilitative, retraining or assessment program approved by the board.

C. If the board finds, based on the information received pursuant to subsection A or 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, limit 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 must 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.

D. If after completing an investigation the board finds that the information provided is not of sufficient seriousness to merit disciplinary action against the licensee, the board shall either:

1. Dismiss the complaint if, in the opinion of the board, the complaint is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the 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.

E. A complaint dismissed by the board pursuant to subsection D, paragraph 1 of this section is not a complaint of unprofessional conduct and shall not be disclosed by the board as a complaint on the licensee's complaint history.

F. If after completing its investigation the board believes that the information is or may be true, the board may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavioral health. A consent agreement may also require the licensee to successfully complete a board approved rehabilitative, retraining or assessment program.

G. If the board finds that the information provided pursuant to subsection A of this section is or may be true, the board may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee'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, the board may order a summary suspension of the licensee's license pending formal revocation proceedings or other action authorized by this section.

H. If after completing the formal interview the board finds the information provided is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a decree of censure. A decree of censure is an official action against the licensee's license and may include a requirement for restitution of fees to a client resulting from violations of this chapter or rules adopted pursuant to this chapter.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client 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 terms of probation or a consent agreement.

5. 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.

I. If the board finds that the information provided in subsection A or G of this section warrants suspension or revocation of a license issued under this chapter, the board shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

J. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

K. A letter of concern is a public document.

L. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally 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 all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.

M. If the board during the course of any investigation determines that a criminal violation may have occurred involving the delivery of behavioral health services, the board shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

N. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

O. Notice of a complaint and hearing is effective by a true copy of the notice being sent by certified mail to the licensee'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.

P. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Q. The board may defer action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing to practice restrictions and treatment and monitoring programs deemed necessary by the board to protect the public health and safety. A licensee who is impaired and who does not agree to enter into an agreement with the board is subject to other action as provided pursuant to this chapter.

R. Subject to an order duly entered by the board, a person whose license to practice behavioral health has been suspended or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals apply to the board for reinstatement of the license. The person shall submit the application in writing and in the form prescribed by the board. After conducting an investigation and hearing, the board may grant or deny the application or modify the original finding to reflect any circumstances that have changed sufficiently to warrant modification. The board may require the applicant to pass an examination or complete board imposed continuing education requirements or may impose any other sanctions the board deems appropriate for reentry into the practice of behavioral health.

S. A person whose license is revoked, suspended or not renewed must return the license to the offices of the board within ten days after notice of that action.

T. The board may enforce a civil penalty imposed pursuant to this section in the superior court in Maricopa county.

U. For complaints being brought before the full board, the information released to the public regarding an ongoing investigation must clearly indicate that the investigation is a pending complaint and must include the following statement:

Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit or not of sufficient seriousness to merit disciplinary action against the licensee and are dismissed.

V. 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. 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.

W. The board shall not open an investigation if identifying information regarding the complainant is not provided.

X. Except for disciplinary matters prescribed by section 32-3251, paragraph 16, subdivision (v), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-3282. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; confidentiality

A. In connection with information received pursuant to section 32-3281, subsection A, the board or the board's authorized agents or employees at all reasonable times have access to, for the purpose of examination, and the right to copy any psychotherapy notes, documents, reports, records or other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or health care institution as defined in section 36-401 or any other public or private agency, if the psychotherapy notes, documents, reports, records or evidence relate to the specific complaint.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents or any other physical evidence if the evidence relates to the unauthorized practice of behavioral health or to the competence, unprofessional conduct or mental or physical ability of a licensee to safely practice. Within five days after the service of a subpoena on any person requiring the production of any evidence in that person's possession or under that person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify a subpoena if in its opinion the evidence required does not relate to unlawful practices covered by this chapter or is not relevant to the charge that is the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any member of the board and any agent designated by the board may administer oaths, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.

3. The board shall make available to the licensee who is the subject of the investigation, or the licensee's designated representative, for inspection at the board's office the investigative file at least five business days before a board meeting at which the board considers the complaint. The board may redact any confidential information before releasing the file to the licensee.

4. The superior court, on application by the board or by the person subpoenaed, has jurisdiction to issue an order either:

(a) Requiring the person to appear before the board or the board's authorized agent to produce evidence relating to the matter under investigation.

(b) Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter or is not relevant to grounds for disciplinary action that are the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any failure to obey an order of the court may be punished by the court as contempt.

C. Records, including clinical records, reports, files or other reports or oral statements relating to examinations, findings or treatments of clients, any information from which a client or the client's family might be identified or information received and records kept by the board as a result of the investigation procedure prescribed by this chapter are not available to the public.

D. This section and any other law that makes communications between a licensee and the licensee's client a privileged communication do not apply to investigations or proceedings conducted pursuant to this chapter. The board and and the board's employees, agents and representatives shall keep in confidence the names of any clients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

32-3283. Confidential relationship; privileged communications; clients with legal guardians; treatment decisions

A. The confidential relationship between a client and a licensee, including a temporary licensee, is the same as between an attorney and a client. Unless a client waives this privilege in writing or in court testimony, a licensee shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavioral health professional-client relationship.

B. A licensee shall divulge to the board information the board requires in connection with any investigation, public hearing or other proceeding.

C. The behavioral health professional-client privilege does not extend to cases in which the behavioral health professional has a duty to:

1. Inform victims and appropriate authorities that a client's condition indicates a clear and imminent danger to the client or others pursuant to this chapter.

2. Report information as required by law.

D. A client's legal guardian may make treatment decisions on behalf of the client, except that the client receiving services is the decision maker for issues:

1. That directly affect the client's physical or emotional safety, such as sexual or other exploitative relationships.

2. That the guardian agrees to specifically reserve to the client.

3. Where the right to seek behavioral health services without parental or guardian consent is established by state or federal law.

32-3284. Cease and desist orders; injunctions

A. The board may issue a cease and desist order or request that an injunction be issued by the superior court to stop a person from engaging in the unauthorized practice of behavioral health or from violating or threatening to violate a statute, rule or order that the board has issued or is empowered to enforce. If the board seeks an injunction to stop the unauthorized practice of behavioral health, it is sufficient to charge that the respondent on a day certain in a named county engaged in the practice of behavioral health without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under applicable procedures prescribed in title 41, chapter 6, article 10.

B. Violation of an injunction shall be punished as for contempt of court.

32-3285. Judicial review

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.

32-3286. Unlawful practice; unlawful use of title; violations; classification; civil penalty; exception

A. Except as prescribed in section 32-3271, a person who is not licensed pursuant to this chapter shall not engage in the practice of behavioral health.

B. A person who is not licensed pursuant to this chapter shall not use any of the following designations or any other designation that indicates licensure status, including abbreviations, or claim to be licensed pursuant to this chapter:

1. Licensed professional counselor.

2. Licensed associate counselor.

3. Licensed marriage and family therapist.

4. Licensed associate marriage and family therapist.

5. Licensed clinical social worker.

6. Licensed master social worker.

7. Licensed baccalaureate social worker.

8. Licensed independent substance abuse counselor.

9. Licensed associate substance abuse counselor.

10. Licensed substance abuse technician.

C. A person who is not licensed pursuant to this chapter and who practices or attempts to practice or who holds himself out as being trained and authorized to practice behavioral health, including diagnosing or treating any mental ailment, disease or disorder or other mental condition of any person, without being authorized by law to perform the act is engaging in the unauthorized practice of behavioral health, is in violation of this chapter, is guilty of a class 6 felony and is subject to a civil penalty of not more than $500 for each offense.

D. A person who conspires with or aids and abets another to commit any act described in subsection C of this section is guilty of a class 6 felony and is subject to a civil penalty of not more than $500 for each offense.

E. The board shall notify the department of health services if a licensed health care institution employs or contracts with a person who is investigated pursuant to this section.

F. Each day that a violation is committed constitutes a separate offense.

G. All fees received for services described in this section shall be refunded by the person found guilty pursuant to this section.

H. Notwithstanding subsection A of this section and based on circumstances presented to the board, the board may sanction a person's failure to timely renew a license while continuing to engage in the practice of behavioral health as an administrative violation rather than as a violation of this section or grounds for unprofessional conduct and may impose a civil penalty of not more than $500. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the state general fund.

32-3291. Licensed baccalaureate social worker; licensure; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed baccalaureate social worker shall:

1. Furnish documentation as prescribed by the board by rule that the person has earned a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

2. Pass an examination approved by the board.

B. A licensed baccalaureate social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

32-3292. Licensed master social worker; licensure; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed master social worker shall:

1. Furnish documentation satisfactory to the board that the person has earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

2. Pass an examination approved by the board.

B. A licensed master social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

32-3293. Licensed clinical social worker; licensure; qualifications

A person who wishes to be licensed by the board to engage in the practice of social work as a licensed clinical social worker shall:

1. Furnish documentation as prescribed by the board by rule that the person has:

(a) Earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.

(b) Received at least twenty-four months of post-master's degree experience in the practice of clinical social work under supervision that includes at least one thousand six hundred hours of direct client contact that meets the requirements prescribed by the board by rule. For clinical supervision, at least one hundred hours of experience must be as prescribed by the board by rule. For direct client contact hours, not more than four hundred hours may be in psychoeducation.

2. Provide documentation on a board-approved form completed by the person's supervisor attesting that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

3. Pass an examination approved by the board.

32-3301. Licensed professional counselor; licensure; requirements

A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed professional counselor shall:

1. Meet the education requirements of subsection B of this section and the work experience requirements of subsection F of this section.

2. Pass an examination approved by the board.

B. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the person has received a master's or higher degree with a major emphasis in counseling from a regionally accredited college or university in a program of study that includes at least sixty semester credit hours or ninety quarter credit hours at one of the following:

1. A program accredited by the council for the accreditation of counseling and related educational programs or the national council on rehabilitation education.

2. A program with a curriculum that has been approved by the board pursuant to section 32-3253.

3. A program with a curriculum meeting requirements as prescribed by the board by rule.

C. A program that is not accredited by the council for the accreditation of counseling and related educations programs or the national council on rehabilitation education must require seven hundred hours of supervised clinical hours and twenty-four semester hours or thirty-two quarter hours in courses in the following eight core content areas as prescribed by the board by rule:

1. Professional orientation and ethical practice.

2. Social and cultural diversity.

3. Human growth and development.

4. Career development.

5. Helping relationships.

6. Group work.

7. Assessment.

8. Research and program evaluation.

D. Credit hours offered above those prescribed pursuant to subsection C of this section must be in studies that provide a broad understanding in counseling related subjects as prescribed by the board by rule.

E. The board may accept equivalent coursework in which core content area subject matter is embedded or contained within another course, including another subject matter.

F. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the applicant has received at least twenty-four months in post-master's degree work experience in the practice of professional counseling under supervision that includes at least one thousand six hundred hours of direct client contact and that meets the requirements prescribed by the board by rule. An applicant may use a doctoral-clinical internship to satisfy the requirement for one year of work experience under supervision.

G. In addition to the requirements of subsection F of this section, the applicant must have at least one hundred hours of clinical supervision as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

H. The applicant's supervisor shall attest on a board-approved form that the applicant both:

1. Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the applicant provided direct care.

2. Has a rating of at least satisfactory in overall performance.

I. An applicant who is deficient in hours required pursuant to subsection B of this section may satisfy those requirements by successfully completing post-master's degree coursework.

J. An applicant who completed a degree before July 1, 1989 and whose course of study did not include a practicum may substitute a one-year doctoral-clinical internship or an additional year of documented post-master's degree work experience in order to satisfy the requirements of subsection B of this section.

32-3303. Licensed associate counselor; licensure; requirements; supervision

A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed associate counselor shall satisfy the requirements of section 32-3301, subsections B, H and I and pass an examination approved by the board.

B. A licensed associate counselor shall only practice under direct supervision as prescribed by the board.

32-3311. Licensed marriage and family therapist; licensure; qualifications

A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist shall furnish documentation as prescribed by the board by rule that the person has:

1. Earned a master's or doctoral degree in behavioral science, including, but not limited to, marriage and family therapy, psychology, sociology, counseling and social work, granted by a regionally accredited college or university in a program accredited by the commission on accreditation for marriage and family therapy education or a degree based on a program of study that the board determines is substantially equivalent.

2. Completed one thousand six hundred hours of post-master's degree experience in at least twenty-four months in the practice of marriage and family therapy under supervision that meets the requirements prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The one thousand six hundred hours must consist of direct client contact and include at least one thousand hours of clinical experience with couples and families and at least one hundred hours of clinical supervision as prescribed by the board by rule.

3. Passed an examination approved by the board.

4. Provided an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

B. The curriculum for the master's or doctoral degree in behavioral science accepted by the board pursuant to subsection A, paragraph 1 of this section shall include a specified number of graduate courses as prescribed by the board by rule and shall be consistent with national standards of marriage and family therapy. Part of this course of study may be taken in a post-master's degree program as approved by the board.

C. The one thousand hours of clinical experience required by subsection A, paragraph 2 of this section may include one year in an approved marriage and family doctoral internship program.

32-3313. Licensed associate marriage and family therapist; licensure; requirements; supervision

A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed associate marriage and family therapist shall satisfy the requirements of section 32-3311, subsection A, paragraphs 1 and 3 and subsection B.

B. A licensed associate marriage and family therapist shall only practice under direct supervision as prescribed by the board.

32-3321. Licensed substance abuse technician; licensed associate substance abuse counselor; licensed independent substance abuse counselor; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed substance abuse technician shall present documentation as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) An associate degree in chemical dependency or substance abuse with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.

(b) A bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.

2. Passed an examination approved by the board.

B. A licensed substance abuse technician shall only practice under direct supervision as prescribed by the board.

C. The board may waive the education requirement for an applicant requesting licensure as a substance abuse technician if the applicant provides services pursuant to contracts or grants with the federal government under the authority of Public Law 93-638 (25 United States Code section 5301) or Public Law 94-437 (25 United States Code sections 1601 through 1683). A person who becomes licensed as a substance abuse technician pursuant to this subsection shall only provide substance abuse services to those persons who are eligible for services pursuant to Public Law 93-638 (25 United States Code section 5301) or Public Law 94-437 (25 United States Code sections 1601 through 1683).

D. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed associate substance abuse counselor shall present evidence as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) A bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university and present documentation as prescribed by the board by rule that the applicant has received at least one thousand six hundred hours of direct client contact work experience in at least twenty-four months in substance abuse counseling under supervision that meets the requirements prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

(b) A master's or higher degree in a behavioral science with an emphasis on counseling as prescribed by the board by rule from a regionally accredited college or university.

2. Passed an examination approved by the board.

3. Provided an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

E. A licensed associate substance abuse counselor shall only practice under direct supervision as prescribed by the board.

F. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed independent substance abuse counselor shall:

1. Have received a master's or higher degree in a behavioral science with an emphasis on counseling, in a program that is approved by the board pursuant to section 32-3253 or that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.

2. Present documentation as prescribed by the board by rule that the applicant has received at least one thousand six hundred hours of work experience in at least twenty-four months in substance abuse counseling with direct client contact under supervision that meets the requirements as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation.

3. Pass an examination approved by the board.

4. Provide an attestation from the person's supervisor on a board-approved form that the person both:

(a) Was observed during supervised hours to have demonstrated satisfactory competency in clinical documentation, consultation, collaboration and coordination of care related to clients to whom the person provided direct care.

(b) Has a rating of at least satisfactory in overall performance.

January 12, 2023

Andrea Shirley
Empowered Resilience Counseling
4150 E Cannon Drive
Phoenix, AZ 85028

To Whom It May Concern:

I am writing in response to the proposed rule changes regarding the Supervised Practice option for completing the LAC to LPC Professional Counseling requirements. I would like to offer my general feedback, as well as speak to the specific impact on me as as professional.

First, I would like to validate that I understand there are legitimate concerns and potential needs for adjustments. My larger concern, however, is that the proposed solution might not resolve the identified issue or match what I understand to be the purpose of the licensure process. While I understand the inclination to increase supervision if there have been issues with trainees, I am concerned that the solution to implement more of the same process will not actually address concerns. More specifically, I would like to provide the following feedback/questions:

- What research has been implemented to understand the true nature of the problem and contributing factors, thus ensuring the solution meets the need?
- Are the issues identified specific to the supervised practice option? I am concerned that there could be issues regarding the supervision model as a whole across settings that increasing supervision of the same type in this setting only might not address. For multiple reasons, counselors in training do not have many avenues to address concerns without concern for their training and licensure. Some of these issues may be part of the reason that professionals are increasingly interested in other options, such as the supervised practice.
- Given the shortage of mental health workers, I have concern that increased barriers and decreased options could be detrimental to public access to care.
- I have concern that the changes could effectively eliminate options for training and becoming licensed, thus reducing the effectiveness of the model that was intended to improve service at a time during which the need is high. I would think that again, an unintended consequence could be fewer professionals entering the field, or fewer fully licensed professionals available to supervise those entering the field.
- Is there a way to propose a more balanced measure of responsibility and accountability in the rule changes for both the trainee and the supervisor? With all due respect, from an outward appearance, the bulk of the cost seems to fall on the person in training, while greatly providing financial benefit to the supervisors. I do not at all believe this is the intention, however, it does seem to be the outcome. My background and training in leadership would not indicate that holding a higher standard and consequence for those in training than those in leadership to be effective.

While my understanding of what precipitated the concerns generating the proposal is limited, here are some of my thoughts/suggestions that might address the identified concerns:

- Creating a method of assessing readiness for the supervised practice option rather than a sole focus on increased supervision as the solution. I would assume that the this skill would be a required aspect of supervision, and that this could be a very beneficial skill for the professional in training to acquire.
- Addressing issues of cost in some manner to create consistency across options and increase ability to meet supervision standards proposed.
- If this option is effectively eliminated, continuing to work to create options for accessibility to training to ensure a variety of services are available to the public and for trainees to pursue.

In addition to addressing my overarching concerns regarding the new rules proposal, I would also like to speak to the specific impact on myself as a professional. My reasons for choosing the supervised practice option seem relevant and are described below.

After being engaged in a professional capacity within community mental health settings for the 20 plus years of my career, and specific to this role for approximately two and a half years before starting the LAC process, I deliberately chose to take on the cost and liability of a supervised practice as was outlined. I was interested in ensuring a higher quality of supervision than I could receive in a setting in which individuals are frequently overwhelmed and overworked. I would like to add that, indeed, this has happened. Additional factors include an interest in gaining skill to meet the needs of the general population rather than specific populations, and to learn to establish a business practice that best meets practice standards.

Additionally, I have intentionally separated out one specific reason I have chosen the supervised practice option. I am an individual who lives with physical disabilities that are a result of an accident that occurred early in my adulthood. While I have been highly successful in this field, my long term goal has been to engage in a small private practice in which I could use my skills and training for the benefit of the community while also being able to sustain active employment throughout my lifetime. While this issue is highly personal, and I do not typically disclose this, I am assuming there are others with physical disabilities that will be impacted. I believe this is part of my professional responsibility and ethics to present this consideration.

In doing so, I would like to increase awareness that for a person who is living with physical disabilities, what can unintentionally be measured during a training and evaluation period in a community based setting is not the ability to provide quality and ethical care. Rather, the ability to survive a harsh and overwhelmed environment becomes the focus. For individuals such as myself, there is a risk of being evaluated on circumstances that do not actually measure my ability as a counselor, but instead measure my level of physical energy in what is well known to be a challenging environment. More succinctly, I chose this option as a means of creating a reasonable accommodation for myself, and to ensure that what I am seeking a license for is what is being evaluated. I would like to again emphasize that I have been successful in community based settings, and part of my work is currently in this type of setting. Due to these factors, I thought I may be able to use my voice on this matter effectively, without the concern of inadvertent bias that people living with disabilities may face.

Specific consequences of the rule change to me include but are not limited to the following:

1) The increase in supervision could be cost prohibitive. These costs include an inability to make a living wage comparable to my colleagues, a decreased ability to engage in quality professional training outside of supervision and thus increasingly limited to one professional perspective,

and a decreased ability to afford an office which would allow for in person assistance, which seems to also be a desired outcome now that the pandemic has become endemic.

2) I have been in practice for 2 years this month. I am serving some individuals who have been under my care long term and who will be significantly impacted by a sudden change in therapists as a result of referral if my practice closes.
3) I will be less apt to receive the opportunity to engage in the professional goal planning I have established over the course of last leg of this journey to ensure that I have learned and implemented best practice business aspects of private practice. This will leave me in a similar situation that I have witnessed many of my colleagues contend with when opening a practice and navigating issues specific to that type of environment, post supervision. I can't help but think that there are times that there are issues that arise later because there is not always a way to prepare and train for the business best practices aspect of counseling.

In summary, I would like to add that I would be interested, and willing, to be a part of creating solution. As a dedicated behavioral health professional for my entire lifetime, I am committed to my own growth, as well as growth and development in the field as a whole.

Thank you for taking the time to review my questions, concerns and feedback.

Sincerely

Andrea Shirley LAC

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

RULES FEEDBACK

1 message

Julia Poole <juliakpoole@gmail.com> Thu, Sep 15, 2022 at 11:50 AM
To: rulesfeedback@azbbhe.us

Hello,

I am writing to the board to advocate for additional policy under R4-6-212. Clinical Supervision Requirements. I think it is in the best interest of all parties involved, the Board, the associate licensed clinician, and the clinical supervisor, to require the clinical supervision verification form be completed and signed within 30 days of a clinical supervision contract being terminated. This helps ensure associate licensees receive accurate and timely verification of hours from their clinical supervisor and reduces the chances of lost communication, records, etc in situations involving multiple supervisors and varying lengths of time to complete supervision requirements.

While this may sound like best practice, in my experience as an associate clinician, it is not being required by our community mental health agencies and group practices due to it not being a Board requirement. I strongly believe if the Board required the documentation to be completed and provided to the associate within 30 days of the supervision contract being terminated, it would help streamline the application process and increase accountability for clinical supervisors to provide accurate, timely verification of hours.

Thank you for all that you do.

Julia Poole, LMSW

Gmail

Erin Yabu <erin.yabu@azbbhe.us>

Fwd: regarding proposed change to Board rule

1 message

Tobi Zavala <tobi.zavala@azbbhe.us> Mon, Dec 12, 2022 at 7:55 AM
To: Erin Yabu <erin.yabu@azbbhe.us>, BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Tobi Zavala, Executive Director

ARIZONA BOARD OF BEHAVIORAL HEALTH EXAMINERS
1740 W. Adams Street, Suite 3600, Phoenix, AZ 85007
Phone: 602-542-1617 Fax: 602-364-0890
Email: tobi.zavala@azbbhe.us
Board Website: www.azbbhe.us

---------- Forwarded message ---------
From: **Dana Vargas** <DanaV@sbhservices.org>
Date: Fri, Dec 9, 2022 at 8:13 AM
Subject: regarding proposed change to Board rule
To: Tobi Zavala <tobi.zavala@azbbhe.us>

Hello Tobi,

It is my understanding that the Board is proposing a change to Board rules regarding new LPCs having to wait 2 years before providing supervision to LACs. I would like to advise the Board, with all due respect, that I do not think this is a good idea.

I believe that making this change would detract from all parties involved, to include the LPCs, LACs, and even clients. In my experience, it took me about 4-6 months to get what I needed to provide supervision, and being able to do so has allowed me to continue my process of gathering knowledge, skills and abilities, as well as allowed me to share what I know and Board information with others. Your requirements to meet LPC are just that, and having met the criteria to be independently licensed also includes the

ability to start sharing that valuable knowledge with those at the LAC level so that they can best implement that into their practice and growth toward independent licensure. It allows recent knowledge and information to remain fresh and adds to the growth process for all involved. I believe this would take away from the learning and growing process for newly independent licensees as well as the so many associate level licensees that are needing valuable opportunities to enhance their knowledge, skills and abilities.

In light of this information, I respectfully request that LPCs be able to provide supervision after receiving their independent license and have the current training requirements met, is most beneficial for us as professionals as well as those clients with whom we work.

Thank you.

Dana Vargas, MS LPC BHP

Lead Therapist, In-Home Program

2345 W. Glendale Ave, Phoenix, AZ 85021

Cell (602) 359-0472

Fax (602) 254-3831

www.sbhservices.org

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Proposed Board Rules Clarification

Sheana Kupitz <sheanamkupitz@gmail.com> Fri, Dec 30, 2022 at 9:26 AM
To: BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Thank you for your response; I appreciate the opportunity to provide feedback! From my perspective, this rule is more negatively impactful than helpful to licensees, supervisors, and our system of care, as a whole. As someone who has been licensed (LMSW) with the Arizona board for 12 years, I have experience in both agency work and now private practice; both settings that will be disrupted by this revision.

From an agency perspective, retention is already a great challenge and in many instances the opportunity to take on a supervisory role to support the team after providing the necessary 24 months of direct client care is a welcome change that allows this individual (and the team) longevity and consistency. This in turn impacts the quality of care for the better, benefitting the clients served by these agencies. However, with this revision, many of these individuals who are newly independently licensed will not have the chance for these supervisory roles on the team, as the ability to receive supervision toward board licensure is a critical fixture of agency work. In turn, supervisory positions may go unfilled requiring more contracted supervisors, and whether these are contracted by individual licensees or by agencies this places additional burden on those in need of licensure and the agencies who employ them.

From a contracted therapist perspective, this is similarly impactful. Therapists who work for the required 24 months and attain an independent license do so in part to open up their opportunities to engage in the field, including the capacity to supervise and mentor others. By requiring another two years of licensure before allowing these licensees to expand their offerings to the community is of detriment to them, their career development, and may impact the availability of supervision for the board, as this reduces the number of supervisors available, overall.

Because supervision is deeply important to our system of care and the success of therapists working in our systems, I support the implementation of mechanisms by which we ensure quality of supervision. However, I think it's important to note that the success of a supervisor is not marked by years worked. I have met many supervisors who were inappropriate, clinically unsound, and ultimately unsuccessful with their teams after years and years of practice in the field, while conversely some of the best supervisors I've had the pleasure of knowing and working with were newly independently licensed, but committed to ethical practice, best practice techniques, and authentic support to their supervisees. It would be a shame to allow time served with a specific licensure level dictate who has the capacity to supervise and mentor our future therapists.

Finally, I use myself as a case in point. As noted above, I have been licensed with the AZBBHE for 12 years; however, my employment trajectory took me away from direct client care prior to my completion of the 24 months of service required to obtain my independent license. In this time (approximately 8/8.5 years), I was in supervisory and oversight roles. As a Clinical Supervisor, I developed and provided oversight to a case management team, as well as unlicensed and independently licensed clinicians. I was also utilized as a support to associate level licensed therapists; although, none were my direct reports, as I could not provide the board supervision they needed. As a Site Director, I was responsible

for the administrative and operational functions of clinics in both the East and West Valleys. In this role, I provided oversight to the Clinical Supervisor team and in conjunction with our Clinical Director, I was responsible for the clinical success of our clinics, as well as the financial and procedural health of our clinics. For the board to determine that my 12 years as a licensee in good standing with the board, coupled with my 8+ years of service in supervisory roles is not enough for me to be eligible to provide clinical supervision for the board upon receipt of my independent license (anticipated submission date: 02/28/23) feels discouraging, at best.

If there is concern about the supervisory capacities of those who are freshly independently licensed, I'd propose a more rigorous application process or an exemption process of sorts. Suggestions include:

- Additional training requirements about supervision for the first two years as a clinical supervisor for the board

- Required letters of recommendation (3) from those who can vouch for the supervisory ability of the newly independently licensed individual. These can be submitted by any license level/unlicensed individuals, as many times (specifically in agency work) those who most closely observe and work with a licensee in a supervisory capacity are associate level licensed, or unlicensed.

- A supervision requirement for new supervisors (perhaps six months or a year of oversight from a seasoned supervisor in good standing with the board).

It seems that if the goal is to ensure quality of supervision, monitoring the applications of those who want to supervise is far more valuable than depending on length of time in the field as a barometer for success in this capacity. Thank you for your consideration on this matter and thank you for your continued work to ensure the safe and successful practice of therapy in our state!

Sheana Kupitz, LMSW

480-452-4577
[Quoted text hidden]

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

feedback on proposed changes

Laura Fontaine <vivifywellness@gmail.com> Thu, Sep 1, 2022 at 1:25 PM
To: rulesfeedback@azbbhe.us

Hi,
I just wanted to give some feedback on a few of the proposed rule changes.

R4-6-217 (B) (2ai): One potentially controversial change that I noted was re: changing the amount of supervision for a supervised private practice from 1 hr of supervision/20 hrs of direct client contact to 1 hr of supervision /10 hrs of direct client contact. As a supervisor of LACs in private practice **I would be in favor of this**. I find that supervision time can get taken up with business/ethics of running the practice (insurance issues, appropriate coding of sessions, how to do superbills, reviewing Board rules, etc). Also for some LACs attempting to go into private practice very soon after graduation and getting their associate license they don't have the clinical skills yet to effectively treat clients in a solitary environment.

R4-6-217 (D) (4): proposing supervisors take 3 hours of supervision specific to supervising private practices. In theory I understand and would be ok with this change. However, I have scoured numerous continuing education sources and have not found a single one offering a CE course specific to supervising a private practice. I have checked: APA, ACA, AZ Trauma Institute, CE4LEss, Quantum Units, Clinical Best Practices Institute, Udemy, The Knowledge Tree, CE-Classes.com, Professional Psych Seminars, Continuing Ed Courses.net, PESI, Good Therapy, Steve Frankle Group, and Envision Services. I found trainings on running a private practice, growing your private practice, marketing a private practice, creating a group practice, etc in addition to various ones on supervision methods and supervision with various populations. Not one had a course specific to supervising a private practice. Unless the Board is going to create a training for this or provide the names of sources that *do* offer this, I think it is unreasonable that after checking 15 resources I was unable to find something that would meet this requirement and yet this rule would require me to find it somewhere or my ability to supervise would be jeopardized despite checking with 15 potential sources for CEUs. **Because of this I am NOT in favor of this rule change.**

R4-6-802 (C) (1c): proposing adding 3 hours of continuing ed specific to telehealth practice. **I am in favor of that change** with telehealth being so prevalent and here to stay.

R4-6-1106 (D) (2): proposing that a client's local emergency contact's address be documented in the record and on progress notes when providing telehealth. To me this does not seem necessary. If I am reaching out to an emergency contact, I don't need their address. I need a phone number. I can't imagine sending emergency services to the emergency contact person for my client. I would need my client's address, not their emergency contact. Also, when I am in session with a client, I don't have their progress note in front of me. I would still need to go back into their records so recording any of the emergency contact's information does not feel necessary to me because that is not what I would be referencing if I needed to contact this person. It feels especially unnecessary to obtain the emergency contact's address because I won't be sending help to the emergency contact and having it in the note does not actually help me at all if I do need to contact the emergency contact person. **For these reasons I am not in favor of this change.**

Thank you,
Laura Fontaine, MS, LISAC, LPC
she/her
EMDRIA Certified EMDR Therapist and Approved Consultant
Vivify Wellness
2345 S. Alma School Rd, #105
Mesa, AZ 85210
480-206-4753
www.vivifyyourwellness.com

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback on Supervised Private Practice Proposed Rules

Erin Stone <erin.stone09@gmail.com> Fri, Aug 26, 2022 at 11:08 AM
To: rulesfeedback@azbbhe.us

Hello,
I wanted to provide some feedback on the proposed rule to provide one hour of supervision/meeting individually for every 10 hours of direct client contact.

I believe this rule is being proposed to impede and dissuade associate clinicians from opening a private practice. For someone who is looking to build their practice and see 25 - 30 clients per week, it is highly unlikely that any clinical supervisor has the availability to provide 3 hours of clinical supervision per week. That is asking for 12 meetings per month for someone who is looking to have a full caseload in order to make a living and sustain their practice. I see this as a barrier and a rule put in place to make this type of venture impossible, versus trying to help individuals obtain their license and support small business owners while still being adequately supervised as the current rule stands. We would have no associate clinicians owning their own private practice if this rule were to be put in place.

I would also like to propose that the supervised private practice owner (the licensed supervisee) be allowed to employ and provide clinical oversight to other licensees. Currently, in other settings and agencies, an associate clinician can be the highest clinical person and provide clinical oversight to others *as long as they have a supervisor who they report to*. In a supervised private practice scenario, the associate clinician employed by the private practice owner would be reporting to someone (the private practice owner), and there are checks and balances with the private practice owner having requirements to meet with their own clinical supervisor as specified in the rules. Potentially, an alternative requirement could be that associate clinicians employed by licensed supervisees be required to meet with a clinical supervisor for clinical supervision at least once for every 80 hours of direct client contact hours.

Thank you for your consideration,
Erin Stone

Arizona Board of Behavioral Health Examiners
1740 W. Adams St., Suite 3600, Phoenix, AZ 85007

FEEDBACK FORM

Board Fax: (602) 364-0890 **Email Address:** information@azbbhe.us

Please complete the following to provide feedback to the Arizona Board of Behavioral Health Examiners. Forms may be mailed, faxed or emailed to the contact information below.

My feedback is in reference to:

☐ Licensure ☐ Renewal ☐ Investigations

☐ Board staff/meetings ■ Board rules/statutes ☐ Other

Details: Hi, I am not sure if you are still accepting feedback for the proposed rule that those in Supervised Private Practice would need 1 supervision hour for every 10 hours of clients. I really believe that is a bit of overkill and is very taxing on the Supervisee. If you did 30 hours a week you would need 3 hours in that same week? That doesn't seem to make sense. It appears that this rule is to dissuade SPP, but if it is something that is allowed, we should not be putting barriers to being successful at it. Either allow SPP or don't. I know there are new therapists who might need more supervision and shouldn't be in private practice, but some of us have been practicing for years and this rule does not make sense whatsoever.

Do you wish to be contacted by Board staff? ■ Yes ☐ No

CONTACT INFORMATION: (*optional unless you wish to be contacted*)

Name: Troy Stone

Address:

City, State, Zip:

Preferred phone: (504) 939-1386

Preferred email: troystone12@gmail.com

Thank you for taking time to provide feedback to the Board. Please submit completed form by:

- Email to: information@azbbhe.us
- Fax to: (602) 364-0890
- Mail/deliver to: Arizona Board of Behavioral Health Examiners
  1740 W. Adams St., Suite 3600
  Phoenix, AZ 85007

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback on proposed changes to supervised private practice

Vic Meadow <vic@faygelehcounseling.com> Tue, Dec 20, 2022 at 9:16 AM
To: rulesfeedback@azbbhe.us

To whom it may concern,

I'm writing to express my strong disagreement with the proposed rule change for supervised private practice that doubles the amount of required supervision from once every twenty hours to once every ten hours. This doubles the financial burden on new therapists who are often already struggling to make ends meet at a time when therapists are overburdened with increased client demand. The impact on associate level clinicians was not discussed in these proposed rule changes, which risk closing our practices. Most agencies and group practices in town that hire associate level clinicians pay very low rates, or pay a salary while mandating extremely high case loads. Supervised private practice allows new clinicians to make a living wage while having agency over the size of their case load. These proposed changes hugely increase the financial burden on associate level clinicians and threaten our ability to keep our practices open.
Thank you for your consideration,

Vic Meadow, LAC
(they/them)
520-955-6941 (text)
faygelehcounseling.com

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

SPP Changes

EJ Millstone <emillstone@gmail.com> Tue, Dec 20, 2022 at 9:59 AM
To: rulesfeedback@azbbhe.us

Hi there,

I'm writing as a supervising clinician. I would like to oppose the rule change that LACs in supervised private practice will be required to receive supervision every 10 hours of client contact.

This puts an undue financial burden on new clinicians trying to make a living seeing clients. Between increasing office rents, fees for telehealth, and low payment from clinics and competition from more seasoned therapists, I fear this will turn new therapists away from the field. Specifically, therapists who serve underserved populations such as BIPOC, trans and queer folk.

In the current climate, I am constantly turning away new clients who need counseling but cannot find an available clinician. Further burdening new LACs with costs will continue to shrink the availability of clinicians in Arizona, something we are already dearly struggling with.

Please reconsider requiring more supervision hours for these badly needed clinicians.

Thank you,

EJ Millstone, LPC CDWF (she/her)
Licensed Professional Counselor

520-241-1950

emillstone@movetowardgood.com

www.movetowardgood.com

4625 E. Broadway #119, Tucson, AZ 85711

Gmail BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Rules Feedback

Shelly Thome <shelly@getfocuscounseling.com> Thu, Dec 22, 2022 at 11:04 AM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Good Morning,

Thank you for the opportunity to provide feedback on the proposed rulemaking changes. Though I can appreciate that language and guidelines must be updated regularly, I find that certain subpopulations of clinicians are having rules selectively enforced upon them as compared to other clinician groups.

Supervised Private Practice

Of particular concern is the increased frequency of supervision only for those in supervised private practice. If the new rules pass, supervision must occur once every 10 rather than 20 hours of direct client work. This creates a substantial change in the financial burden not identified under the economic impact statement for both the supervisee and supervisor.

- This creates a financial burden to the supervisee in doubling their supervision expense
- This creates a further financial impact when the supervisee also experiences a loss of income for the session times during which they can no longer see clients while attending supervision instead.
- Supervisors must also remove client sessions in order to accommodate this increased frequency of supervising individuals
- This can also cause undue barriers to many people obtaining a qualified supervisor who:
- Can accommodate this frequency in their practice schedule
    - Qualify under the new education requirements.

What is the initial and then the ongoing cost to the supervisor to attain and maintain the new education credentials?
A potential unintended consequence may be supervisors raising their rates significantly to provide supervision under all of the above conditions.

It does not feel as if individuals in agency roles are being asked to receive such high levels of supervision and incur the additional financial burden, as compared to those in supervised private practice (1 hour per month regardless of the number of direct client hours vs 1 hour every 10 direct client hours). If the overall focus is on client welfare, why are these supervision requirements not aligned across all restricted license therapists?

Is there data on Board complaints that necessitates these proposed changes to supervised private practice, or is it an impression that those in supervised private practice require more support? Wouldn't it be more appropriate to require a certain level of experience prior to opening a supervised private practice (much like the requirement that a clinical supervisor must have 2 years post unrestricted license)?

Telehealth

How might one demonstrate competency, and what are the criteria for this (R4-6-1106 (A) (2)?
How does an individual or organization provide evidence acceptable to the Board that the licensee does not practice behavioral health by telehealth (R4-6-802 (C) (c)?

- Do they sign a document to attest to this, or is there an additional burden of evidence to be provided?
- What are the acceptable trainings?

Again, I appreciate and respect rules that are created to protect client welfare and to assure that we are positive representations of our profession. However, selectively enforcing rules on certain populations within the profession creates equity concerns.

Thank you for considering the feedback prior to decisions on the proposed rulemaking.

Shelly

Shelly Thome, LPC, CCTP, CCTSI, CTMH
Owner and CEO
Focus Counseling
602-649-4040
www.getfocuscounseling.com

For Additional Assistance, in case of an emergency:
Warm line: 602-347-1100
Crisis line: 602-222-9444
Suicide Prevention: 988
Crisis: 911

RULES FEEDBACK

Joan Rapine <joan.rapine@pascuayaqui-nsn.gov> Thu, Dec 22, 2022 at 12:09 PM
To: BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Oh I really appreciate you asking (forgot about the whole public thing….

I'm comfortable with adding this:

There are trans/LGBTQ+ clinicians who don't fit into the agencies currently operating in Tucson, making it difficult for them to gain experience and appropriate supervision at an agency. In such cases supervised private practice might be their best way to gain experience and supervision. Doubling the supervision requirements adds financial stress, especially for clinicians with a full caseload (and in cases when supervisors' charges are high). Although money is not a main consideration, I believe it is important to keep in mind.

[Quoted text hidden]

Gmail BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Financial Impact of Board Rulemaking Changes

Pallavi Lal <gobeyondpotential@gmail.com> Fri, Dec 30, 2022 at 1:02 PM
To: erin.yabu@azbbhe.us, rulesfeedback@azbbhe.us

Good Afternoon Deputy Director Yabu,

I hope that you are having a prosperous Holiday Season.

I wanted to offer some feedback regarding the recent proposed changes for those in Supervised Private Practice.

As an owner of a SPP in Arizona, I am very much concerned about the additional financial and economic impact these new rules may have on my business, work/life balance as well as the continuing interests or availability of Supervisors willing to offer Supervision.

Aside from the increased financial investment on doubling my expenses for Supervision on a weekly basis; additional concerns arise regarding loss of income to allow for required Supervision. This directly reduces my availability for clients in my work week thus limiting my ability to serve a population in much need of Mental Health Services.

Furthermore, increasing practice hours during the work week to offset increased costs of Supervision and the overhead expenses of a Small Business, could lead to a decreased work/life balance; mimicking compassion fatigue and burnout as experienced by many colleagues in Community Mental Health Settings.

Other direct impacts as a result of increased Supervision requirements would decrease time with family, limited availability for Continuing education or Specialized Clinical Trainings, investing additional time in accumulating Direct hours towards my independent licensure. All these factors mitigate the efficacy and efficiency as Practitioners in SPP while we work towards adhering to a completely separate set of rules than our counterparts in Community Mental Health Settings or Fully Independent Private Practices.

This proposed shift in Supervision requirements can potentially cause adverse financial impact as Supervisors may also increase their rates for Supervision to compensate for loss of availability for Clients on their personal caseload and to adhere to additional Continuing Education requirements proposed.

While I understand that these Rules are in place to protect the general population and ensure ethical and moral guidelines are being maintained by ANY practicing Clinician under the umbrella of the AZBBHE; I wonder if effort invested would be more advantageous to ensure that Clinicians in SPP are set up for success through proper education and compliance with business practices prior to getting approved for SPP. In doing so, Clinicians are vetted to maintain high standards of practice from the beginning rather than adjusting practice policies and guidelines with limited notice from the Governing Board. Additionally, it is important to note that NO other LAC's or Supervisors in various practice settings whether Community Mental Health, Independently Licensed Private Practices or Fully Licensed Clinicians are required to adhere to these strict guidelines.

To state, "The Board believes most of the rulemaking will have minimal economic impact because it makes no substantive changes other than those required to be consistent with statute." is not conclusive nor sensitive to the needs of the professionals directly impacted by these changes: Supervisees in SPP and their Supervisors.

I thank you for your time and hope that the intended Rulemaking takes into consideration the financial and emotional duress this may have on those operating under the guidelines of Supervised Private Practice.

Be Inspired,

Pallavi Lal, MS, LAC
Mental Health Therapist
DBT, EMDR, Trauma
Expanding Horizons Counseling, LLC: Discover Your Authentic Self
480-359-6126
Like on FB: Be Still Everyday, Expanding Horizons Counseling
Please enjoy this Yoga Nidra practice: https://youtu.be/-PxNLFJ91Io.

For Additional Assistance, in case of an emergency:
Warm line: 602-347-1100
Crisis line: 602-222-9444
Suicide Prevention: 800-273-8255

January 13, 2023

Supervised Private Practice Reflections and Contributions for Rulemaking Discussion

- **Whereas:** Supervised Private Practice (SPP) Owners have elucidated the alarming impacts on the proposed supervision ratio change to our businesses, our clients, and our ability to maintain compliance. *And so too, SPP owners have thus brought awareness to the Board of these facts' discordance with the Rulemaking Filing's assertion that no such impacts will occur.*
- **Whereas:** SPP owners have become aware of the workload increase on Board Staff as related to regulating our practices and we share their desire to streamline the process and make compliance and regulation easier without compromising either accountability or compliance.
- **Whereas:** SPP owners understand and agree with the Board that we need and deserve strong learning opportunities, support, and connection throughout our careers, but especially now as associates. *In fact, it's what we see as the biggest asset of SPP over agency/group practice!*
- **Whereas:** We agree with the need to raise the bar for those struggling but know it can be done without handicapping those of us actively learning and growing as clinicians in this space.

We humbly and collaboratively propose the Board take the following actions:

TODAY

1. Strike the ratio change, in full, from the proposed rulemaking for 2022 to both avail themselves of SPP owners' insight, labor, data, and collaboration and to save the rest of this session's rulemaking from scrutiny at the GRRC (as our coalition will not pursue public dissent if the ratio change is stricken).

THIS YEAR

2. Consider shifting SPP from a supervision requirement rooted in variable metrics like direct contact hours to a fixed metric like the Gregorian (modern) Calendar. Consider, perhaps, that SPPs registered as part-time be required three (3) hours of supervision per month and SPPs registered as full-time be required five (5) hours of supervision per month. This contrasts with full-time associates in agency or group practice being required to have one (1) hour of supervision per month in order to count their hours. ****If an SPP grows from part-time to full time, they would of course increase their supervision.*
3. Consider shifting SPP site visits from variable metrics like "every 60 days" (which sets out different interval start/stop dates for every registered SPP owner) to a fixed, calendar-based model that would set the same date ranges for every SPP the Board is regulating. We propose one site visit per calendar/fiscal quarter, which would serve to create a uniform set of dates and deadlines for the Board and increase compliance by way of enhanced clarity and uniformity.
4. Consider measures for SPP that raise the bar for those struggling *without* restricting those who excel from doing their best work…as opposed to regulatory measures that aim to support those struggling but which stifle those who thrive. *Our biggest common trait as SPP owners is that we LOVE learning and want to be our best for this work and service—please believe and remember that.*
5. Explicitly create space for SPP owners to share our insights, experiences, and ideas as policymaking and regulation move forward. We have demonstrated that we have the insight, data, lived experience, values and orientation toward stewarding our field forward that is urgently needed in our professional climate.

Halina Brooke, MS, LAC, LAMFT
On behalf of the Arizona Coalition for Sensible Therapy Practices

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

feedback about proposed rule for supervised private practice

Awakening Peace <awakeningpeace@gmail.com> Tue, Jan 3, 2023 at 12:34 PM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Hello,

I would like to give feedback regarding the proposed rule change for doubling the amount of supervision that associate therapists need to have to do supervised private practice. I know this is controversial but I support this change. I am concerned about inexperienced therapists being in their own solo private practices with very little oversight. I am an LPC and a supervisor in a group practice and have been for the past 8 years. We have had interns and associates leave to go start their private practice. They are typically people who are struggling with our policies and with relationships with other supervisors. This is concerning that they are able to go off on their own so as not to have as much oversight. I was in solo private practice as an independently licensed person and even then I was missing the support and guidance that comes from being in a group or agency. I think associates should be encouraged to work in agencies or groups while they are developing their clinical skills. Or if not, then they should have more supervision than is even required in these group settings. So again, I support the proposed rule that would increase the supervision requirement for associates in private practice.

Thank you,

RULES FEEDBACK

Rachel Bentley <pathbuilders@icloud.com> Mon, Aug 29, 2022 at 2:38 PM
To: rulesfeedback@azbbhe.us

While telehealth is convenient and may have some financial savings to both Clinician and Client, it is important to assess if long-term telehealth adequately serves the clinical needs of the client (e.g., accurate assessment, diagnosis, treatment) when a client and Clinician have never met face-to-face.

Respectfully,
Rachel Bentley, LMFT

Sent from my iPhone

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

RULES FEEDBACK

Michele Chinichian <micheleroya@gmail.com> Fri, Dec 23, 2022 at 5:35 PM
To: rulesfeedback@azbbhe.us

Hi, I would love to see more flexiblity for tele-health. The world is changing, more clients are becoming nomads as tehy have the flexiblity to work from anywhere in the world, yet could still benefit from consistent support. Families that live in numerous states spread out still want to do family therapy via tele-health but finding a therapist licensed in 4 states is challenging. More flexibility of these rules would greater serve client needs and better accommodate these changing times.

I appreciate your consideration,

Michele Chinichian, LCSW
Phone: (480) 409-2915

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

RULES FEEDBACK

kkruse.mft <kkruse.mft@gmail.com> Mon, Nov 21, 2022 at 11:46 AM
To: rulesfeedback@azbbhe.us

Hello,

In reading over the proposed changes for telehealth, it appears that the board is proposing that mfts will only be allowed to provide teleheath to clients over a span of 90 days. Is this correct? I think this would be highly detrimental to so many clients who are unable to access or have difficulty accessing in person services. I work with clients who live in very remote places in AZ, as well as clients whose demanding schedules would make it quite difficult to attend in person therapy. I am concerned about what would happen to them if they had to terminate telehealth services after 90 days.

Kimberly Kruse

Sent from my T-Mobile 5G Device

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Question

Darya Windsofchangecounseling.com <darya@windsofchangecounseling.com>

Wed, Aug 24, 2022 at 9:02 PM

To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

To whom it may concern,

I just wanted to get a little bit of clarification on the proposed rule changes regarding Telehealth.

I am a Telehealth provider considering a move to Washington, and would like to retain my Arizona license and continue to see my Arizona clients. Am I to understand that under these proposed rule changes, if I continue to operate out of AZ and have an AZ designated receiver of certified mail/legal paperwork that I would register to be an out of state provider if I am myself out of state, despite my business being registered in AZ?

Furthermore, with this proposed change, am I to read that if I myself don't physically live in AZ I can only provide 90 days worth of services, despite registration? Does this sound accurate?

Please advise,

- Darya McClure MAS-MFT LMFT

Gmail BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback

Lisa Menard <elizabethamenard@gmail.com> Thu, Aug 25, 2022 at 5:48 PM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Hello,

I am writing to provide feedback on the telehealth section of the 2022 rules. The section that is concerning to me is as follows:

Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year.

The way I am reading this rule sounds like there will be a limit on telehealth. My practice is 100% telehealth and I plan to keep it this way. I have found telehealth to be highly effective and significantly more convenient and accessible to my clients. I cannot think of any legitimate reason to limit this important service for clients and implore you to reconsider this limitation.

Thank you for giving me the opportunity to share my feedback.

Elizabeth Menard

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

RULES FEEDBACK

Elizabeth Diamond <drlibbydiamond@gmail.com> Thu, Aug 25, 2022 at 7:38 PM
To: rulesfeedback@azbbhe.us

Hello,

I just learned about the proposed rule for limiting telehealth to 90 consecutive days. This is very limiting to many who need and want to receive mental health care. Of course there are risks, but there are also important ways we can minimize those risks.

The advancements in telehealth have really improved people's access to care for those in rural areas, those with kids and limited childcare, and financial barriers to finding an in person provider. I can't understand why the board would want to decrease access by taking this away.

Thank you for your time in reading my concerns.

Libby Diamond, PhD, LMFT📱

RULES FEEDBACK

Kathryn Freeman <kathrynfreeman66@yahoo.com> Thu, Aug 25, 2022 at 8:56 PM
To: rulesfeedback@azbbhe.us

I am a LOC and I currently operate a fully remote counseling practice with contracted employees. This rule would take away my livelihood and affect the people working for me. Being able to offer services virtually is a benefit to the community and to counselors as well. This rule would be unfair and limit access to care to many people in need.

Thank You,
Kathryn

RULES FEEDBACK

Darcy Machado <machadotherapyandwellness@gmail.com> Thu, Aug 25, 2022 at 6:21 PM
To: rulesfeedback@azbbhe.us

Hello my name is Darcy Machado I'm an LCSW licensed and practicing telehealth in Arizona. I was made aware of the proposed changes in in October and would like some clarification on this proposed change:

"Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year."

To clarify is the proposed change that therapists would no longer be able to see clients for more then 90 days via telehealth? As someone who works solely via telehealth this is extremely concerning to me. If this is the proposed change, I hope the Board has taken time consider how closing/ minimizing access to therapy negatively impacts clients that otherwise would not receive services. I look forward to your clarification.

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

RULES FEEDBACK

Minon Maier <minon.maier@me.com> Tue, Aug 30, 2022 at 10:14 PM
To: rulesfeedback@azbbhe.us

Regarding Proposed rule for Telehealth: Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive an

Limiting the time of Telehealth for clients is not clinically appropriate for all clients. Due to the ongoing pandemic, there are clients that cannot meet in person due to health risks.

Can there be exemptions for clients that require virtual appointments due to health concerns, ongoing pandemic, lack of transportation/resources, client preference or other reasons?

We continue to see the ripple effects of the pandemic on client's mental and emotional health. Limiting therapists and clients to only 90 days of Telehealth will cause lack of clinical care for clients in a variety of situations. It should be an ongoing option for all therapists and clients, along with ongoing assessment for clinical appropriateness of Telehealth.

The pandemic has shown that there are clients that do better clinical work when meeting remotely, in the safety/comfort of their home. I have found that clients feel more comfortable going deeper into their emotions when they are not in the therapy room. The other aspect to consider is an exemption for college-aged clients that have a strong therapeutic rapport but can only meet virtually due to attending college in Arizona with no method of realistic transportation to the therapist. Starting over with a new therapist that is closer to the college due to an in person mandate will be more damaging to the client's treatment than allowing the therapist and client to meet virtually.

Minon Maier
480.650.4835

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

feedback on the proposed rules for behavioral health examiners

Anna Odell <anna_odell@alumni.brown.edu> Tue, Sep 6, 2022 at 3:48 PM
To: rulesfeedback@azbbhe.us

To the Board of Behavioral Health Examiners in Arizona,

My name is Anna Odell. I moved to Flagstaff, Arizona Fall of 2021 from Austin, Texas. I want to comment on the proposed change in section R46-6-1106, Part B, which concerns how many days a patient in Arizona can receive mental health counseling via Telehealth. According to the 90 day rule, which was in effect in 2021 and 2022, I have been able to maintain my regular meetings with my social worker in Texas once a week. If the proposed change in which the 90 days that I can receive this health care has to be consecutive, I will only be able to have access to my long-term therapist for three months out of the year. This mental health care that I receive, and being able to maintain that care from my long-term provider, is non-negotiable for me. If this new alteration to the rules in section R46-6-1106, Part B goes into effect, I would be forced to leave Arizona and move to another state where I can still receive Telehealth with my current provider.

As a constituent of Arizona, I strongly suggest not implementing a 90 day **consecutive** day restriction on Telehealth.

Thank you for your time,

Anna Odell

--
Anna Odell
Brown University '20
Bachelor's of Science in Environmental Sciences
(512) 590-3624

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback

Sophia Fleming <sophia@ihcounselingservice.com> Fri, Sep 9, 2022 at 11:35 AM
To: rulesfeedback@azbbhe.us

Hello,

I would like to offer my feedback regarding the following proposed change:

"Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year"

My business is 100% telehealth, and I know I am not the only one. I am very careful who I take on as a telehealth client. My clients prefer telehealth and it supports work life balance for those who I treat. Please DO NOT accept this policy if this is meant for all Arizona licensed providers.

Thank you for your time and consideration.

Sophia Fleming, LCSW, SEP
Psychotherapist
Somatic Experiencing Practitioner
Integrative Healing Counseling Service, PLLC
www.ihcounselingservice.com
623-277-0228

Gmail BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback/Questions on 2022 Proposed Rules

Kimberly Mahr <kimberly@bestdamnyou.com> Fri, Sep 9, 2022 at 12:57 PM
To: rulesfeedback@azbbhe.us

Hi!

I have some questions and concerns about one of the proposed changes on the table for the October RULEMAKING meeting(s).

R4-6-1106-B: "Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year. "

1. Is this directed at providers who do not reside/work/practice within AZ state or who are not licensed to practice in AZ.... or is it also directed at licensed AZ providers who operate in AZ?

2. Is the limit 90 days PER year? Or does it allow 90 days consecutive, then a break, and then another 90 days consecutive?

I would like to understand *the objective* behind this rule. Many of us (who are licensed and operating in AZ) have been using telehealth as an extremely effective and safe modality to reach Arizona clients who live in remote, underserved areas as well as those who have limitations to mobility or access to in-person care within a specialty. To set limits on responsibly practicing telehealth providers is not acceptable.

I welcome any clarifications you may have, as well as request that my concerns be noted in the upcoming meeting(s) in October.

Thank you!
Kimberly

Kimberly

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Telehealth Rulemaking Proposal

Ryan Schulz <rmschulz1983@hotmail.com> Tue, Sep 13, 2022 at 9:06 PM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Hello:

For the 2022 proposed rule making for telehealth, I would like to make a suggestion for the following proposed rule:

R4-6-1106.

B. Under A.R.S. § 32-3271(A)(2), an individual shall not provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona for more than ninety days. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year.

Can it be clarified that this rule only applies to individuals who are not licensed in Arizona?

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BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Feedback

jbilliard@selahcounseling.net <jbilliard@selahcounseling.net> Sat, Dec 17, 2022 at 2:19 PM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Proposed Rule Change for A.R.S. § 32-3271(A)(2)

I am writing to discuss the proposed rule change for Telehealth appts to not last more than 90 days. I am an elderly white female, that when first moved to Telehealth appointments during the pandemic, I was the first to say that it wouldn't work and that we couldn't effectively do the work that we do through an online platform.

However, since then I have maintained a hybrid of both Telehealth and in person clients. For my telehealth clients, it has really been a way that I can provide services to individuals that might not have transportation, are geographically remote and unable to find a provider in their area, or have either physical or emotional diagnosis that interfere with their ability to obtain counseling otherwise.

I am concerned that this limitation to services will limit vulnerable populations to obtain/maintain ongoing behavioral health services.

Jenny Billiard, LCSW
Selah Counseling Center
www.selahcounseling.net
623-499-3218 phone and fax
12406 North 32nd Street Suite 100 Phoenix, AZ 85032
Telehealth Sessions link: *https://sessions.psychologytoday.com/jenny-billiard*

Gmail

BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Clarification for consents

Dedra Serafin <dedra.serafin@mindpath.com> Sun, Dec 18, 2022 at 1:38 AM
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

In the upcoming rules 2022, I would like to suggest that if an agency uses an electronic means for consents and tx plan signatures and reviews these too should be allowed ***even if not on telehealth***.

MINDPATH Health has gone to an all-electronic consent format for all intakes and reviews, screenings, etc. *Wet signatures* will only be available for those without computer access and/or portal access.

If not possible, it will increase "paper copying costs and not automatically uploaded to the EMR but will need to be uploaded by a staff person causing increase risk for human error.

If that is already written allowing the suggestion above, then could I suggest a **rewrite** because **I didn't understand what it meant.**

A.R.S. § 32-3271(A)(2): 2. A person **who is *not a resident of this state*** if the person:

(a) Performs behavioral health services in this state ***for not more than ninety*** *days in any one calendar year* as prescribed by board rule.

(b) Is authorized to perform these services pursuant to the laws of the state or country in which the person resides or pursuant to the laws of a federally recognized tribe.

(c) **Informs the client of the limited nature of these services and that the person is not licensed in this state.**
Question: What if they are licensed but do not live in the state??

Dedra Serafin, RN, LPC, NCC

Regional Therapy Director

70 N. McClintock Dr. Suite #4

Chandler, AZ 85226

Office 480-464-4431| Fax 480-464-2338

Direct-line 480-801-9186 ext 2437

dedra.serafin@mindpath.com

Gmail BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

2022 Rulemaking Comment and Question

Michael A. Morton <mmorton2012@gmail.com> Mon, Dec 19, 2022 at 8:38 AM
To: BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

Dear Erin,

Thank you for you prompt response.

Yes! The clarification you are proposing re: NOT licensed in AZ makes since and I support it.

Also, you might want to review the last sentence of that proposed rule as it is not very clear.

My best to you this Holiday Season.

Respectfully, Michael Morton

Michael A. Morton
8850 North Treasure Mountain Drive
Tucson, AZ 85742-8414
505-270-2547

On Mon, Dec 19, 2022 at 8:24 AM BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us> wrote:

> Mr. Morton,
>
> I just left you a message regarding your feedback. In summary, the proposed telehealth rule only applies to those who are NOT licensed in Arizona. We will be proposing modified language to ensure clarity.
>
> If this does not answer your questions, please let us know and we can go from there.
>
> Thanks,
> *Erin Yabu*
> Deputy Director
>
> Image result for az state seal
>
> **STATE OF ARIZONA**
> **BOARD OF BEHAVIORAL HEALTH EXAMINERS**
> 1740 W. Adams Street, Suite 3600, Phoenix, AZ 85007
> Phone: 602-542-1811 Fax: 602-364-0890
> Email: erin.yabu@azbbhe.us
> Board Website: www.azbbhe.us
>
>

On Fri, Dec 16, 2022 at 12:34 PM Michael A. Morton <mmorton2012@gmail.com> wrote:

> Hello,
>
> I am writing to voice my concern over the following proposed additions to the "Rules for 2022: R4-6-1106, Telehealth : Section B": (Bold/Underline my emphasis):
>
> "Under A.R.S. § 32-3271(A)(2), an individual **shall not** provide counseling, social work, marriage and family therapy, or substance abuse counseling by telehealth to a client located in Arizona **for more than ninety days**. The individual providing behavioral health services under A.R.S. § 32-3271(A)(2) by telehealth to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year."
>
> **MY CONCERNS**
>
> 1. I can find no evidence-based research that justifies a limit to the number of 'days' , (or, the number of telehealth treatment sessions) if those 'days' or sessions are clinically appropriate.
>
> 2. Regarding: **"....**to a client in Arizona shall ensure the 90 days are consecutive and occur in one calendar year.": **I have no idea what that means.**
>
> 3. Please see *"Exploring the Efficacy of Telehealth for Family Therapy Through Systematic, Meta-analytic, and Qualitative Evidence"* at the end of my email that actually makes the case for Telehealth as a stand-alone intervention equal to or even better

than in-person therapy in some cases, including for individuals and families that had previously done in-person sessions. I offer the follow excerpts from this very well designed study for your consideration:

This systematic review and meta-analysis provides evidence that family-based therapy delivered via TH improves relational and mental health outcomes for family, parent, and child measures. Effects were equivalent to in-person delivery of interventions for many outcomes. In no studies included in the review were outcomes from TH found to be inferior to in-person delivery. These findings are preliminary, and should be interpreted in light of their limitations, including the small number of studies reviewed. Only 20 studies met inclusion criteria, a considerably smaller pool of research than has been examined for individual TH therapies.

Views about the suitability of cases for TH family therapy were congruent with those made in in-person work. No blanket contraindications for the use of TH were identified for this setting. As per in-person work, contraindications included imminent family violence risks and current severe disturbance in personal functioning with cognitive, neurological, or psychiatric origins that render participation unsafe or otherwise unhelpful for any participant. As with in-person consultation, such impairments may delay the timing of the intervention rather than presenting a blanket contradiction. An example of this may be presenting as drug affected on the day of an appointment.

Various therapeutic experiences and access/uptake issues were improved with the transition to TH delivery. Some felt that TH offered an improved ability for therapists to emphasize and align with others' experiences due to the equal visual presentation of faces on the screen. In this, being able to see one's own responses on the screen had potential benefits. Self-direction associated with use of TH also offered families a greater sense of ownership in their therapeutic process.

Some felt that TH promoted better equity in access and uptake. At the geographical level, there are benefits of TH for those living in remote areas. At the individual level, TH can better suit those with certain disabilities or preferences for interaction online.

We found congruence between the core practice and process elements of family therapy across in-person and TH modalities. Some unique benefits of practicing via TH were observed. Necessary accommodations made to therapeutic work with TH predominantly pertained to process rather than content changes, including the need to plan ahead for possible management of risk.

This study examined the efficacy and optimization of TH-delivered family therapy from multiple perspectives, aiming to inform future use of TH for family and systemic practice. The first study found that content from existing guideline documents was heavily weighted to operational rather than therapeutic aspects of therapy delivery. We identified a significant gap in information for practitioners to guide therapeutic adjustments that may be required when working with families over digital mediums, and especially with children. Study Two examined evidence for efficacy of TH in improving outcomes for families. Although the available literature was limited in volume, consistent results emerged. Meta-analyses demonstrated improvements in child behaviour problems for family therapy with equivalency between TH and in-person delivery from pre-to-post intervention and to follow-up. Relative to treatment as usual, internet resources, or wait-list control conditions for child behaviour problems, TH family therapy had superior improvement rates, pre- to post-intervention. Similarly, for family-oriented treatment of parental depression, meta-analyses showed that improvements were superior in TH relative to in-person delivery for pre- to post-intervention and to follow-up. Narrative review of individual studies excluded from meta-analyses found that TH delivery was equivalent to in-person delivery for a range of family, parent, and child outcomes, and frequently superior to minimal intervention control conditions. In the final study, qualitative analysis of one-on-one interviews with experienced family therapists found that core processes and practices of family therapy could be preserved in the online modality. Adaptations to delivery of therapy in TH were primarily process rather than content related. Taken together, the findings of these three studies provide considerable support for ongoing delivery of family therapy via TH.

Recommendations

The findings of these three studies provide considerable support for ongoing delivery of family therapy via TH. In this light we offer recommendations for further optimization of TH practice in family therapy contexts.

1. Progression in Guidelines

    a. Our evidence suggests a need for advanced clinical guidelines for enhanced engagement and therapeutic alliance. Guidelines offered by peak therapy and regulatory bodies would include but move beyond operational factors regarding the practical administration of TH delivery of services, to include critical points of difference in assessment, engagement and therapeutic alliance over TH media, for adults, and for children.
    b. Beyond the expectation for assessment of suitability, articulation of specific criteria for assessing the appropriateness of TH are needed. These are multi-factored, and range from operational constraints, to safety risks, to clinically based cautions and contraindications.

2. Enablers of Telehealth practice

    a. Further work is needed to address technology and access constraints to overcome obstacles that would otherwise preclude some families from TH services, including access for clients to software and necessary equipment, basic training in their use, and support for trouble-shooting.
    b. Similarly, evolving technologies may better enable the use of core family therapy techniques within TH services, for example, reflective teams, joint completion of genograms in sessions, and interactive play between children and therapist.

3. Training

    a. With rapid expansion of requirements for TH services comes the attendant need to train and support mental health workforces in the requisite skills. Where technology is likely to remain specific to local contexts and require in-house training, broader Family Therapy-specific training for TH would optimally be offered through accessible online training, consultation and support.

4. Research

    a. Our review of the existing literature shows some early encouraging replication of evidence and justifies further exploration. For example, efficacy data spanning longer post-treatment intervals, a focus on contraindications and iatrogenic effects would support practice and policy decisions about the continuation of TH interventions as an acceptable alternative to in-person interventions.
    b. Greater consistency in assessment of child, parent, and family outcomes across studies would assist.
    c. Inclusion of diverse samples, with exploration of limits to culturally safe TH practices will be important to applying this method at scale.
    d. Distinctions between forms of telehealth suitable for more than one therapist are yet to be systematically researched and further knowledge about the relative efficacies of co-therapy and team interventions via telehealth would provide valuable insights for future implementation.
    e. Mediators of change relative to in-person therapies and questions concerning pre-existing and presenting circumstances impacting efficacy are yet to be addressed.

Conclusion

Go to:

Findings of the current studies offer significant support for delivery by TH methods of family therapy services. The collective evidence suggests equivalent efficacy for relational and mental health outcomes from telehealth relative to face-to-face delivery. From both empirical review and grounded narrative perspectives, the studies included here provide a solid platform from which to advance telehealth methods for family therapy.

MY RECOMMENDATIONS

1. Table a decision on this language, and draft new language that is reflective of the current state of the research on this matter. This new language should include at least the following:

2. Do not place a limited number of "days" or "sessions" for Telehealth Treatment.
3. Mandate that an initial "Risk Assessment and Mitigation Plan" be included as an adjunct to the Treatment Plan in the clients file.
4. That this "Risk Assessment and Mitigation Plan" be reviewed and updated every 120 days and that update also to be added to the clients file.

Regarding the drafting of this new language as well as information to be required in the "Risk Assessment and Mitigation Plan", I would be happy to assist in the drafting of that information for the boards review and consideration.

Thank you for your consideration of my thoughts and recommendations on this matter.

Respectfully,

Michael A. Morton, PhD, AZ LMFT-15420 Linked In: https://www.linkedin.com/in/michael-morton-6552007/

(Currently employed in New Mexico doing Telehealth Therapy under my New Mexico License from Tucson. Not currently active in Arizona, though currently licensed and on Supervision Registry.)

PMCID: PMC7829321
PMID: 33492545

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Exploring the Efficacy of Telehealth for Family Therapy Through Systematic, Meta-analytic, and Qualitative Evidence

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Associated Data

Supplementary Materials

Data Availability Statement

Abstract

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There is a current escalating need for telehealth (TH) options in family mental health services. In the absence of replicated evidence, TH guidelines from peak bodies are largely based on assumptions of the effectiveness of TH methods. New investments in TH would optimally be based in evidence of clinical efficacy. To this end, we conducted three studies in which we (1) systematically reviewed eight professional guidelines for TH family therapy, (2) examined replicated evidence for the efficacy of TH family therapy through systematic review of 20 studies and meta-analyses of 13 effects, and (3) synthesised clinical accommodations to TH methodology from a study of 12 experienced TH family therapists. The studies found (1) a predominant focus in existing TH guidelines on operational matters pertaining to TH and relative neglect of therapeutic process; (2) meta-analyses of efficacy for child behavioural problems ($k = 8$) and parental depression ($k = 5$) showed equivalent outcomes in TH and face-to-face therapy and enhanced outcomes in TH relative to treatment as usual, resource provision (i.e. written materials), or wait-list control. Narrative review of 20 studies for a range of relational and mental health outcomes aligned with these findings; and (3) therapists defined clear conditions for enhanced engagement

and therapeutic process via TH and reflected on cautions and accommodations for purposes of rapport building and mitigating risk. Given moderate-strong evidence for the efficacy of TH methods of family therapy for a range of conditions, we offer recommendations for future implementation of TH for family therapy.

Supplementary Information

The online version of this article (10.1007/s10567-020-00340-2) contains supplementary material, which is available to authorized users.

Keywords: Telehealth, Family therapy, COVID-19, Systematic review, Meta-analysis

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Delivery of psychotherapy through synchronous digital or other communication technology, referred to here as telehealth (TH), has been used for some decades to enhance access to care. This delivery format overcomes obstacles to receiving therapy such as geographic distance (Kuulasmaa et al. 2004), lack of access to resources due to financial constraints (Doss et al. 2020; Stuttard et al. 2015), and transport barriers (Syed et al. 2013). In recent months, with the advent of the COVID-19 pandemic, TH use has risen in response to public health restrictions on in-person contact (Aafjes et al. 2020). This has affected multiple modes of therapy, including family therapy, the focus of this paper. In response to the rapid shift to TH delivery, guidance for the provision of family therapy delivered by TH has been sought, including necessary accommodations from in-person to online delivery and use of technology to enhance therapeutic processes. The need to gather evidence for the efficacy of online delivery of family therapy, although previously recognised (Kuulasmaa et al. 2004), has become pressing during the COVID-19 pandemic. This paper addresses knowledge gaps in three ways, by (1) reviewing existing guidelines on the implementation of TH for family therapy, (2) reviewing the replicated evidence for the efficacy of TH in family therapy via systematic review and meta-analytic methods, and (3) describing further refinements for TH delivery of family therapy, through a qualitative study of 12 Family Therapists experienced in TH methods.

Previous research has examined use of TH for other modes of therapy, such as individual psychotherapy. These have included cognitive behaviour therapy (e.g. Lichstein et al. 2013), interpersonal therapy (Heckman et al. 2017), and behavioural activation therapy (Egede et al. 2015). In these contexts, systematic reviews and meta-analyses of trials of TH have established superior outcomes of TH relative to active or wait-list control (Ahern et al. 2018). Importantly, TH-delivered individual psychotherapy has also shown equivalent outcomes to in-person delivered therapy (Ahern et al. 2018; Drago et al. 2016; Norwood et al. 2018).

In contrast to this preliminary evidence-base for TH in individual psychotherapy, review of outcomes for TH in family treatment contexts has yet to be conducted. Caution is needed in extrapolating these findings to support the use of TH in the family therapy setting. Significant differences in the application of TH to family treatment contexts include accommodating more than one person “in the room” and managing the complexity of attending to family and communication dynamics during sessions. In addition, particular techniques used in family therapy add further complexity to the move from in-person to technology, such as use of visual aids including genograms and physically re-positioning family members. These have obvious operational and therapeutic implications for how successfully family therapy may be delivered and received.

The limited literature to date focuses largely on the technical nature of TH delivery, and its possible advantages for family therapy, such as supporting the requirement to not talk over one

another, and disadvantages, such as the potential for misunderstanding due to screen resolution limitations (Kuulasmaa et al. 2004). In contrast, impacts on the therapeutic process involved in delivering family therapy via TH have received limited attention.

In this context, we conducted three studies to examine technical and therapeutic considerations for delivering family therapy via TH. Study One aimed to examine current guidelines for TH delivery. Study Two aimed to examine the replicated evidence for the efficacy of TH in family therapy contexts, via a systematic review and meta-analysis. Study Three aimed to summarise the therapeutic processes core to effective TH consultations with families, via analysis of family therapists' descriptions of effective and ineffective TH consultations.

Study One: Review of Operational and Therapeutic Guidelines for Family Therapy TH Go to:

Study One aimed to review available guidelines for delivery of family therapy via TH.

Method

Search Procedure Grey literature for operational and therapeutic guidelines for TH was searched via the Google search engine on 10 April 2020. The search terms used were "guidelines", "telehealth", and "family therapy". Results from the first 10 pages (100 results) were screened for inclusion. Guidelines were included if they were publicly available and provided advice on the conduct of TH in a therapy setting involving family consultation. One additional resource was sourced on 3 June 2020. Resources were excluded if they were secondary citations from a higher peak body, advertisements, marketing, or individual blogs. Peer-reviewed literature was excluded and examined in the systematic review section of this paper.

Resource Selection Eight resources providing guidelines or advice for conducting TH in family therapy contexts met inclusion criteria. These are summarised below.

Results

Seven of the eight resources were designed to provide guidance for TH delivery of systemic, family and/or marriage therapy, or therapy with children and adolescents (AAFT 2020; Caldwell et al. 2017; Helps et al. 2020; ILB-MFT 2016; Myers et al. 2017; Rogers 2020; Tran-Lien 2020). One resource was for governing bodies to regulate use of TH (AMFTRB 2016). Four of the eight resources preceded the COVID-19 pandemic, and four were developed specifically in response to escalating need for TH delivery of therapy during the pandemic (AAFT 2020; Helps et al. 2020; Rogers 2020; Tran-Lien 2020).

Guidelines for Operational Arrangements

Ten themes related to operational guidelines were identified, as outlined in Table 1. The most commonly identified themes are summarised below.

Table 1

Level of detail provided for operational guidelines for Telehealth according to resource source

Theme	Guideline Document Source							
	AAFT	AAMFT	AMFTRB	ATA	CAMFT	Emerging minds	ILB-MFT	TP-NHSFT
Security	None	Moderate	Detailed	None	None	None	Brief	None
Risk/specific populations	None	Brief	Detailed	Detailed	None	None	None	Very brief
Consent and documentation	None	Moderate	Detailed	Brief	Moderate	Very brief	Moderate	None
Confidentiality	Brief	None	Moderate	None	None	Brief	Brief	Brief
Client identify	None	Brief	Moderate	None	None	None	Very brief	None
Working with children	None	None	Moderate	Detailed	None	Brief	None	None
Platform/devices/access	None	Brief	Moderate	Moderate	Moderate	Brief	None	Moderate
Workspace boundaries/room setup	None	None	None	Detailed	None	Brief	None	Moderate
Call interruptions	None	Brief	Brief	None	None	None	None	Very brief
Recording sessions	None	None	Brief	None	None	None	Very brief	Brief

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AAFT Australian Association of Family Therapy, *AAMFT* American Association for Marriage and Family Therapists, AMFTRB Association of Marital and Family Therapy Regulatory Boards, ATA American Telemedicine Association, CAMFT California Association of Marriage and Family Therapists, ILB-MFT Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists, TP-NHSFT The Tavistock and Portman NHS Foundation Trust

Technology Requirements for Conducting TH Six of the eight resources addressed at least one issue concerning platform for TH delivery, device use, access, or how to deal with call interruptions. Recommendations for use of particular platforms were infrequently provided, with greater focus on requirements of the platforms or devices to provide reliable, private, and quality connections (ARFTRB 2016; Caldwell et al. 2017; Helps et al. 2020; Myers et al. 2017; Tran-Lien 2020). Prior testing of platforms and devices was recommended to ensure client(s) could access the TH space (Rogers 2020), and plans be made in advance to deal with call interruptions due to technology failure or connection difficulties (AMFTRB, 2016; Caldwell et al. 2017; Helps et al. 2020). One specified the video image be stable and that all members of families and their interactions, including facial features and expressions, can be viewed (Myers et al. 2017).

Client Consent and Confidentiality Recommendations on this element of practice were made by most resources. Only two resources attended to prior written consent for recording sessions (AMFTRB 2016; Helps et al. 2020), and others referred to obtaining in situ verbal or written consent for TH (Myers et al. 2017; Tran-Lien 2020). Others provided detailed recommendations on risks and benefits of online therapy, training or credentials of the therapist in delivering TH therapy, privacy settings, alternative communication methods, and emergency procedures (AMFTRB 2016; Caldwell et al. 2017; ILB-MFT (Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists 2016). Two resources noted the need for a confidential space in which to conduct TH, from both the client(s) and therapists' perspective (AMFTRB 2016; Helps et al. 2020; Rogers 2020). The need to inform clients of the limits or risks to confidentiality from TH delivery was also advised by three resources (AAFT 2020; AMFTRB 2016; ILB-MFT 2016) and to safeguard electronic storage accessible only by authorised persons (AMFTRB 2016; ILB-MFT 2016). A recommendation for security regarding TH platforms and data storage was made by three resources (AMFTRB 2016; Caldwell et al. 2017; ILB-MFT 2016), including for password protection and that encryption be used for the therapists' electronic communication.

The need to verify client identity was advised by three resources, from noting that the identity of the client(s) should be verified by the TH provider (ILB-MFT 2016), to continuous verification across the period of engagement, through special procedures, such as passwords, codewords, or agreed upon phrases (AMFTRB 2016; Caldwell et al. 2017).

Risk and Client Safety One resource mentioned the need to assess risk indications that TH may be contra-indicated for some clients (Helps et al. 2020). Three others gave information on emergency planning, including the need to be aware of emergency resources in the client(s) location and to provide written information to the client(s) about emergency procedures (AMFTRB 2016; Caldwell et al. 2017; Myers et al. 2017), and the need to assess for physical risk of harm in the setting/environment in which the client accesses TH. Possible exclusions from TH in unsupervised settings included families with maltreatment histories (Myers et al. 2017).

Children and TH Somewhat surprisingly, only three resources specifically addressed working with children in the TH setting. Matters addressed included the need for children to be familiarised with technology through game play and exploration of platform features (Rogers 2020), and that consent and identity of the parent or guardian providing the consent be verified (AMFTRB 2016). Myers et al. (2017) made numerous recommendations about supervision of the TH session, safety risks for young people including the potential of the young person to act out and attack devices, and considerations that some children may not tolerate TH due to developmental or psychotic disorders. In addition, conduct of TH in non-neutral settings that may be sites of violence or neglect, or where a volatile caregiver or parent is present were noted contraindications.

Workspace Boundaries and Room Set-Up Three resources addressed these issues. Recommendations included obscuring the therapist's background where possible (Rogers 2020) and ensuring clients' space was free from interruptions, from the risk of being overheard (Helps et al. 2020), and was sufficiently large to accommodate all family members and to allow children to move around as needed (Myers et al. 2017).

Guidelines for Engagement and Therapeutic Processes on TH

Ten themes for therapeutic guidelines were identified (see Table 2). The most frequently mentioned themes are outlined below.

Table 2

Level of detail provided for therapeutic guidelines for Telehealth according to resource source

Theme	Guideline Document Source							
	AAFT	AAMFT	AMFTRB	ATA	CAMFT	Emerging Minds	ILB-MFT	TP-NHSFT
Assessment of appropriateness for telehealth	None	Moderate	Moderate	Brief	Brief	Brief	Moderate	None
Session structure	Detailed	None	None	None	None	Moderate	None	Brief
Rapport and engagement	Moderate	None	None	None	None	Moderate	None	Very brief
Visual cues and use of the body	Detailed	None	Moderate	Brief	None	Moderate	None	Moderate
Visual tools and genograms	Brief	None	None	None	None	Brief	None	Brief
Reflecting conversations	None	None	None	None	None	None	None	Brief
Managing emotions	Moderate	None	None	None	None	None	None	Brief
Therapist presence / state of mind	Moderate	None	None	None	None	None	None	None
Monitoring progress	None	Brief	Brief	None	None	Brief	Brief	None
Supervision	None	None	Detailed	Brief	None	None	None	Brief
Session Content	None	None	None	None	None	None	None	Detailed

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AAFT Australian Association of Family Therapy, *AAMFT* American Association for Marriage and Family Therapists, *AMFTRB* Association of Marital and Family Therapy Regulatory Boards, *ATA* American Telemedicine Association, *CAMFT* California Association of Marriage and Family Therapists, *ILB-MFT* Idaho Licensing Board of

Professional Counselors and Marriage and Family Therapists, *TP-NHSFT* The Tavistock and Portman NHS Foundation Trust

Assessing for Appropriateness for TH Six guideline documents (AMFTRB 2016; Caldwell et al. 2017; ILB-MFT 2016; Myers et al. 2017; Rogers 2020; Tran-Lien 2020) stated that assessments for appropriateness of TH should be conducted, and based on varying considerations such as the nature and severity of symptoms, clients' ability to use TH platforms, and risks and benefits of TH-delivered therapy. However, specific thresholds for indicators or contraindicators of use of TH were not provided.

In-Session Communication and Engagement Issues here included greater concentration demands on therapists and clients of TH relative to in-person work, and acknowledged a possible need to curtail session length (Helps et al. 2020). The need for new rituals was suggested, to signal different stages of the therapy session, such as beginnings and endings (AAFT 2020; Helps et al. 2020). Similarly, different approaches to promoting engagement and rapport and clear communication were advocated (AAFT 2020; Helps et al. 2020; Rogers 2020), for example, through visual cues, variation of voice (i.e. intonation, tempo), and physical signals such as waving or the thumbs-up sign (AAFT 2020; AMFTRB 2016; Helps et al. 2020; Myers et al. 2017; Rogers 2020). The additional need for therapists to maintain attentiveness in sessions given the more effortful nature of TH was also mentioned (AAFT 2020).

Managing Intensity of Emotion and Focus in TH Delivery Suggested strategies here included setting up a contract that outlines the planned response to escalation of emotion (Helps et al. 2020) and using directive problem-solving approaches to contain distress (AAFT 2020).

Therapist Self-Care The added utility of supervision and use of technology to facilitate supervision was mentioned by three resources (AMFTRB 2016; Helps et al. 2020; Myers et al. 2017), including sharing of recording of video conference sessions for review by supervisors (Helps et al. 2020)..

Use of Family Therapy Specific Skills and Tools Only two resources specifically mentioned ongoing use of tools such as use of genograms (AAFT 2020; Helps et al. 2020) and reflecting conversations (Helps et al. 2020).

Monitoring Client(s') Progress

This issue was included in some guidelines AMFTRB (Association of Marital and Family Therapy Regulatory Boards) 2016; Caldwell et al. 2017; ILB-MFT (Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists) 2016; Rogers 2020. In some instances, these were specific to monitoring the effectiveness and appropriateness of TH delivery of therapy (AMFTRB 2016; Caldwell et al. 2017; ILB-MFT 2016).

Session Content No guideline implied that the content of a session would be affected by the differences between TH and in-person work. Continued support for the family to set the agenda for the discussion was assumed throughout. One set of guidelines developed post COVID-19 restrictions observed that COVID-19-related topics were frequently raised, and needed time to discuss, including addressing children's worries about the virus, physical distancing, and contact between parents and children in separated families (Helps et al. 2020).

Brief Discussion

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Study One reviewed publicly available documents providing guidelines for provision of TH within family therapy settings. Half of the documents had been produced specifically in response to the COVID-19 pandemic. Perhaps reflecting the rapid move to provision of TH, content of the guidelines documents was heavily weighted to providing operational guidance, including use of technology and processes for obtaining client consent and managing confidentiality. Less attention was given to guidance for adapting therapeutic processes within the TH setting and somewhat surprisingly, few resources attended to ways of working with children in TH in relation to either operational or therapeutic guidelines. No guideline attended to the evidence for effectiveness of TH.

Study Two: Systematic Review and Meta-analysis

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The aim of Study Two was to conduct a systematic review of literature examining relational and mental health outcomes of family therapy via TH and, where possible, to conduct meta-analyses of commonly reported outcomes.

Method

This review was conducted in accordance with the preferred reporting items for systematic review and meta-analysis protocols (PRISMA) guidelines for systematic reviews and meta-analysis protocols (Moher et al. 2015).

Search Strategy

A systematic search of the following databases was conducted in April 2020: PsycINFO, CINAHL, FAMILY, ProQuest Psychology Journals, ProQuest Dissertations and Theses, and Google Scholar. Search terms were telemedicine OR telehealth OR “telemental health” OR telepsych* OR ehealth OR edelivery OR online AND “family health services” OR “family therapy” OR “family consult*” OR “clinical consult*” OR “group consult*” AND trial OR “randomi*ed control* trial*” OR “randomi*ed clinical trial*” OR “experimental design” OR “random sampl*” OR “case control”.

The search was restricted to English language peer-reviewed papers. The ProQuest Dissertations and Theses and Google Scholar searches were not restricted to peer-review literature to allow retrieval of grey literature. Given the large number of records from Google Scholar on irrelevant topics, screening was restricted to the first 50 returns. A total of 177 papers were retrieved. After removal of duplicates ($n = 15$), 162 papers remained for screening.

Study Selection

All papers ($n = 162$) were screened for eligibility by two authors (AB and AS) across two levels; title and abstract, and full text. Papers were included if: (a) they reported on a TH based delivery of a therapeutic intervention (i.e. synchronous audio or video consult); (b) the treatment was simultaneously received by more than one client (i.e. was a family or group); and (c) the paper reported on relational health or mental health outcome measures.

The title and abstract screen excluded 112 papers and a further 30 were excluded following full-text screen. Reasons for exclusion at this level are shown in Fig. 1. One additional paper that was already known to the authors was included. Twenty papers met eligibility criteria for inclusion. Of these, 9 reported on effects that were eligible for inclusion in meta-analysis.

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Fig. 1

Selection process of articles for inclusion in review and meta-analyses

Data Extraction

Two authors (AB and AS) extracted data from eligible papers. The data described study country, study design, treatment sample and size, intervention type and delivery formats, relevant outcomes and their measures, relevant results, and reported effect sizes. For meta-analytic categories, pre- and post-intervention means and standard deviations were extracted from studies for effect size calculation.

The quality of included studies was assessed by one author (AS) using the 12-item Methodological Index for Non-Randomized Studies (MINORS) scale (Slim et al. 2003). This scale assesses methodological quality for both non-randomised and controlled studies. Items are scored as 0 (not reported), 1 (reported but inadequate), and 2 (reported and adequate). An ideal score for a randomised controlled study is 24 and 16 for non-comparative studies. Additionally, one item from the Jadad Scale (Jadad et al. 1996) for Reporting Randomised Controlled Trials was included to assess randomisation. Studies received 2 points if described as randomised, and the method of randomisation was described and appropriate. Studies received 1 point if randomisation was mentioned but the method of randomisation was inappropriate. A score of zero was awarded if randomisation was not explicitly mentioned. A second author (AB) assessed 20% of studies for inter-rater reliability of study quality. Scores for each study are included in Supplementary Material.

Meta-analyses

Meta-analyses were possible for two outcomes, child behaviour problems and parent depression. Analyses were conducted using the Comprehensive Meta-Analysis software (Version 3; Borenstein et al. 2005). Effect sizes (Hedges *g*) were calculated for the interaction effect (between group (control and intervention) change from pre–post interventions) for each study. Effect sizes from individual studies were then combined to produce an aggregate effect size, using random-effects models. Given studies did not report pre–post correlations of child behaviour or caregiver depression, we used a conservative *r* of 0.70 as recommended by Rosenthal (1984) to calculate the group x time effect sizes. The I^2 statistic was used to assess the heterogeneity of the subgroups with scores of 0.25, 0.50, and 0.75 corresponding to low, moderate, and high levels, respectively (Higgins et al. 2003). Given there were not more than five studies in any subgroup, meta-regression moderation analyses could not be conducted to assess for age or gender differences in samples.

Results

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Characteristics of Included Studies

Details regarding the characteristics of included studies are shown in Table 3. The 20 papers reported on samples comprising families; mostly parent–child compositions ($n = 18$), with

others involving adult relatives ($n = 2$; *Glynn et al. 2010; *Rotondi et al. 2005). Most studies were conducted in the USA ($n = 16$), with three Australian and one Canadian study.

Table 3

Sample, study characteristics, and findings of included studies ($N = 20$)

Study; Country	Study design & sample (*N*)	Intervention (s) and study conditions	Assessment time points	Attrition	Relevant outcome (s)	Outcome measure (s)	Relevant findings
*Anderson et al. (2017)	Uncontrolled experimental trial Adolescents 13–18 years with anorexia nervosa (AN) and their parent(s)	TH (video) FBT. 20 sessions over 6 months	Baseline, post-treatment, 6-month follow-up	0	Adolescent weight (BMI), eating disorder symptoms, depressive symptoms, self-esteem	EDE BDI RSE	Significant increase in BMI and reductions in eating disorder symptoms from baseline to post-treatment and to 6-month follow-up. Significant improvement in depressive symptoms and self-esteem from baseline to follow-up
*Comer et al. (2017a); USA	RCT families; child 4–8 years, child diagnosis of obsessive–compulsive disorder (OCD) (*N* = 22)	TH (video) FB-CBT; F2F FB-CBT 12 sessions over 14 weeks (both conditions)	Baseline, post-treatment, 6-month follow-up	2 families (1 TH, 1 F2F)	Child OCD symptoms Family accommodation of OCD symptoms	ADIS-IV-C/P CY-BOCS CGI-S/I CGAS FAS-PR	Child OCD symptoms and family accommodation of OCD symptoms improved from baseline to post-treatment, and to follow-up in both conditions; no significant difference between TH and F2F. 60–80% had clinically significant improvement across both conditions
*Comer et al. (2017b); USA	RCT Families; children 3–5 years, child diagnosis of behavioural disorder (*N* = 40)	TH (video) PCIT; F2F PCIT	Baseline, mid-treatment, post-treatment, 6-month follow-up	12 families (6 TH, 6 F2F)	Child behaviour problems	K-DBDS CGI-S/I CGAS ECBI CBCL	Both conditions had large-to-very-large positive effects on children's behavioural difficulties. Most outcomes were comparable across conditions; significantly higher rate of "excellent responses" in TH PCIT than in F2F PCIT
*Dadds et al. (2019); Australia	RCT (× 2) Study 1: Rural families; child 3–9 years, child diagnosis of oppositional defiant or	Both studies—TH (video) IFICCP; F2F IFICCP	Both studies: Baseline, post-treatment, 3-month follow-up	Study 1: 11 families (7 TH, 4 F2F) Study 2: 7 families (6 F2F, 1 VTC)	Child behaviour problems Parent depression Parent anxiety	SDQ BSI	Large improvements in child behavioural difficulties in both studies; no significant difference between conditions. Moderate improvements in parent depression and anxiety in both studies; no significant difference between treatment conditions

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Outcome Measures: *AAQ-II* Acceptance and Action Questionnaire–II, *ADIS-IV-C/P* Anxiety Disorders Interview Schedule for Children and Parents for DSM–IV, *ASDS* Acute Stress Disorder Scale, *BDI* Beck Depression Inventory, *BPRS* Brief Psychiatric Rating Scale, *BRIEF* Behavior Rating Inventory of Executive Functions, *BSI* Brief Symptom Inventory, *CAFAS* Child and Adolescent Functional Assessment Scale, *CBCL* Child Behavior Checklist, *CES-D* = Center for Epidemiological Studies Depression Scale, *CGAS* Children's Global Assessment Scale, *CGI-S/I* Clinical Global Impression-Severity and Improvement Scales, *CSQ* Caregiver Strain Questionnaire, *CY-BOCS* Children's Yale-Brown Obsessive- Compulsive Scale, *DASS* Depression Anxiety Stress Scales, *DBD* Disruptive Behaviour Disorder Rating Scale, *EATQ-R* Early Adolescent Temperament Questionnaire, *ECBI* Eyberg Child Behavior Inventory, *EDE* Eating Disorder Examination (Interview), *FAD-PS* Family Assessment Device Problem-Solving subscale, *FAS-PR* Family Accommodation Scale–Parent

Report, *FAS* Family Attitude Scale, *FES* Family Empowerment Scale, *ICS* Issue Change Scale, *IFIRS* Iowa Family Interaction Rating Scale, *IFS* Issue Frequency Scale, *ISS* Issue Severity Scale, *K-DBDS* Kiddie-Disruptive Behavior Disorders Schedule, *K-SADS-PL* Schedule for Affective Disorders and Schizophrenia-Present and Lifetime Versions, *SDQ* Strengths and Difficulties Questionnaire, *MSPSS* Multidimensional Scale of Perceived Social Support, *PCIT* Parent–Child Interaction Therapy, *PCL-S* Posttraumatic Stress Disorder Checklist-Specific, *PECI* Parent Experience of Child Illness, *PHQ-9* The Patient Health Questionnaire, *PPF* Parental Psychological Flexibility Questionnaire, *PSDRS* Problem-Solving Discussion Rating Scale, *PSI* Parenting Stress Index, *PTC* Parenting Tasks Checklist, *RSE* Rosenberg Self-Esteem Scale, *SSRS* Social Skills Rating System, Interventions: *ACT* Acceptance and Commitment Therapy, *CAPS* Counsellor-Assisted Problem-Solving, *F2F* Face-to-Face in-person delivery, *FB-CBT* Family-Based Cognitive-Behavioural Therapy, *FBT* Family-based Therapy, *FPS* Family Problem-Solving Therapy, *IFCM* Issue-Specific Family Counselling Model, *IFICCP* Integrated Family Intervention for Child Conduct Problems, *IRC* Internet-resource comparison, *MFG* Multi-Family Group, *TAU* Treatment As Usual, *TH* Telehealth, *TOPS-Family* Teen Online Problem Solving with Family, *TOPS-TO* Teen Online Problem Solving with Teen Only, *WC* Wait-list Control

Twelve studies were described as randomised controlled trials (RCT); others were feasibility studies or pilot trials ($n = 4$), experimental trials ($n = 2$), modified randomised controlled field experiments ($n = 1$), and case–control studies ($n = 1$). Papers were published between 2002 and 2019. In total, the included studies reported on 1992 families or parent–child/adult-relative dyads, with a mean sample size of 99.6 (SD = 91.81, range = 10–322).

The included studies drew on a range of interventions, including Family Problem-Solving Therapy (FPS; $n = 5$), Family-Based Cognitive Behavioural Therapy (FB-CBT; $n = 2$), and Parent–Child Interaction Therapy (PCIT; $n = 1$). Two studies used a multi-family group (MFG) approach for individuals with a psychotic illness and their adult relatives. One study used an Acceptance and Commitment Theory (ACT) framework, and one used the Triple P: Positive Parenting Program intervention. One study used family-based treatment (FBT) for anorexia nervosa. All other studies described a non-specific cognitive-behavioural and/or skills-based approach (see Table 3).

Study Quality

The average score for quality assessment ratings of included studies was 18.9 out of a possible maximum of 26. When the Jadad scale item (item 13) was removed, no studies exceeded a score of 24. Scores for each included study are presented in Online Resource 1. Many studies either reported inadequate information or did not address study blinding or prospective calculation of sample size, and many studies reported a loss of > 5% of the sample to follow-up. Twenty percent of studies were double rated. Inter-rater agreement on study quality was 100%.

The Replicated Evidence: Meta-analytic Findings

Across the 20 included studies, there were 37 relevant effects relating to mental health and/or relational health outcomes. Meta-analyses were possible for thirteen effects from eleven studies related to the efficacy of TH in addressing child behavioural problems ($k = 8$) and parental depression ($k = 5$). The remaining effects could either not be meaningfully clustered into a domain with at least one other similar effect ($k = 22$), or the required statistical information was not given in text nor provided by authors upon request ($k = 2$).

Child Behavioural Problems

In the pre- to post comparison (see Fig. 2), the efficacy of the TH interventions for child behavioural problems was somewhat superior to the control interventions (in-person, internet resources, treatment as usual, or wait-list control), with a small effect size. The *Q* statistic assessment of heterogeneity confirmed studies in the meta-analysis shared the same effect size ($Q = 2.828$, $p = 0.900$, $I^2 < 0.001$). Publication bias did not appear to be an issue, with a visual inspection of the funnel plot showing an even dispersal of studies, and Egger's

regression confirming the included studies were symmetrically distributed [p (2-tailed) = 0.66]. The classic Fail-Safe N was calculated and revealed that an additional 10 studies with an effect size of zero would be required to render the current findings non-significant.

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Fig. 2

Meta-analyses of the effect of telehealth interventions for child behavioural problems. *E-Health* telehealth delivery, *F2F* face-to-face, *IRC* internet-resources comparison, *TAU* treatment as usual, *WLC* wait-list control

Subgroup analyses revealed the effect size did not differ across studies, based on control group type $Q_{between} = 1.40$, $df = 3$, $p = 0.706$, or the outcome measure used (i.e. Child Behavior Checklist, Eyberg Child behaviour Inventory, or Strengths and Difficulties Questionnaire), $Q_{between} = 0.34$, $df = 2$, $p = 0.846$. Although Fig. 2 shows significant differences between TH and provision of resources but not between TH and in-person delivery, when considered collectively the effect sizes did not differ based on comparison type.

For the four studies that collected follow-up data, meta-analysis showed a non-significant trend for persisting improved outcomes in TH relative to control, also with small effect size. Subgroup analyses revealed the effect size did not differ across studies, based on the control group type, $Q_{between} = 0.56$, $df = 1$, $p = 0.454$, or the measure used, $Q_{between} = 0.93$, $df = 1$, $p = 0.336$.

Parental Depression As shown in Fig. 3, the efficacy of the TH interventions appeared to be superior to control interventions, all in-person comparisons, at both pre- to post intervals, Hedges $g = -0.23$ (95% CI −0.57, −0.07) $p = 0.011$, and pre to follow-up, Hedges $g = -0.33$ (95% CI −0.47, −0.11) $p = 0.002$, for parental depression. Both were small effects. The heterogeneity among effect sizes was low in both pre to post ($Q = 1.161$, $p = 0.445$, $I^2 < 0.001$) and pre to follow-up ($Q = 0.877$, $p = 0.831$, $I^2 < 0.001$).

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Fig. 3

Meta-analyses of the effect of telehealth interventions for parental depression. *E-Health* telehealth delivery, *F2F* face-to-face

Publication bias did not appear to be an issue, with a visual inspection of the funnel plot showing an even dispersal of studies, and Egger's regression confirming the included studies were symmetrically distributed at pre to post (p (2-tailed) = 0.12) and pre to follow-up (p (2-tailed) = 0.34). The Fail-Safe N analyses show that the addition of two and seven studies at each timepoint comparison with an average effect size of zero would render the current findings non-significant.

Narrative Summary of Individual Studies

The included individual studies reported effects relating to family outcomes, child outcomes, and outcomes for individuals with a psychotic illness and their adult relatives. Study findings for effects

not included in the meta-analysis are described below and details of study interventions are included in Table 3.

Family Outcomes Included studies assessed a range of negative (e.g. distress, conflict) and positive (e.g. problem solving) family outcomes. Many studies reported improvements in outcomes following engagement with TH. However, changes in outcomes from pre- to post intervention and to follow-up were not different from changes observed in comparison conditions for any outcomes.

A family counselling intervention delivered via TH (videoconferencing) with parent–teenager dyads led to significant reductions in the severity and frequency of family problems to post-intervention. Improvements were maintained at 6-month follow-up (*Glueckauf et al. 2002). There was no evidence of any significant differences between this intervention delivered via TH or via telephone or in-person delivery.

One study of families with children with traumatic brain injury (TBI) used a web-based family problem-solving therapy with a counsellor via TH (videoconferencing) sessions. Improvements to post-treatment were observed for family problem solving. These were not maintained to 18-month follow-up (*Narad et al. 2015). Other effects were mixed and depended on differing levels of severity of TBI of adolescents. For family conflict, significant decreases were observed at 18-month follow-up only for adolescents with severe TBI. For adolescents with moderate severity of TBI, levels of effective family communication remained steady across assessment timepoints for the TH group. Declines at 12-month follow-up were observed in the control group who received internet resources.

The use of TH (videoconference) delivered family-based cognitive-behavioural therapy (FB-CBT) in families with a child with obsessive–compulsive disorder (OCD) led to improvements in family accommodation of OCD symptoms which were maintained at 6-month follow-up (*Comer et al. 2017a, b). Immediate and 6-month follow-up improvements were comparable to those in the in-person condition.

Parent Outcomes Parent mental health outcomes were assessed in four of the included studies. Relative to primary care, a hybrid TH approach for caregivers of a child with attention-deficit hyperactivity disorder demonstrated significantly greater improvements in caregiver stress, depression, and caregiver strain (Stoep et al. 2017). This intervention comprised videoconference-delivered psychiatry sessions and skills-based behavioural training.

In other studies, interventions were implemented for child conduct disorders utilising the Integrated Family Intervention (*Dadds et al. 2019) and family problem solving following adolescent traumatic brain injury (*Wade et al. 2019). No differences were noted between TH and in-person delivery. Improvements in parent anxiety and depression at post-intervention were maintained to 3 months (*Dadds et al. 2019), and depression and distress at post-intervention maintained 9 months after baseline (*Wade et al. 2019). TH intervention (videoconferencing) in acceptance and commitment therapy for parents with a child with life-threatening illness was piloted in a non-controlled feasibility study. Small but non-significant improvements in parent depression, anxiety, stress, and PTSD symptoms were noted at post-intervention (*Rayner et al. 2016).

Child Outcomes Studies reported a diverse array of child outcomes. One study explored the impact of TH (videoconferencing) FB-CBT on child OCD symptom severity. Improvements comparable to the in-person FB-CBT condition were noted for TH in OCD symptoms and in clinician-rated functioning, and maintained at 6-month follow-up (*Comer et al. 2017a, b).

*McGrath et al. (2011) examined a family-centred coaching intervention with online resources accessed by families and weekly TH (telephone) coaching for families with a child diagnosed with oppositional defiant disorder (ODD), attention-deficit hyperactivity disorder (ADHD), or an anxiety disorder. Successful outcomes, defined as children no longer meeting diagnostic criteria, were observed in higher rates in the TH groups relative to treatment as usual control. Effects were maintained to 8 months post baseline for the ODD group and to 12 months for the ADHD and anxiety groups (*McGrath et al. 2011). *Sibley et al. (2017) examined a 10-session family therapy skills-based TH (video-conferenced) intervention for adolescents with attention-deficit hyperactivity disorder (ADHD) and their parents. Parent and teacher-rated severity of inattention symptoms improved post-treatment. Findings reflect within-group change over time, as no control group was used. A further study examined the feasibility and preliminary effects of family-based treatment (FBT) delivered via TH (videoconferencing) in a pilot trial for adolescents with anorexia nervosa (*Anderson et al. 2017). Significant improvements in weight and eating disorder symptoms were apparent at post-treatment and maintained at 6-month follow-up. Adolescents rated the treatment as moderately positively, whereas mothers and fathers rated the treatment very positively.

Two studies utilised TH for families where a child had TBI. Family problem-solving therapy delivered by videoconferencing improved daily functioning of children relatively more than an internet resource control group, with effects evident 12 months after treatment completion (*Wade et al. 2015). Similarly, compared to individual therapy, a TH (videoconferencing)-delivered problem-solving program resulted in more improved executive functioning (parent report) post-treatment in adolescents (*Wade et al. 2018). Interaction effects between family stress levels and executive function were noted.

*Davis et al. (2016) examined the benefit of a TH intervention, delivered by videoconference or by telephone, in treating paediatric obesity on child behavioural outcomes. The sample did not display clinically significant levels of behavioural problems at baseline and there were no group by time changes over the course of the intervention. This study was not included in the meta-analysis of the same category, as no quantitative statistics were made available for analysis.

Adults with Psychotic Illnesses and Their Relatives Two studies examined outcomes for individuals with a psychotic illness (schizophrenia and schizoaffective disorder) and their adult relatives from participation in an online support program with TH therapy/facilitated synchronous chat for persons with schizophrenia, family member groups, or multi-family groups (*Glynn et al. 2010; *Rotondi et al. 2005). Mixed findings were observed. Relative to the treatment as usual control groups, for individuals with psychotic disorder, TH intervention reduced stress in one study (*Rotondi et al. 2005) but did not reduce distress or impact clinical symptomatology in another study (*Glynn et al. 2010). In neither study were improvements in perceived social support observed (*Glynn et al. 2010; *Rotondi et al. 2005).

For adult relatives of individuals with a psychotic disorder, participation in TH did not alter perceived social support or stress (*Rotondi et al. 2005) or alter anxiety/depression or somatisation symptoms, reflective of distress (*Glynn et al. 2010), relative to treatment as usual. Relatives were found to have improved levels of family relationship stress but not perceived social support over time. However, these were not examined in comparison with change in the control group (*Glynn et al. 2010).

Brief Discussion

Go to:

This systematic review and meta-analysis provides evidence that family-based therapy delivered via TH improves relational and mental health outcomes for family, parent, and child measures. Effects were equivalent to in-person delivery of interventions for many outcomes. In no studies

included in the review were outcomes from TH found to be inferior to in-person delivery. These findings are preliminary, and should be interpreted in light of their limitations, including the small number of studies reviewed. Only 20 studies met inclusion criteria, a considerably smaller pool of research than has been examined for individual TH therapies.

Study Three: Qualitative Exploration of Family Therapist Experiences with TH

Go to:

Study Three aimed to explore family therapists' perspectives on delivering family therapy via TH and to understand elements of therapy that are more or less effective through TH delivery relative to in-person experiences. In addition, the study aimed to understand perceptions of risk of use of TH.

Method

Participants Participants were family therapists ($n = 12$; three male and nine female) at a specialist public health funded family services centre. Invitation to participate was extended to all practitioners with experience delivering family/group therapy via a TH (videoconferencing) medium. Participation was voluntary, and required informed consent. Most (10 of 12) participants had conducted between 6 and 12 family telehealth sessions. One participant had completed about 18, and one had completed about 30. For most (10 of 12) participants, use of telehealth was new (i.e. since the beginning of the COVID-19 pandemic). There were two exceptions to this: one participant had some prior experience with family therapy telehealth in a previous role, and one had prior experience with the use of telehealth but only with individuals rather than groups or families.

Procedure Approval was provided by the La Trobe University Human Ethics Committee (Project ID: HEC20118). The study was performed in accordance with the ethical standards of the 1964 Declaration of Helsinki. Each practitioner participated in a structured, one-on-one audio-recorded interview (approximately 60 min) with AB. Interview questions are presented in Table 4. Participants were not familiar with the interview questions prior to the interview.

Table 4

Interview questions for exploration of family therapist experiences with TH

Interview question	Domain
What core considerations would guide your judgement that a case was suitable or unsuitable for a TH medium? (E.g.: client ages, presenting problems, reflective capacity, risk, intra-family dynamics, etc.)	Suitability for TH
What would you consider essential for an online therapist to do in establishment of rapport and empathy with all family members?	Rapport
How might you handle moments of conflict between family members in the 'online' room—e.g. is there any difference in what you would say or do, or feel?	Conflict management
What accommodations would you make for younger children?	Working with children
Under what conditions would you not resume a treatment online that had commenced in person?	Continuation of in-person therapy via TH
Are there any core principles or practice elements of family therapy that seem less effective via TH?	Perceived drawbacks of TH interventions with families
Are there any core principles or practice elements of family therapy that seem more effective via TH?	Perceived efficacy of TH interventions
How would your crisis management practice change when using a TH medium, to manage risky behaviour in the room (e.g. a child starts head banging; a family member threatens another family member)	Managing risk in the moment
What additional vulnerabilities might you feel as the therapist? What might assist you to feel more comfortable with respect to these?	Wellbeing of the therapist in a TH context

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Data Analysis

Audio-recorded interviews were transcribed verbatim using transcription software and checked by a member of the research team. Transcript data were then subject to qualitative content analysis (Bengtsson 2016; Elo and Kyngäs 2008; Hsieh and Shannon 2005) at the manifest level. Using a deductive, predetermined coding system aligned with the interview structure, one independent coder (FP) extracted and coded transcript data using a standardised coding table. Codes and themes were reviewed by two second independent coders (AB, JM). Nine key domains were identified. Data analysis occurred across four stages: (a) decontextualization (deconstruction of the transcript into meaning units); (b) recontextualization (identification of codes); (c) categorization (identification of themes); and, (d) compilation (drawing of group-level conclusions and variations, with conferencing between coders and checking of the original text).

Results

Go to:

Findings are organised by the domains corresponding to interview questions (see Table 4), including a high-level summary of key themes and significant variations in therapists' views.

Suitability for TH

Views about the suitability of cases for TH family therapy were congruent with those made in in-person work. No blanket contraindications for the use of TH were identified for this setting. As per in-person work, contraindications included imminent family violence risks and current severe disturbance in personal functioning with cognitive, neurological, or psychiatric origins that render participation unsafe or otherwise unhelpful for any participant. As with in-person consultation, such impairments may delay the timing of the intervention rather than presenting a blanket contradiction. An example of this may be presenting as drug affected on the day of an appointment.

A series of cautions characterised by risk or complexity (e.g. history of trauma, sexual assault or suicidal ideation) emerged about the suitability of TH for cases. Suggested accommodations to manage these circumstances centred on 'slowing the work down' and included spending more time than usual understanding client situations, priorities, and the nuances of potential risk, and setup of risk management plans prior to therapy. A well-paced therapeutic process was key to maintaining trust and rapport, together with making open and collaborative choices with clients; devoting more time to 'talking about the talking'; and allowing more time to develop the foundations of a therapeutic relationship with new clients.

Rapport

Relative to in-person contexts, the TH environment was seen to require (i) more time and (ii) additional accommodations to content and process for purposes of establishing rapport, described below. TH engagement was augmented by a first telephone contact with all family members to establish individual connections before commencing TH sessions. Equally important were transparent discussions about client comfort with the TH therapy modality; establishing a mutual understanding of how to communicate about the process when it is not working well and being more directive than usual to facilitate equal contributions to group conversations.

Technological factors impacted rapport, including looking directly at the camera while talking with clients to emulate eye contact, and using names when addressing clients to compensate for the challenges of deploying direct gaze and body orientation as one would in person. Consideration was also given to the influence of TH features on client experience, e.g. muting different voices at different times and using a particular screen viewing modes. Explanations were offered when doing anything off-screen such as using a notepad, providing a clear explanation to avoid confusion about practitioner inattention.

Conflict Management

Therapists noted a lower overall threshold in the TH context for intervening with conflict during a session, and a focus on methods of remaining in control if conflict occurred. All therapists noted the critical importance of mitigating the possibility of conflict prior to therapy. Preliminary discussions with clients about how conflict would be resolved in the absence of the practitioner were felt to be essential, given concerns that clients might be more inclined to abruptly walk out of a TH consult than from the therapy room in-person. Successful TH interventions included establishing permission and processes for discussing 'hot issues' during the session; addressing the need to intervene, and post-session regulatory strategies. Several therapists found online breakout rooms useful for speaking to clients separately where conflict had occurred or was imminent.

One key variation was noted. Some therapists felt that conflict was more difficult to manage when family members were on separate screens, as this blurs the detection of early signs of conflict, while others felt a greater sense of control when family members joined from separate devices, in separate spaces, as the risk of physical conflict was felt to be lower.

Managing Risk in the Moment

All therapists reported that managing risk via TH was more delicate than managing risk in-person. The unanimous emphasis was on risk mitigation rather than risk management in TH. As such, efforts were consistently made to ensure best possible risk assessment prior to engaging in therapy. As with in-person work, therapists agreed that imminent safety risks would contraindicate suitability for TH therapy. Immediate intervention in a context of risk would be largely congruent with intervention in the in-person setting (i.e. the need to slow down and stop where necessary and allow for breaks in instances of escalation; post-session follow-up to determine client safety; readiness to contact police, or provide details of support services or contact services on client's behalf).

A common concern pertained to the consequence of technology failure, with the need to invest in pre-session preparation, to ensure therapists were aware of clients' locations and alternate contact methods in case of an emergency, including phone numbers and email addresses. The normal practices of notifying police would apply if a reportable concern about dangerous behaviour arose.

Therapists agreed that given the physical distance of the therapist, TH brings increased shared involvement of the client in risk management, shared responsibility for their own self-regulation, and support of others' self-regulation, with the assistance of emotion coaching strategies.

Working with Children

Views about suitability of TH for children varied. Common to all was the need for advance preparation and active alignment with parents to ensure the space for the session worked well for the children and was equipped with drawing and play materials, active engagement of young children, sustaining their involvement in the session through shorter sessions, and leveraging different types of play. In this, a need for therapists to manage their own expectations was evident (e.g. being prepared that the session might need to be brief or to end early).

Most therapists reported the need to be more engaging, e.g. via maximising interactive methods and minimising verbal discussion, creating a playful atmosphere by utilising virtual backgrounds, and introducing various types of play. Therapists also found it helpful to bring attention to the TH medium as a point of interest and to use its novel features (e.g. online whiteboards) to engage children in session.

Continuation of In-Person Therapy Via TH

As to the question of continuing an already established therapy process via an online medium, no differences were noted relative to those that would apply to consideration of continuing in-person therapy. These standard cautions as outlined above in the 'Suitability for TH' section would equally apply.

Cautions for continuing via TH amounted to concerns about participating safely and included situations where the client had inadequate support in scenarios of risk management while using TH. Ongoing monitoring of the efficacy and suitability of the medium across the course of treatment was noted by all.

Perceived Drawbacks of TH Interventions with Families

Several therapists reported that some therapeutic techniques felt more difficult or perhaps less effective online (e.g. triadic questioning when members were on different devices). The same held for pragmatic activities (e.g. moving people around the room to create a family sculpture) and several felt that their use of warmth, humour, and the ability to accurately read non-verbal cues were somewhat compromised. Nevertheless, there was uniform agreement that the core elements of family therapy were more or less maintained with the transition to TH.

Perceived Efficacy of TH Interventions

Various therapeutic experiences and access/uptake issues were improved with the transition to TH delivery. Some felt that TH offered an improved ability for therapists to empathise and align with others' experiences due to the equal visual presentation of faces on the screen. In this, being able to see one's own responses on the screen had potential benefits. Self-direction associated with use of TH also offered families a greater sense of ownership in their therapeutic process.

Some felt that TH promoted better equity in access and uptake. At the geographical level, there are benefits of TH for those living in remote areas. At the individual level, TH can better suit those with certain disabilities or preferences for interaction online.

Wellbeing of the Therapist in a TH Context

Several therapists reported that the usual boundaries that exist between in-session and out-of-session work done in-person were difficult to maintain when using TH. Some reported feeling

detached from their work when using TH: they were disempowered and at times helpless about what they perceived as a limited capacity to detect and adequately respond to nuances of expression. To preserve wellbeing, therapists expressed a need for quality supervision; the importance of seeking and maintaining collegial support; the availability of reliable technology (to mitigate stress associated with the technological challenges of operating via TH); a manageable workload; being accepting of the constraints associated with TH; prioritising self-care activities such as breaks and exercise; and incorporating co-therapy to ease feelings of isolation.

Brief Discussion

Go to:

We found congruence between the core practice and process elements of family therapy across in-person and TH modalities. Some unique benefits of practicing via TH were observed. Necessary accommodations made to therapeutic work with TH predominantly pertained to process rather than content changes, including the need to plan ahead for possible management of risk.

Discussion

Go to:

This study examined the efficacy and optimization of TH-delivered family therapy from multiple perspectives, aiming to inform future use of TH for family and systemic practice. The first study found that content from existing guideline documents was heavily weighted to operational rather than therapeutic aspects of therapy delivery. We identified a significant gap in information for practitioners to guide therapeutic adjustments that may be required when working with families over digital mediums, and especially with children. Study Two examined evidence for efficacy of TH in improving outcomes for families. Although the available literature was limited in volume, consistent results emerged. Meta-analyses demonstrated improvements in child behaviour problems for family therapy with equivalency between TH and in-person delivery from pre-to-post intervention and to follow-up. Relative to treatment as usual, internet resources, or wait-list control conditions for child behaviour problems, TH family therapy had superior improvement rates, pre- to post-intervention. Similarly, for family-oriented treatment of parental depression, meta-analyses showed that improvements were superior in TH relative to in-person delivery for pre- to post-intervention and to follow-up. Narrative review of individual studies excluded from meta-analyses found that TH delivery was equivalent to in-person delivery for a range of family, parent, and child outcomes, and frequently superior to minimal intervention control conditions. In the final study, qualitative analysis of one-on-one interviews with experienced family therapists found that core processes and practices of family therapy could be preserved in the online modality. Adaptations to delivery of therapy in TH were primarily process rather than content related. Taken together, the findings of these three studies provide considerable support for ongoing delivery of family therapy via TH.

The current findings, focussed on family therapy, expand the meta-analytic evidence for TH in other contexts, mirroring findings of the superiority of individual therapies via TH relative to wait-list or information only controls, and equivalent outcomes to in-person delivery of therapy (Ahern et al. 2018; Drago et al. 2016). Consideration of the therapeutic alliance may offer some insight into the equivalence of outcomes in TH and in-person therapy. Normatively, the therapeutic alliance accounts for considerable variance in therapeutic outcomes (Fluckiger et al. 2018). Novice TH therapists in our third study echoed concerns voiced elsewhere (Bee et al. 2008), that the formation of this critical alliance could be impacted in TH relative to in-person interactions through alterations in interpersonal communication. However, in some (Jenkins-Guarnieri et al. 2015) but not all review studies (Norwood et al. 2018), and for many Study 3 experienced therapists, the alliance was observed to be unaffected by TH delivery. As found in our third

qualitative study, key to this are alterations to accommodate the digital environment, in pursuit of establishing rapport and empathic connection, which may be integral to good outcomes in TH.

As with prior research (Gros et al. 2013), therapists in our qualitative study also emphasised the need to engage in pre-therapy connection and preparation strategies, such as prior telephone or digital conversations with clients, for risk mitigation and for optimised outcomes. Other scholars have suggested that it is advantageous for the pre-therapy connection meetings to take place in-person, rather than through technology (Kuulasmaa et al. 2004). It remains to be seen whether initial in-person meetings would strengthen therapist–client connections or whether conducting this meeting over telehealth would be sufficient for this purpose.

Uniquely, our qualitative results suggest some advantage of TH delivery in family therapy over face-to-face, as reported in previous research with individual or couples therapy (Richardson et al. 2015). Key factors for perceived efficacy from the client and therapist perspectives include ease of talking in telehealth, where turn taking is clearer, and ease of revealing vulnerability for some clients, invoked by a sense of distance in TH that may be conducive to disclosure (Kysely et al. 2020). Accessibility is also key. The TH platform removes obstacles to attendance for many families in compounding circumstances that render the logistics of attending in-person difficult, as with families living in remote regions, and high-needs single parent families.

Limitations

Findings should be interpreted in light of the studies' limitations. First, the grey literature on TH Guidelines comprised a mix of pre-COVID-19 resources and others specifically generated in response to the rapid uptake of TH due to the pandemic. Studies eligible for the meta-analyses were limited by the heterogeneity in measurement methods and outcome foci. As such, a small number of studies focused only on child behaviour outcomes and parental depression were subject to meta-analysis. In relation to the qualitative study, our participants were a homogenous sample of therapists from one service, most of whom had limited pre-COVID-19 TH experience. However, due to this recent transition to TH delivery, they were well positioned to reflect on differences between TH and in-person delivery. In all three studies, examination of cultural and gender diversity was not possible. Consumer participation in the research was also not possible at this stage but is now planned.

Recommendations

The findings of these three studies provide considerable support for ongoing delivery of family therapy via TH. In this light we offer recommendations for further optimisation of TH practice in family therapy contexts.

1. Progression in Guidelines

    a. Our evidence suggests a need for advanced clinical guidelines for enhanced engagement and therapeutic alliance. Guidelines offered by peak therapy and regulatory bodies would include but move beyond operational factors regarding the practical administration of TH delivery of services, to include critical points of difference in assessment, engagement and therapeutic alliance over TH media, for adults, and for children.
    b. Beyond the expectation for assessment of suitability, articulation of specific criteria for assessing the appropriateness of TH are needed. These are multi-factored, and range from operational constraints, to safety risks, to clinically based cautions and contraindications.

2. Enablers of Telehealth practice

a. Further work is needed to address technology and access constraints to overcome obstacles that would otherwise preclude some families from TH services, including access for clients to software and necessary equipment, basic training in their use, and support for trouble-shooting.
b. Similarly, evolving technologies may better enable the use of core family therapy techniques within TH services, for example, reflective teams, joint completion of genograms in sessions, and interactive play between children and therapist.

3. Training

a. With rapid expansion of requirements for TH services comes the attendant need to train and support mental health workforces in the requisite skills. Where technology is likely to remain specific to local contexts and require in-house training, broader Family Therapy-specific training for TH would optimally be offered through accessible online training, consultation and support.

4. Research

a. Our review of the existing literature shows some early encouraging replication of evidence and justifies further exploration. For example, efficacy data spanning longer post-treatment intervals, a focus on contraindications and iatrogenic effects would support practice and policy decisions about the continuation of TH interventions as an acceptable alternative to in-person interventions.
b. Greater consistency in assessment of child, parent, and family outcomes across studies would assist.
c. Inclusion of diverse samples, with exploration of limits to culturally safe TH practices will be important to applying this method at scale.
d. Distinctions between forms of telehealth suitable for more than one therapist are yet to be systematically researched and further knowledge about the relative efficacies of co-therapy and team interventions via telehealth would provide valuable insights for future implementation.
e. Mediators of change relative to in-person therapies and questions concerning pre-existing and presenting circumstances impacting efficacy are yet to be addressed.

Conclusion

Go to:

Findings of the current studies offer significant support for delivery by TH methods of family therapy services. The collective evidence suggests equivalent efficacy for relational and mental health outcomes from telehealth relative to face-to-face delivery. From both empirical review and grounded narrative perspectives, the studies included here provide a solid platform from which to advance telehealth methods for family therapy.

Supplementary Information

Go to:

Below is the link to the electronic supplementary material.

Supplementary material 1 (DOCX 28 kb)(28K, docx)

Funding

Go to:

No funding was received for this research.

Data Availability

Go to:

The data that support the findings of Study 3 are not publicly available due to privacy and ethical approval restrictions. Data were not collected for Study 1 or Study 2.

Compliance with Ethical Standards

Go to:

Conflict of interest

The authors declare that they have no conflicts of interest or competing interests in relation to this research.

Ethical Approval

Study Three involved research with human participants. The study was performed in line with principles of the Declaration of Helsinki. Approval to conduct the study was obtained from the La Trobe University Human ethics committee (Date: 23 April 2020/No. HEC20118) and written informed consent was obtained from all participants prior to participating in this study.

Informed Consent

The authors confirm that participants provided informed consent for publication of their anonymous, grouped data.

Footnotes

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Publisher's Note

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References marked with an asterisk indicate studies included in the systematic review in Study 2.

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December 29, 2022

To the Esteemed Members and Staff of the Arizona Board of Behavioral Health Examiners:

We are a coalition of Supervised Private Practice (herein referred to as "SPP") owners, who must, with passionate urgency and the utmost respect, submit our concerns about the proposed rule changes of 2022/2023 as discussed in the Notice of Proposed Rulemaking. Despite our fears and the absence of formal structures within which to caucus, we've come together to share our experiences, call your attention to the real impacts on our lives and our clients' and supervisors' lives, and advance the dialogue to protect the public and clinicians of all stages of practice alike. In the below text, we hope to elucidate:

- Our concerns about the content of the proposed changes and their devastating impact.
- A discussion of the crucial function of SPP in the milieu of Arizona practice pathways.
- Our heartfelt plea for sensible, strong, equitable, and transparent supervision practices (and their regulation) across all settings, from agency to group practice to SPP.

Please do not hesitate to reach out with any follow-up questions or to set up a meeting. It is our hope that the below discussion will guide you toward policymaking that supports all clinicians and clinical settings here in Arizona, which best stewards the public's trust and safety as well as a strong and effective clinical community for years to come.

With Humble Sincerity,

Halina Brooke, MS, LAC, LAMFT
on behalf of the Arizona Coalition for Sensible Therapy Practices

CONTEXT: Why we didn't come forward before, and why we must now.

Before expounding upon our concerns for the proposed rule changes, we feel it prudent to contextualize why we're coming forward now, why we do so without a list of members' identifying information, and why our effort is at once deeply thoughtful and somewhat guarded. The rulemaking process and its public meetings came on the heels of a summer in which all of us (owners and supervisors of SPPs) were mandated to submit new contracts within a span of under two weeks. We also became the only associate-level clinicians in the entire state whose offerings must be disclaimed widely across our marketing and informational media (while the rest of the state's associates only need bring this forth in clinical documents, informed consent, and as necessary over the course of treatment).

The fast turn-around of the contracts left us anxious and many of us didn't have time to consult our counsel. The additional and specific disclaimers we needed to add to our media left us at a disadvantage to our same-level peers working in other settings when offering our services to the public. Some clients even asked us if it meant we were under discipline from the Board. Others of us had already paid extensive attorneys' fees to seek and apply guidance on informing the public of our status as SPPs—hundreds of dollars of consult rendered obsolete by the new mandatory text. And, we're all already on a registry with the Board. We experienced angst, and for many of us (but not all), this angst rested on a foundation of trauma and fear from prior toxic supervision or workplaces. We do hope this helps to paint a picture of why no one wanted to be the squeaky wheel in a rulemaking process whose preamble said we wouldn't even be impacted: our section was simply being "moved."

We decided to wait and see which of our professional associations would speak for us, as some of us did reach out to those we saw as leaders in these organizations. On the first day of public comment in late October, it seemed that two organizations sent no representatives and the third send someone who asked excellent questions out of concern for agency and group supervisors but did not speak to the interests of SPP owners and our clients. On the second day, the recording indicates that no one attended. We began to connect and vulnerably share our fears with one another. We started to broach the topic, with our supervisors, of how we could try to accommodate the changes should they come to fruition. Over the next two months, we realized how dire the consequences would be: for ourselves, our businesses, and especially our most vulnerable clients and the citizens of Arizona.

UNEXAMINED: The vast and dire consequences of proposed rule changes.

Article 5 of the Preamble of the Filing states that Supervised Private Practice is [only] being moved from R4-6-211 to R4-6-217. However, it omits the substantive changes within this transition, the most significant change of which is the doubling of supervision requirements, and thus the doubling of the time and financial burden of SPP owners to continue in our practices. Article 8 of the same document is meant to disclose the economic, small business, and consumer impact of the rule change. It attestants that "the Board believes most of the rulemaking will have minimal economic impact because it makes *no substantive changes* other

than those required to be consistent with statute." The only impacts named are one-time, nominal costs of a 3-hour biennial course for some supervisors and a one-time out-of-state telehealth providers' fee. In contrast, any mention of the supervision ratio change was completely omitted from this section as well. Let us return to the rule change of doubling SPP owners' supervision ratio and thus our time and expenditures for same:

> For reference, an agency or group practice worker with a productivity requirement of 35 direct hours of client care a week, or 140 hours a month, only needs one hour of supervision in that month. At present, an associate who works similar hours in SPP would need seven (7) hours of supervision in that same month and the proposed rule changes would double that to fourteen (14) hours. That would mean that SPP owners seeing a similar caseload would go from needing seven times the amount of supervision as their peers in agencies to a whole FOURTEEN times the amount per month. For those paying average market rates for supervision ($150/hr), that would bring supervision expenses for an SPP owner working these hours to over $2,000 a month. *Of note, and to preempt the response that SPP owners typically work fewer direct hours, it would still come out to ten (10) hours and over $1,500 a month for those seeing 25 clients a week and six to seven (6-7) hours or $1,000 a month for those seeing 16 clients per week.*

This has a robust and tragic economic, small business, and consumer impact. When asked, here is what a sampling of SPP owners said about how doubling of our supervision ratio will impact ourselves and our families, our businesses and those of our supervisors, our professional development, and our ability to serve our mental/behavioral health clientele:

- Supervision costing more than housing and office rental (combined, in some cases).
- Needing to discontinue specialist consultations or trainings for high needs clinical conditions like Eating Disorders, Autism, OCD, or Prolonged Grief because their entire consult budget would now be earmarked to their general/practice supervisor. *While our supervisors are highly qualified, it is best practices to consult niche experts and trainings for myriad reasons.*
- Needing to terminate some clients or decreasing care for some clients so they stay under x hours per week due to supervisor being unable to commit to the increase in supervision.
- Needing to terminate care for low-fee clients and only take full-fee to make ends meet, meaning that the most vulnerable clients lose out on needed care while therapists need to choose between giving back and staying above water.
- Having to halt progress through specialized advanced trainings from PhD programs to DBT, EFT, Gottman, or SE skills and/or certification, which restricts professional growth.
- Losing their supervisor entirely, and not being able to count the hours between one supervisor terminating and adding another, which pushes independent licensure farther down the road.
- Losing the time and budget they need to care for an elderly relative, child, or themselves.

- Finding themselves losing the self-care ability they finally got back when they left agency work.
- Realizing they might not be able to afford the healthcare they or their family needs.
- Slower progression to independent licensure and thus, the ability to scale their small business to serve niche and underserved communities.
- Inability to offer their time and expertise for giving back to the community because their schedules and bank accounts are taking such a hit.
- Feeling stuck between a rock and a hard place because they've already chosen to build and invest in their practice based on the rules at that time, so they lose tens of thousands of dollars and many months if they close, but staying open is also a financial hardship.

BELONGING: Our Role as SPP owners in the Arizona Mental/Behavioral Health Community

It is natural to experience distress when something new or different emerges in a setting whose norms are fairly consistent. It's also natural to stand so close to the forest that we forget about the larger world (the rest of the US in this case) out there that might already have experience and success with what might feel new to us. Thus is the case with supervised private practice in Arizona. Washington, Colorado, Florida and countless other states have a proven track record that Supervised Private Practice works, has not been the downfall of the group or agency template, has not increased risk for harm to clients, and has in fact both raised the bar for supervision and expanded the public's options for quality psychotherapy services. It is certainly not the right fit for every associate, but neither are the other paths to independent licensure. Much like how we offer our clients *informed consent* when starting treatment and ensuring that we are a good fit for their unique needs, associates should have access to the variety of tracks that allows for them to choose the right fit.

- Community Mental Health: The chance to serve the community, knock out direct contact hours at rapid pace, work with very intense and unusual cases, lots of resourcing and behavioral work with clients, and likely healthcare benefits. Downsides include feeling ill-equipped for complicated clients, physically unable to fulfill high productivity burdens, very little chance for advancement in a niche treatment model, and minimal opportunity for deeper, non-crisis therapy work with clients.
- Small Group Practice: A less intense environment than CMH but still the chance at a high rate of completion of direct hours, the chance to wet one's feet in a private practice ambiance, and the opportunity to learn a niche treatment model if the specific practice allows. Downsides include often low pay (with some practices offering as low as 40% of the client's fees), minimal or no health insurance, and tension if an associate chooses to go out on their own.
- Supervised Private Practice: The chance to practice with the hours and setting that fits one's individual needs, purity of supervision since the supervisor's financial interests aren't tethered to one's productivity, working with the populations that feel like the best fit, and the opportunity to direct more of one's revenue toward specific business

and training expenses and endeavors. Downsides: finding health insurance, needing to manage the business side, and truly needing to have high insight and strong clinical skills to maintain a thriving practice and maintain ethics and competence.

In all three contexts, associates can thrive or suffer. Many people end up choosing door number three because the first or second options didn't work out, either due to the above-mentioned factors or because supervision ended up falling short or even leaving the associate traumatized. Others choose door number three straight away because they've worked in related fields, like education or social services, enter the field with more lived experience or wisdom than a typical graduate, and need the semi-autonomous environment so that they can best continue to develop as therapists and serve the community.

Unfortunately, there are also some who don't realize that SPP isn't a highway to financial windfall and that it takes real effort, competence, and ethical mindedness. Stories have echoed in the recent months that some associates in private practice are receiving board complaints and falling under fire for ethical shortcomings. While the dominant conclusion is that this means that *all* supervised private practice is wrong and was a bad idea in the first place, that is a hasty generalization that also serves to obscure what we're really seeing: the adjudications illustrate that the Board process works—quite well in fact—and that it's keeping the public safe!

Further, SPP is a consumer-driven business model. SPPs, by default, are not funded by insurance contracts, employee wellness plans, Medicaid, or court/government contracts. As private-pay relationships with no intermediary, the success of these clinician-owners is built solely upon client continuity, which is singularly tied to whether the consumer finds value and safety in the relationship and care. When private-pay practices don't succeed, the market weeds out those who struggle to serve this population. When we as SPP owners *do* succeed, however, it is a cause for celebration and a testament that newer clinicians can blend robust skill, healthy rapport, ethical stewardship, and innovative methods in offering healing and growth alongside our longer-tenured counterparts. And, many of us *are* thriving as our clients do the same under our care.

COLLABORATION: Shared values and shared aspirations for our professional community.

Without detouring too far from the key points of our address to you, we in this Coalition join the Board and Staff in its commitment to ethical and safe practice. We know that our supervision as SPP owners is vital and we aspire toward an Arizona whose agency-based, group-based, associates can know that their supervision is as safe, thorough, and accountable as ours. Many of us have either experienced distressing supervision ourselves, at prior positions, or fear for our colleagues who are currently struggling with such situations at some agencies and groups. We ask that you turn your focus toward their plight as well.

Regarding concerns about SPP: If the Board and Staff wish for associates to think more deeply about Supervised Private Practice's many risks and burdens before jumping in, we humbly ask

that the measures taken don't also serve to handicap good, responsible associate clinicians from doing their best work and using the resources from the businesses they've worked hard to build to continue preserving their own wellness, honing their skills through continued trainings and mentorship, and serving the community in the best way they can. Perhaps alternatives can better achieve the attested goal. For example, a one-time course that hopeful SPP owners must take to inform themselves of the risks, burdens, and extra responsibilities this kind of practice requires, might be a reasonable alternative.

As the business owners and clinicians who live the reality of practice ownership during our associate years, we are on the front lines of this experience and are an integral asset to you as you move forward with regulation designed to center the wellbeing of the state we all love. We humbly ask for a seat at the table to create whatever this gatekeeping measure might be, and we urgently ask you to please choose not to advance the proposed rules change as set forth in the filing. Let's work together to build the strongest emerging cohort of psychotherapists Arizona has ever seen, instead of an even greater barrier and divide between the various paths to independent licensure!

Again, if we can be of any service, answer any questions, or provide further feedback, our coalition is available at azsensibletherapypractices@gmail.com . Thank you so much for your consideration.

In Collaborative Spirit,

Halina Brooke, MS, LAC, LAMFT
on behalf of the Arizona Coalition for Sensible Therapy Practices

BOARD OF NURSING
Title 4, Chapter 19, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 8, 2023**

SUBJECT: **BOARD OF NURSING**
Title 4, Chapter 19

Summary

This One Year Review Report (1YRR) from the Arizona Board of Nursing (Board) relates to four (4) rules in Title 4, Chapter 19. Specifically, HB 2521 (Laws 2021, Chapter 86) granted the Board a one-time exemption from the rulemaking requirements of the Administrative Procedures Act to adopt rules necessary to carry out a new form of licensure, 'Licensed Health Aide' or 'LHA'.

Proposed Action

The Board proposes adding renewal of the LHA license to R4-19-101 time frames to match those for licensed or certified nursing assistants; and removing the "reinstatement" language from the title of R4-19-903. The Board anticipates initiating a rulemaking no later than April 1, 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board indicates that there has been no measurable economic impact to the Board or the regulated public as a result of these rules. The Board does state that it has 13 Licensed Health Aide (LHA) programs and 177 family members of qualifying patients that are now able to receive increased payment for caring for their juvenile patients. Stakeholders include the Board and LHA's.

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 believes that the rules in Article 1 and 9 are necessary for the Board to achieve its mission to protect the public and impose the least burden and cost upon regulated persons, while remaining compliant with the requirements of 2021 HB 2521.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Board states they have received requests to expand the permissible tasks for the LHA, and to extend the age of the patient, however both of those items are in statute and cannot be modified. The Board also received requests to expand the definition of "family member" to include aunts and uncles. Board staff is currently conferring with agency stakeholders to determine if this is permissible, as it could be inconsistent with reimbursement regulations.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates that the rules are generally clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are generally consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board states that the rules are effective in achieving their objectives and indicates that this is evident because as of April 28, 2023, the Board has 13 approved LHA programs and has issued 177 LHA licensees.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates that the rules are enforced as written.

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

The Board indicates that the rules are not more stringent than corresponding federal law.

10. Has the agency completed any additional process required by law?

The Board indicates that there were no additional processes as required by law.

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

The Board states that they are in compliance with the general permit requirements of A.R.S. § 41-1037, as the licenses issued by the Board are authorized by statute.

12. Conclusion

Council staff finds that the Board submitted an adequate report that meets the requirements of A.R.S. § 41-1095. As indicated above, the Board received a one-time exemption from the rulemaking requirements to adopt rules necessary to carry out a new form of licensure, 'Licensed Health Aide'. Council staff recommends approval of this report.

Katie Hobbs
Governor

Joey Ridenour
Exec. Director

Arizona Board of Nursing

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June 20, 2023

Nicole Sornsin
Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Chairperson Sornsin:

Re: Arizona State Board Nursing Board; One Year Rule Review for Arizona Administrative Code Title 4, Chapter 19, Article 9

Please find, enclosed, the Five Year Rule Review of the Arizona State Board of Nursing's ("Board's") submission for Arizona Administrative Code ("A.A.C."), Title 4, Chapter 19, Article 9, which is due on May 3, 2023.

The Board reviewed all rules in Article 9; and there are no rules intended to expire pursuant to A.R.S. § 41-1056(J).

There are no rules that have not been reviewed due to rescheduled review, pursuant to A.R.S. § 41-1056(H).

The Board hereby certifies that it is in compliance with A.R.S. § 41-1091.

The Board contact person for information regarding the report is myself, **Joey Ridenour, Executive Director for the Board, at jridenour@azbn.gov; telephone 602-771-7801.**

Sincerely,

Joey Ridenour RN MN FAAN

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Enclosures: One Year Rule Review of A.A.C. Title 4, Chapter 19, Article 9

C: GRRC Staff

Arizona State Board of Nursing

REVISED

1 YEAR REVIEW REPORT

Arizona Administrative Code

Title 4. Professions and Occupations

Chapter 19. Board of Nursing

Article 9

Due: May 2, 2023; revision June 12, 2023

ARTICLE 4. REGULATION

LICENSED HEALTH AIDE RULES

A.A.C. R4-19-101; R4-19-901, R4-19-902, R4-19-903, and R4-19-904

1. Authorization of the rule by existing statutes:

   Licensed Health Aide rules, in Title 4, Chapter 19, Articles 1 and 9 of the Arizona Administrative Code ("A.A.C.") were both authorized and required by the State of Arizona Fifty-fifth Legislature, First Regular Session of 2021 House Bill 2521, including A.R.S. §§ 32-1601, 32-1643, 32-1645, and 36-2939, to create a new form of licensure, the "Licensed Health Aide" ("LHA").

   General rulemaking authority for all rules in this article is provided by A.R.S. § 32-1606(A)(1).

   Additionally:
   R4-19-901 and R4-19-904 have additional authority pursuant to A.R.S. § 36-2939.
   R4-19-903 and R4-19-903 have additional authority pursuant to A.R.S. §§ 32-1663 and 32-1664, and Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
   R4-19-904 has additional authority pursuant to A.R.S. § 32-1643.

2. Objective of each rule:
   R4-19-101; Definitions and Time Frames: This rule provides time frames for LHA licensure application and LHA programs approval or re-approval; and definitions for new terms associated with Article 9, including "family member," and "LHA".

R4-19-901; Standards for Licensed Health Aide (LHA) Training Programs: This rule provides the standards related to LHA training programs.
R4-19-902; Initial Approval and Renewal of Approval of LHA Training Programs: This rule provides the requirements for application and renewal of LHA training programs.
R4-19-903; Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement: This rule defines the unprofessional conduct for which the Board may take disciplinary action against an LHA program, process for disciplinary action, and voluntary termination of the program.
R4-19-904; Licensed Health Aide (LHA) Licensure, Renewals, and Patient Safety Referral: This rule specifies the requirements for LHA licensure, process for contesting license denial, Board maintenance of a list of LHA licensees, and safety referral to AZ DES for LHAs suspected of patient neglect or abuse.

3. Are the rules effective in achieving their objectives?

Yes for all rules in Articles 1 and 9.
This is evidenced by the fact that, since the implementation of these rules, the Board already has 13 LHA programs approved and 177 LHA licensees (as of April 28, 2023).

4. Are the rules consistent?

Yes, the Board has not identified any inconsistencies within these Articles, or compared with other, applicable statutes and rules.

5. Are the rules enforced as written?

Yes, routinely. The rules have been successfully used over the past year to issue LHA licenses and program approvals.

6. Are the rules clear, concise, and understandable?

Yes, the rules are all regularly used and reviewed by regulated parties, the Board, and Board staff, and are clear, concise, and understandable.

7. Has the agency received written criticisms of the rules within the last five years?

The Board has received requests to expand the permissible tasks for the LHA, and to extend the age of the patient (which is now under 21). Both of those items are in statute and cannot be modified. The Board also received requests to expand the definition of "family member" to include aunts and uncles. Board staff is currently conferring with other agency stakeholders to determine whether this would be permissible, as it could be inconsistent with reimbursement regulations.

8. Economic, small business, and consumer impact comparison:

Although not quantified, 177 family members of qualifying patients are now able to receive increased payment for their time caring for their juvenile patients. Otherwise, there has been no measurable economic impact to the Board or regulated public as a result of these rules.

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 five-year-review report?

    Not applicable.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

    Yes, the rules in Articles 1 and 9 are necessary for the Board to achieve its mission to protect the public, and impose the least burden and costs upon regulated persons, while remaining compliant with the requirements in 2021 HB 2521.

12. Are the rules more stringent than corresponding federal laws?

    Not applicable.

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 Board is in compliance with the general permit requirements of A.R.S. § 41-1037, as the licenses issued by the Board are authorized by statute, specifically A.R.S. §§ A.R.S. §§ 32-1601, 32-1643, 32-1645, and 36-2939; and 32-1605.01(B)(3) and (4), and 32-1606(A)(3) and (B)(5).

14. Proposed course of action:

    The Board proposes adding renewal of the LHA license to R4-19-101 time frames to match those for licensed or certified nursing assistants; and removing the "reinstatement" language from the title of R4-19-903.

    Because the renewal of the LHA licenses will not occur less than 4 years after the original issuance, which began in 2021, the Board will begin a rulemaking to revise the applicable rule, R4-19-101, and make the technical correction to R4-19-903, no later than April 1, 2024, as this will provide adequate time to complete the rulemaking prior to any LHA licenses requiring renewal.

§ R4-19-101. Definitions

"Abuse" means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

"Administer" means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

"Admission cohort" means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. "Same time" means on the same date or within a narrow range of dates pre-defined by the program.

"Advance practice registered nurse (APRN)" means either a registered nurse practitioner (RNP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), or clinical nurse specialist (CNS), certified by the Board.

"Applicant" means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

CNS or RNP nursing program,

Credential evaluation service,

Nursing assistant training program,

Nursing program,

Nursing program change, or

Refresher program.

"Approved national nursing accrediting agency" means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

"Assign" means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

"Certificate or diploma in practical nursing" means the document awarded to a graduate of an educational program in practical nursing.

"Certified medication assistant" means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. §32-1650 et. seq.

"CES" means credential evaluation service.

"Client" means a recipient of care and may be an individual, family, group, or community.

"Clinical instruction" means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

"CMA" means certified medication assistant.

"CNA" means a certified nursing assistant, as defined in A.R.S §32-1601(4).

"CNS" means clinical nurse specialist, as defined in A.R.S. §32-1601(7).

"Collaborate" means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

"Contact hour" means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

"Continuing education activity" means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

"CRNA" means a certified registered nurse anesthetist as defined in A.R.S. §32-1601(5).

"DEA" means the federal Drug Enforcement Administration.

"Dispense" means to deliver a controlled substance or legend drug to an ultimate user.

"Dual relationship" means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient's or resident's family that is avoidable, non-incidental, and results in the patient or resident or the patient's or resident's family being exploited financially, emotionally, or sexually.

"Eligibility for graduation" means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

"Failure to maintain professional boundaries" means any conduct or behavior of a nurse or CNA that, regardless of the nurse's or CNA's intention, is likely to lessen the benefit of care to a patient or resident or a patient's or resident's family or places the patient, resident or the patient's or resident's family at risk of being exploited financially, emotionally, or sexually.

"Family," as applied to R4-19-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

"Family Member", means a licensed health aide (LHA) who is an adult (at least 18 years old) and has the following relationship with the LHA's one patient:

1. spouse,

2. children/step children,

3. son/daughter-in-law,

4. grandchildren,

5. siblings /step siblings,

6. parents /step parents/adoptive parents,

7. grandparents,

8. mother/father-in-law,

9. brother/sister-in-law, or

10. legal guardian.

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"LHA", means a licensed health aide who meets Board qualifications as defined by A.R.S. §32-1601(14).

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

"NCLEX" means the National Council Licensure Examination.

"Nurse" means a licensed practical or registered nurse.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

"Nursing program" means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;

Date placed on the register;

Date of initial and most recent certification, if applicable; and

Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

"Resident" means a patient who receives care in a long-term care facility or other residential setting.

"RN" means registered nurse.

"RNP" means a registered nurse practitioner as defined in A.R.S. §32-1601(20).

"SBTPE" means the State Board Test Pool Examination.

"School nurse" means a registered nurse who is certified under R4-19-309.

"Secure examination" means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;

Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee's score; and,

After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

"Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

"Standards related to scope of practice" means the expected actions of any nurse who holds the identified level of licensure.

"Substance use disorder" means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

"Supervision" means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

"Unlicensed assistive personnel" or "UAP" means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

"Verified application" means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

History:

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. §41-1011(C), Laws 2012, Ch. 152, §1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of "CNA" "CNS" and "RNP" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at

19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective 9/8/2014. Amended by final rulemaking at 23 A.A.R. 1420, effective 7/1/2017. Amended by final rulemaking at 25 A.A.R. 919, effective 6/3/2019. Amended by final rulemaking at 26 A.A.R. 3289, effective 12/2/2020. Amended by exempt rulemaking at 28 A.A.R. 111, effective 1/2/2022.

§ R4-19-901. Standards for Licensed Health Aide (LHA) Training Programs

A. Organization and Administration: An LHA program may be offered only by an entity:

1. Approved by Board;

2. Approved by the Arizona Department of Health Services as a Medicare-certified home health agency service provider; and

3. That meets the requirements of A.R.S. §36-2939.

B. Instructor qualifications. An LHA instructor shall:

1. Hold a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15;

2. Possess at least two years of direct care nursing experience in pediatrics or medical/surgical care including medication administration, tracheostomy care, and enteral care and therapy for persons under 21 years of age.

C. Curriculum**:** An LHA program shall provide a basic curriculum that includes: nursing assistant skills, medication administration, tracheostomy care; and enteral care and therapy for persons under 21 years of age.

D. Competency Examination: An LHA program shall provide to the Board for approval a competency examination that includes a written portion and successful performance of the following skills for persons under 21 years of age, and specific to the LHA's singular patient:

1. Nursing assistant skills,

2. Medication administration,

3. Tracheostomy care, and

4. Enteral care and therapy.

E. Training requirements: The LHA program shall train and evaluate the LHA, both in writing and performance of LHA skills, as to the applicable, required competencies related to the healthcare needs of the individual patient for whom the LHA provides care; and provide ongoing assessments as to safety of LHA when performing LHA tasks.

F. Program Certificate Requirements: Upon satisfactory completion of the basic curriculum, the LHA program shall issue a program certificate to those students who demonstrate the skills and ability to safely administer care to the individual patient for whom they provide care.

History:

Adopted by exempt rulemaking at 28 A.A.R. 111, effective 1/2/2022.

§ R4-19-902. Initial Approval and Renewal of Approval of LHA Training Programs

A. An applicant for initial training program approval shall submit an electronic application packet to the Board at least 90 days before the expected starting date of the program.

B. A program applying for initial approval shall include all of the following in its application packet:

1. Name, address, web address, telephone number, e-mail address and fax number of the program;

2. Identity of all program owners or sponsoring institutions;

3. Evidence of program compliance with all of the following:

a. Program description that includes the length of the program, number of hours of instruction;

b. A copy of the documentation that the program will use to verify student knowledge and skills;

c. A copy of course policies and any other materials that demonstrate compliance with R4-19-901;

C. A program seeking renewal of its approval shall submit an application for renewal containing the information required in this Section at least 90 days prior to the expiration of its current approval.

D. LHA program approvals and renewals shall be for a period of four years.

History:

Adopted by exempt rulemaking at 28 A.A.R. 111, effective 1/2/2022.

§ R4-19-903. Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement

A. The Board may take disciplinary action against an LHA program, including rescinding program approval, for any of the following acts of unprofessional conduct:

1. Failing to comply with Board requirements within designated timeframes;

2. Making a false, inaccurate or misleading statement to the Board or the Board's designee in the course of an investigation, or on any application or information submitted to the Board or on the program's public website;

3. Engaging in any other conduct that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety or welfare of students, instructors, patients or the public.

4. Failing to:

a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. §32-1664, or

b. Respond to a subpoena issued by the Board;

5. Failing to promptly remove, or adequately discipline or train, program instructors whose conduct violates this Article or may be a threat to the safety or welfare of students, patients, or the public.

B. Disciplinary Action

An LHA program may request a hearing prior to the imposition of any disciplinary action by the Board by filing a written request with the Board within 30 days of service of the Board's notice of charges. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

C. Voluntary termination

1. An LHA program that seeks to voluntarily terminate the program before its next renewal shall submit a written notice of termination to the Board.

2. The program shall continue the training program, including retaining necessary instructors, until the last enrolled student has transferred or completed the training program.

3. Within 15 days after the termination of a training program, a program representative shall notify the Board in writing of the permanent location and availability of all program records.

4. A program that fails to renew its approval with the Board shall be considered voluntarily terminated unless there is a complaint against the program.

History:

Adopted by exempt rulemaking at 28 A.A.R. 111, effective 1/2/2022.

§ R4-19-101. Definitions

"Abuse" means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

"Administer" means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

"Admission cohort" means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. "Same time" means on the same date or within a narrow range of dates pre-defined by the program.

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Nursing program change, or

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"Approved national nursing accrediting agency" means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

"Assign" means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

"Certificate or diploma in practical nursing" means the document awarded to a graduate of an educational program in practical nursing.

"Certified medication assistant" means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. §32-1650 et. seq.

"CES" means credential evaluation service.

"Client" means a recipient of care and may be an individual, family, group, or community.

"Clinical instruction" means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

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"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

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"Family," as applied to R4-19-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

"Family Member", means a licensed health aide (LHA) who is an adult (at least 18 years old) and has the following relationship with the LHA's one patient:

1. spouse,

2. children/step children,

3. son/daughter-in-law,

4. grandchildren,

5. siblings /step siblings,

6. parents /step parents/adoptive parents,

7. grandparents,

8. mother/father-in-law,

9. brother/sister-in-law, or

10. legal guardian.

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"LHA", means a licensed health aide who meets Board qualifications as defined by A.R.S. §32-1601(14).

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

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"Nurse" means a licensed practical or registered nurse.

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"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;

Date placed on the register;

Date of initial and most recent certification, if applicable; and

Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

"Resident" means a patient who receives care in a long-term care facility or other residential setting.

"RN" means registered nurse.

"RNP" means a registered nurse practitioner as defined in A.R.S. §32-1601(20).

"SBTPE" means the State Board Test Pool Examination.

"School nurse" means a registered nurse who is certified under R4-19-309.

"Secure examination" means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;

Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee's score; and,

After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

"Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

"Standards related to scope of practice" means the expected actions of any nurse who holds the identified level of licensure.

"Substance use disorder" means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

"Supervision" means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

"Unlicensed assistive personnel" or "UAP" means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

"Verified application" means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

History:

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. §41-1011(C), Laws 2012, Ch. 152, §1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of "CNA" "CNS" and "RNP" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at

19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective 9/8/2014. Amended by final rulemaking at 23 A.A.R. 1420, effective 7/1/2017. Amended by final rulemaking at 25 A.A.R. 919, effective 6/3/2019. Amended by final rulemaking at 26 A.A.R. 3289, effective 12/2/2020. Amended by exempt rulemaking at 28 A.A.R. 111, effective 1/2/2022.

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 408

SENATE BILL 1823

AN ACT

AMENDING LAWS 2020, CHAPTER 56, SECTION 8; APPROPRIATING MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Laws 2020, chapter 56, section 8 is amended to read:

Sec. 8. Supplemental appropriation; crisis contingency and safety net fund; reversion

A. In addition to any other appropriations made in fiscal year 2019-2020, the sum of $50,000,000 is appropriated from the state general fund in fiscal year 2019-2020 to the crisis contingency and safety net fund established by section 41-110, Arizona Revised Statutes~~, as added by this act~~.

B. Notwithstanding section 35-190, Arizona Revised Statutes, and section 41-110, Arizona Revised Statutes, ~~as added by this act,~~ the appropriation made in subsection A of this section that is unexpended and unencumbered on June 30, ~~2021~~ 2022 reverts to the state general fund.

Sec. 2. Subject to applicable laws, the sums or sources of revenue set forth in this act are appropriated for the fiscal years indicated and only from the funding sources listed for the purposes and objects specified. If monies from funding sources in this act are unavailable, no other funding source may be used.

Sec. 3. ARIZONA STATE BOARD OF ACCOUNTANCY

	2021-22
FTE positions	14.0
Lump sum appropriation	$ 2,098,500
Fund sources:	
Board of accountancy fund	$ 2,098,500

Sec. 4. ACUPUNCTURE BOARD OF EXAMINERS

	2021-22
FTE positions	1.0
Lump sum appropriation	$ 180,700
Fund sources:	
Acupuncture board of examiners fund	$ 180,700

Sec. 5. DEPARTMENT OF ADMINISTRATION

	2021-22
FTE positions	551.1
Operating lump sum appropriation	$ 88,738,900
Utilities	7,649,900
Hoteling pilot program	375,900
Arizona financial information system	11,549,100
Enduring freedom memorial repair	21,500
Risk management administrative expenses	9,294,300
Risk management losses and premiums	48,396,100

Workers' compensation losses and premiums	31,171,600
Statewide information security and privacy operations and controls	6,423,600
Information technology project management and oversight	1,562,600
State surplus property sales agency proceeds	1,810,000
Southwest defense contracts	25,000
K-12 transportation grants	10,000,000
Government transformation office	2,076,800
Total appropriation — department of administration	$219,095,300
Fund sources:	
State general fund	$ 18,609,900
Air quality fund	927,300
Arizona financial information system collections fund	11,549,100
Automation operations fund	31,275,400
Capitol mall consolidation fund	375,900
Capital outlay stabilization fund	18,749,800
Corrections fund	593,000
Federal surplus materials revolving fund	467,400
Information technology fund	8,566,400
Personnel division fund	13,056,800
Risk management revolving fund	96,879,000
State monument and memorial repair fund	21,500
Special employee health insurance trust fund	5,449,100
Special services revolving fund	1,172,800
State surplus materials revolving fund	3,003,200
State web portal fund	6,705,100
Telecommunications fund	1,693,600

The amount appropriated for southwest defense contracts shall be distributed to a nonprofit organization that advocates for preserving and enhancing critical defense missions and assets in the southwestern United States.

The appropriation from the automation operations fund established by section 41-711, Arizona Revised Statutes, is an estimate representing all monies, including balance forward, revenues and transfers during fiscal year 2021-2022. These monies are appropriated to the department of

administration for the purposes established in section 41-711, Arizona Revised Statutes. The appropriation is adjusted as necessary to reflect monies credited to the automation operations fund for automation operation center projects. Before spending any automation operations fund monies in excess of $31,275,400 in fiscal year 2021-2022, the department shall report the intended use of the monies to the joint legislative budget committee.

On or before September 1, 2022, the department shall submit a report for review by the joint legislative budget committee on the results of pilot projects implemented in fiscal year 2021-2022 for the state employee public transportation service reimbursements pursuant to section 41-710.01, Arizona Revised Statutes, in a vehicle emissions control area as defined in section 49-541, Arizona Revised Statutes, of a county with a population of more than four hundred thousand persons.

All state surplus materials revolving fund monies received by the department of administration in excess of $3,003,200 in fiscal year 2021-2022 are appropriated to the department. Before spending state surplus materials revolving fund monies in excess of $3,003,200 in fiscal year 2021-2022, the department shall report the intended use of the monies to the joint legislative budget committee.

The amount appropriated for the hoteling pilot program line item in fiscal year 2021-2022 is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

Of the amount appropriated for the Arizona financial information system line item in fiscal year 2021-2022, $2,000,000 is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

The department may charge state agencies not more than $10.42 per user per month for the statewide email and calendar service.

Sec. 6. OFFICE OF ADMINISTRATIVE HEARINGS

		2021-22
FTE positions		12.0
Lump sum appropriation	$	921,500
Fund sources:		
State general fund	$	921,500

Sec. 7. ARIZONA COMMISSION OF AFRICAN-AMERICAN AFFAIRS

		2021-22
FTE positions		3.0
Lump sum appropriation	$	133,200
Fund sources:		
State general fund	$	133,200

Sec. 8. ARIZONA DEPARTMENT OF AGRICULTURE

	2021-22
FTE positions	209.9
Operating lump sum appropriation	$ 17,985,500
Agricultural employment relations board	23,300
Animal damage control	65,000
Red imported fire ant control	23,200
Agricultural consulting and training	128,500
Total appropriation — Arizona department of agriculture	$ 18,225,500
Fund sources:	
State general fund	$ 16,726,400
Air quality fund	1,499,100

Sec. 9. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

	2021-22
FTE positions	2,348.3
Operating lump sum appropriation	$ 112,240,600
Administration	
ADOA data center	19,325,800
DES eligibility	88,874,500
Proposition 204 — AHCCCS administration	13,964,300
Proposition 204 — DES eligibility	44,358,700
Medicaid services	
Traditional medicaid services	6,858,335,700
Proposition 204 services	6,504,234,100
Adult expansion services	1,569,961,900
Comprehensive medical and dental program	227,089,300
KidsCare services	141,691,200
ALTCS services	2,022,877,700
Behavioral health services in schools	10,003,300
Nonmedicaid behavioral health services	
Crisis services	16,391,300
Nonmedicaid seriously mentally ill services	77,646,900
Supported housing	65,324,800
Onetime substance use disorder services fund deposit	6,000,000

Hospital payments	
Disproportionate share payments	5,087,100
Disproportionate share payments - voluntary match	48,666,500
Rural hospitals	28,612,400
Graduate medical education	351,322,800
Targeted investments program	50,000,000
Total appropriation and expenditure authority - Arizona health care cost containment system	$18,262,008,900
Fund sources:	
State general fund	$ 1,916,287,300
Budget neutrality compliance fund	4,076,200
Children's health insurance program fund	117,754,900
Prescription drug rebate fund - state	175,237,600
Seriously mentally ill housing trust fund	200,000
Substance abuse services fund	2,250,200
Tobacco products tax fund - emergency health services account	17,921,600
Tobacco tax and health care fund - medically needy account	69,002,100
Expenditure authority	15,959,279,000

Operating budget

The amount appropriated for the DES eligibility line item shall be used for intergovernmental agreements with the department of economic security for eligibility determination and other functions. The state general fund share may be used for eligibility determination for other programs administered by the division of benefits and medical eligibility based on the results of the Arizona random moment sampling survey.

The amounts included in the proposition 204 - AHCCCS administration, proposition 204 - DES eligibility and proposition 204 services line items include all available sources of funding consistent with section 36-2901.01, subsection B, Arizona Revised Statutes.

Of the amount appropriated for the operating lump sum, $100,000 shall be used for a suicide prevention coordinator to assist school districts and charter schools in suicide prevention efforts. The Arizona health care cost containment system administration, in consultation with the department of education, shall report to the governor, the president of the senate, the speaker of the house of representatives, the director of the joint legislative budget committee and the director of the governor's office of strategic planning and budgeting on or before

September 1, 2022 on the suicide prevention coordinator's accomplishments in fiscal year 2021-2022.

Medical services and behavioral health services

Before making fee-for-service program or rate changes that pertain to fee-for-service rate categories, the Arizona health care cost containment system administration shall report its expenditure plan for review by the joint legislative budget committee.

The Arizona health care cost containment system administration shall report to the joint legislative budget committee on or before March 1, 2022 on preliminary actuarial estimates of the capitation rate changes for the following fiscal year along with the reasons for the estimated changes. For any actuarial estimates that include a range, the total range from minimum to maximum may not be more than two percent. Before implementing any changes in capitation rates, the administration shall report its expenditure plan for review by the joint legislative budget committee. Before the administration implements any change in policy affecting the amount, sufficiency, duration and scope of health care services and who may provide services, the administration shall prepare a fiscal impact analysis on the potential effects of this change on the following year's capitation rates. If the fiscal impact analysis demonstrates that this change will result in additional state costs of $500,000 or more for any fiscal year, the administration shall submit the policy change for review by the joint legislative budget committee.

The legislature intends that the percentage attributable to administration and profit for the regional behavioral health authorities be nine percent of the overall capitation rate.

The Arizona health care cost containment system administration shall transfer up to $1,200,000 from the traditional medicaid services line item for fiscal year 2021-2022 to the attorney general for costs associated with e-cigarette enforcement and tobacco settlement litigation.

The Arizona health care cost containment system administration shall transfer $836,000 from the traditional medicaid services line item for fiscal year 2021-2022 to the department of revenue for enforcement costs associated with the March 13, 2013 master settlement agreement with tobacco companies.

On or before June 30, 2022, the Arizona health care cost containment system administration shall report to the joint legislative budget committee on the progress in implementing the Arnold v. Sarn lawsuit settlement. The report shall include, at a minimum, the administration's progress toward meeting all criteria specified in the 2014 joint stipulation, including the development and estimated cost of additional behavioral health service capacity in Maricopa county for supported housing services for 1,200 class members, supported employment services for 750 class members, eight assertive community treatment teams and consumer operated services for 1,500 class members. The administration

shall also report by fund source the amounts it plans to use to pay for expanded services.

On or before September 30, 2022, the Arizona health care cost containment system administration shall report to the joint legislative budget committee on its progress in implementing services specified in the housing and health opportunities section 1115 waiver amendment. The report shall include, at a minimum, the types of services provided for eligible AHCCCS members, expenditures by service category, the number of members receiving services by eligibility category, the number of members waitlisted for housing services and progress toward achieving program outcomes, including changes in hospital utilization rates and utilization of primary care and preventive health services.

The appropriated amount for the supported housing line item includes $60,000,000 of federal medicaid expenditure authority. If the administration's housing and health opportunities section 1115 waiver amendment is denied federal approval, the amount of $60,000,000 of federal medicaid expenditure authority is reduced from the supported housing line item appropriation.

Long-term care

Any federal monies that the Arizona health care cost containment system administration passes through to the department of economic security for use in long-term care for persons with developmental disabilities do not count against the long-term care expenditure authority.

Pursuant to section 11-292, subsection B, Arizona Revised Statutes, the county portion of the fiscal year 2021-2022 nonfederal costs of providing long-term care system services is $283,194,000. This amount is included in the expenditure authority fund source.

Any supplemental payments received in excess of $109,928,700 for nursing facilities that serve Arizona long-term care system medicaid patients in fiscal year 2021-2022, including any federal matching monies, by the Arizona health care cost containment system administration are appropriated to the administration in fiscal year 2021-2022. Before spending these increased monies, the administration shall notify the joint legislative budget committee and the governor's office of strategic planning and budgeting of the amount of monies that will be spent under this provision. These payments are included in the expenditure authority fund source.

Payments to hospitals

The $5,087,100 appropriation for disproportionate share payments for fiscal year 2021-2022 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, includes $4,202,300 for the Maricopa county health care district and $884,800 for private qualifying disproportionate share hospitals.

Any monies received for disproportionate share hospital payments from political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents, and any federal monies used to match those payments, in fiscal year 2021-2022 by the Arizona health care cost containment system administration in excess of $48,666,500 are appropriated to the administration in fiscal year 2021-2022. Before spending these increased monies, the administration shall notify the joint legislative budget committee and the governor's office of strategic planning and budgeting of the amount of monies that will be spent under this provision.

The expenditure authority fund source includes voluntary payments made from political subdivisions for payments to hospitals that operate a graduate medical education program or treat low-income patients and for payments to qualifying providers affiliated with teaching hospitals. The political subdivision portions of the fiscal year 2021-2022 costs of graduate medical education, disproportionate share payments — voluntary match, traditional medicaid services, proposition 204 services and adult expansion services line items are included in the expenditure authority fund source.

Any monies for graduate medical education received in fiscal year 2021-2022, including any federal matching monies, by the Arizona health care cost containment system administration in excess of $351,322,200 are appropriated to the administration in fiscal year 2021-2022. Before spending these increased monies, the administration shall notify the joint legislative budget committee and the governor's office of strategic planning and budgeting of the amount of monies that will be spent under this provision.

Notwithstanding section 36-2903.01, subsection G, paragraph 9, subdivisions (a), (b) and (c), Arizona Revised Statutes, the amount for graduate medical education includes $3,333,400 from the state general fund and $7,782,600 from expenditure authority for the direct and indirect costs of graduate medical education programs located in a county with a population of less than five hundred thousand persons. The state general fund amount may supplement, but not supplant, voluntary payments made from political subdivisions for payments to hospitals that operate a graduate medical education program. The administration shall prioritize distribution to programs at hospitals in counties with a higher percentage of persons residing in a health professional shortage area as defined in 42 Code of Federal Regulations part 5.

Notwithstanding section 36-2903.01, subsection G, paragraph 9, subdivisions (a), (b) and (c), Arizona Revised Statutes, the amount for graduate medical education includes $2,666,600 from the state general fund and $6,225,700 from expenditure authority for the direct and indirect costs of graduate medical education programs located in a county with a population of more than five hundred thousand persons. The state general

fund amount may supplement, but not supplant, voluntary payments made from political subdivisions for payments to hospitals that operate a graduate medical education program. The administration shall prioritize distribution to programs at hospitals in counties with a higher percentage of persons residing in a health professional shortage area as defined in 42 Code of Federal Regulations part 5.

Monies appropriated for graduate medical education in this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2022.

Other

On or before July 1, 2022, the Arizona health care cost containment system administration shall report to the director of the joint legislative budget committee the total amount of medicaid reconciliation payments and penalties received on or before that date since July 1, 2021.

The nonappropriated portion of the prescription drug rebate fund established by section 36-2930, Arizona Revised Statutes, is included in the federal portion of the expenditure authority fund source.

Sec. 10. BOARD OF ATHLETIC TRAINING

	2021-22
FTE positions	1.5
Lump sum appropriation	$ 130,500
Fund sources:	
Athletic training fund	$ 130,500

Sec. 11. ATTORNEY GENERAL — DEPARTMENT OF LAW

	2021-22
FTE positions	624.7
Operating lump sum appropriation	$ 55,707,300
Attorney stipend/retention bonus	2,000,000
Capital postconviction prosecution	824,800
Child and family advocacy centers	600,000
Criminal division major fraud unit	1,139,000
Internet crimes against children enforcement	1,250,000
Expert witness and outside counsel	1,200,000
Federalism unit	1,248,900
Government accountability and special litigation	1,252,000
Study committee on missing and murdered indigenous peoples	40,000
Organized retail theft task force	1,500,000
Risk management interagency service agreement	9,927,300
State grand jury	185,200
Southern Arizona law enforcement	1,571,300

Technology company antitrust	1,000,000
Tobacco enforcement	834,200
Victims' rights	3,783,300
Voter fraud unit	530,000
Total appropriation — attorney general — department of law	$84,593,300
Fund sources:	
State general fund	$ 25,326,000
Antitrust enforcement revolving fund	1,152,500
Attorney general legal services cost allocation fund	2,166,600
Collection enforcement revolving fund	7,132,700
Consumer protection-consumer fraud revolving fund	16,724,400
Interagency service agreements fund	16,980,500
Internet crimes against children enforcement fund	900,000
Risk management revolving fund	10,427,300
Victims' rights fund	3,783,300

All monies appropriated to the attorney general legal services line item in the department of child safety budget do not count toward the attorney general's interagency service agreements fund appropriation in fiscal year 2021-2022.

Within ten days after receiving a complaint alleging a violation of section 15-511, Arizona Revised Statutes, the attorney general shall forward a copy of the complaint to the governor, the president of the senate and the speaker of the house of representatives.

The amount appropriated for the child and family advocacy centers line item is allocated to the child and family advocacy center fund established by section 41-191.11, Arizona Revised Statutes.

The $900,000 appropriation from the internet crimes against children enforcement fund established by section 41-199, Arizona Revised Statutes, and the $350,000 appropriation from the state general fund for the internet crimes against children enforcement line item are continuing appropriations and are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

The $1,000,000 appropriation for the technology company antitrust line item shall be used to employ or retain attorneys to investigate and pursue enforcement actions against technology companies that engage in anticompetitive, anticonsumer or monopolistic behavior and is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

The attorney general shall establish an organized retail theft task force to combat crimes that relate to stealing, embezzling or obtaining retail merchandise by fraud, false pretenses or other illegal means for the purpose of reselling the items or for reentering the items into commerce. The task force shall investigate only those offenses or violations that are under the attorney general's jurisdiction as prescribed by section 21-422, Arizona Revised Statutes. The attorney general shall invite federal, state and local law enforcement personnel to participate in the task force in order to more effectively use the combined skills, expertise and resources of law enforcement personnel. The task force shall review, investigate and prosecute appropriate cases brought before the task force by law enforcement agencies or authorized loss prevention personnel. A member of the legislature may submit the name of a certified peace officer to the attorney general and recommend the officer's placement on the task force. Members of the task force shall investigate, apprehend and prosecute, as appropriate, individuals or entities that participate in the purchase, sale or distribution of stolen property from a retail establishment or through the use of an internet or network site and shall target individuals or entities that commit theft and other property crimes for financial gain. The attorney general may enter into one or more intergovernmental agreements with other state and local law enforcement agencies and with any similar organized retail theft task force program that coordinates a national network of coordinated task forces that assist federal, state, local and tribal law enforcement agencies in conducting investigations, forensic examinations and prosecutions related to organized retail theft. The task force shall consist of at least one full-time prosecutor, paralegal and support staff person, at least two investigators and four peace officers. The task force shall have regularly scheduled meetings to review cases and provide updates on ongoing cases to all members of the task force. On or before July 1 of each year the task force is in existence, the task force shall submit a report to the legislature on the task force's activities and any recommendations for legislative action relating to criminal penalties for crimes that have a negative impact on this state's economy. The task force ends on July 1, 2029.

The $1,500,000 appropriation for the organized retail theft task force line item shall be used for operational expenses of the organized retail task force and for hiring one attorney, one paralegal, two investigators and one support staff person within the office of the attorney general and four peace officers who are assigned to the task force to focus specifically on investigating and prosecuting organized retail crime.

Through June 30, 2023, the attorney general may not represent or provide legal advice to the secretary of state or the department of state on any matter.

Sec. 12. BOARD OF BARBERS

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 419,200
Fund sources:	
Board of barbers fund	$ 419,200

Sec. 13. BOARD OF BEHAVIORAL HEALTH EXAMINERS

	2021-22
FTE positions	17.0
Lump sum appropriation	$ 1,818,200
Fund sources:	
Board of behavioral health examiners fund	$ 1,818,200

Sec. 14. STATE BOARD FOR CHARTER SCHOOLS

	2021-22
FTE positions	24.0
Lump sum appropriation	$ 2,152,100
Fund sources:	
State general fund	$ 2,152,100

Sec. 15. DEPARTMENT OF CHILD SAFETY

	2021-22
FTE positions	3,203.1
Operating lump sum appropriation	$113,172,200
Additional operating resources	
Attorney general legal services	25,522,800
Caseworkers	113,949,000
General counsel	161,700
Inspections bureau	2,548,300
New case aides	3,305,900
Office of child welfare investigations	9,964,800
Records retention staff	600,000
Training resources	9,150,000
Out-of-home placements	
Congregate group care	114,927,100
Extended foster care	14,437,200
Foster home placement	51,929,500
Foster home recruitment, study and supervision	32,753,600
Kinship care	5,000,000
Permanent placements	
Adoption services	278,258,500
Permanent guardianship subsidy	12,516,900

Support services	
DCS child care subsidy	152,075,400
In-home mitigation	28,988,100
Out-of-home support services	116,164,000
Preventive services	15,148,300
Comprehensive health plan	
Comprehensive health plan services	197,055,400
Comprehensive health plan administration	29,862,500
Comprehensive health plan premium tax	4,405,100
Total appropriation and expenditure authority — department of child safety	$ 1,331,896,300
Fund sources:	
State general fund	$ 408,432,200
Federal child care and development fund block grant	130,916,000
Federal temporary assistance for needy families block grant	159,091,100
Child abuse prevention fund	1,459,300
Children and family services training program fund	217,000
Child safety expenditure authority	630,838,800
Child welfare licensing fee fund	941,900

Additional operating resources

The department of child safety shall provide training to any new child safety FTE positions before assigning any client caseload duties to any of these employees.

The legislature intends that the department of child safety use its funding to achieve a one hundred percent investigation rate.

All expenditures made by the department of child safety for attorney general legal services shall be funded only from the attorney general legal services line item. Monies in department of child safety line items intended for this purpose shall be transferred to the attorney general legal services line item before expenditure.

Of the amount appropriated for the DCS child care subsidy line item, a total of $90,400,000 from the federal child care and development fund block grant is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Out-of-home placements

The department of child safety may transfer up to ten percent of the total amount of federal temporary assistance for needy families block grant monies appropriated to the department of economic security and the department of child safety to the social services block grant. Before

transferring federal temporary assistance for needy families block grant monies to the social services block grant, the department of child safety shall report the proposed amount of the transfer to the director of the joint legislative budget committee. This report may be in the form of an expenditure plan that is submitted at the beginning of the fiscal year and updated, if necessary, throughout the fiscal year.

The amount appropriated for kinship care shall be used for a stipend of $75 per month for a relative caretaker, including a grandparent, any level of great-grandparent or any nongrandparent relative, or a caretaker of fictive kinship, if a dependent child is placed in the care of a relative caretaker or caretaker of fictive kinship pursuant to department guidelines. The department shall provide the stipend on behalf of all children placed with an unlicensed kinship foster care parent. The unlicensed kinship foster care parent is not required to file an application to receive the stipend. Before changing the eligibility for the program or the amount of the stipend, the department shall submit a report for review by the joint legislative budget committee detailing the proposed changes.

Departmentwide

The amount appropriated for any line item may not be transferred to another line item or to the operating budget unless the transfer is reviewed by the joint legislative budget committee, except that transfers between any two line items relating to the comprehensive health plan are not subject to review.

Child safety expenditure authority includes all department funding sources excluding the state general fund, the federal child care and development fund block grant, the federal temporary assistance for needy families block grant, the child abuse prevention fund and the children and family services training program fund.

On or before December 1, 2021, the department of child safety shall submit a report to the joint legislative budget committee on the department's efforts to implement the family first prevention services act of 2018. The report shall quantify the department's efforts in at least the following areas, including any associated fiscal impacts:

1. Reducing the number of children placed for more than two weeks in congregate care settings, excluding qualified residential treatment programs, facilities for pregnant and parenting youth, supervised independent living and specialized programs for victims of sex trafficking.

2. Assisting congregate care providers in attaining status as qualified residential treatment programs.

3. Identifying alternative placements, including therapeutic foster homes, for children who would otherwise be placed in congregate care.

4. Expanding evidence-based, in-home parent skill-based programs and mental health and substance abuse prevention and treatment services.

Benchmarks

For the purposes of this section, "backlog case":

1. Means any nonactive case for which documentation has not been entered in the child welfare automated system for at least sixty days and for which services have not been authorized for at least sixty days and any case that has had an investigation, has been referred to another unit and has had no contact for at least sixty days.

2. Includes any case for which the investigation has been open without any documentation or contact for at least sixty days, any case involving in-home services for which there has been no contact or services authorized for at least sixty days and any case involving foster care in which there has been no contact or any documentation entered in the child welfare automated system for at least sixty days.

For the purposes of this section, "open report" means a report that is under investigation or awaiting closure by a supervisor.

On or before February 28, 2022 and August 31, 2022, the department of child safety shall present a report to the joint legislative budget committee on the progress made during July 2021 through December 2021 and January 2022 through June 2022, respectively, in meeting the caseload standard and reducing the number of backlog cases and out-of-home children. Each report shall include the number of backlog cases, the number of open reports, the number of out-of-home children and the caseworker workload in comparison to the previous six months. Each report shall provide the number of backlog cases by disposition, including the number of backlog cases in the investigation phase, the number of backlog cases associated with out-of-home placements and the number of backlog cases associated with in-home cases.

To determine the caseworker workload, the department shall report the number of case-carrying caseworkers at each field office and the number of investigations, in-home cases and out-of-home children assigned to each field office.

For backlog cases, the department's benchmark is 1,000 cases.

For open reports, the department's benchmark is fewer than 8,000 open reports.

For out-of-home children, the department's benchmark is 13,964 children.

If the department of child safety has not submitted a required report within thirty days after the report is due, the director of the joint legislative budget committee shall inform the general accounting office of the department of administration, which shall withhold two percent of the department of child safety's operating lump sum semiannual budget allocation until the department of child safety submits the required report.

Sec. 16. STATE BOARD OF CHIROPRACTIC EXAMINERS

	2021-22
FTE positions	5.0
Lump sum appropriation	$ 450,600
Fund sources:	
Board of chiropractic examiners fund	$ 450,600

Sec. 17. ARIZONA COMMERCE AUTHORITY

	2021-22
Operating lump sum appropriation	$ 10,000,000
Arizona competes fund deposit	5,500,000
Blockchain/wearable research	5,000,000
Frankfurt, Germany trade office	250,000
Israel trade office	175,000
Mexico trade offices	500,000
Major events fund deposit	7,500,000
Total appropriation — Arizona commerce authority	$ 28,925,000
Fund sources:	
State general fund	$ 28,925,000

Pursuant to section 43-409, Arizona Revised Statutes, of the amounts listed above, $15,500,000 of the state general fund withholding tax revenues is allocated in fiscal year 2021-2022 to the Arizona commerce authority, of which $10,000,000 is credited to the Arizona commerce authority fund established by section 41-1506, Arizona Revised Statutes, and $5,500,000 is credited to the Arizona competes fund established by section 41-1545.01, Arizona Revised Statutes.

The Arizona commerce authority shall distribute monies appropriated in the blockchain/wearable research line item to applied research centers and institutes located in this state that specialize in blockchain or wearable technology to be allocated as follows:

1. $2,500,000 for distribution to applied research centers that specialize in blockchain technology.

2. $2,500,000 for distribution to applied research centers that specialize in wearable technology.

Subject to available funding, the authority shall distribute monies in the blockchain/wearable research line item to any applied research center in increments of up to $250,000 within thirty days after the applied research center notifies the authority in writing that the applied research center has received a matching amount from sources other than this state. The authority is exempt from the requirements of title 41, chapter 23, Arizona Revised Statutes, for the purposes of making the distributions to the applied research centers.

An applied research center that receives a distribution pursuant to this section must collaborate with universities, nonprofit business associations, health science research centers, institutes or other technology businesses that do business in this state. On or before September 15, 2025, the applied research center or institute shall return to the authority all monies received by the applied research center or institute pursuant to this section that remain unexpended and unencumbered on September 1, 2025. The authority shall deposit the returned monies in the state general fund. The authority shall notify the president of the senate and the speaker of the house of representatives on or before July 1, 2022 and July 1, 2023 if the authority has not distributed any monies pursuant to this section.

An applied research center or institute that receives monies pursuant to this section shall annually submit an expenditure and performance report to the authority. The authority shall transmit the report to the joint legislative budget committee and the governor's office of strategic planning and budgeting on or before February 1, 2022, 2023, 2024, 2025 and 2026.

The appropriation made in the blockchain/wearable research line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any amounts that remain unexpended and unencumbered on June 30, 2025 revert to the state general fund.

Sec. 18. ARIZONA COMMUNITY COLLEGES

	2021-22
Equalization aid	
Cochise	$ 7,925,300
Graham	18,193,200
Navajo	9,171,000
Yuma/La Paz	616,700
Total — equalization aid	$ 35,906,200
Operating state aid	
Cochise	$ 4,373,500
Coconino	1,626,500
Gila	271,500
Graham	1,936,100
Mohave	1,205,500
Navajo	1,512,300
Pinal	1,356,500
Santa Cruz	17,100
Yavapai	590,500
Yuma/La Paz	2,391,900
Total — operating state aid	$ 15,281,400

STEM and workforce programs state aid	
Cochise	$ 928,400
Coconino	371,800
Gila	127,200
Graham	484,200
Mohave	465,700
Navajo	319,700
Pinal	96,500
Santa Cruz	29,800
Yavapai	699,200
Yuma/La Paz	1,027,400
Total — STEM and workforce programs state aid	$ 4,549,900
Rural aid	
Cochise	$ 6,251,000
Coconino	1,907,300
Gila	652,300
Graham	2,483,700
Mohave	2,388,900
Navajo	1,640,200
Pinal	3,666,000
Santa Cruz	153,000
Yavapai	3,586,900
Yuma/La Paz	5,270,700
Total — rural aid	$ 28,000,000
Urban aid	
Maricopa	$ 10,400,000
Pima	2,600,000
Total — urban aid	$ 13,000,000
Rural county reimbursement subsidy	$ 1,773,800
Additional Gila workforce development aid	200,000
Diné college remedial education	1,000,000
Total appropriation — Arizona community colleges	$ 99,711,300
Fund sources:	
State general fund	$ 99,711,300

Of the $1,773,800 appropriated to the rural county reimbursement subsidy line item, Apache county receives $973,800 and Greenlee county receives $800,000.

On or before October 15, 2022, the Diné college board of regents shall submit to the governor, the speaker of the house of representatives, the president of the senate, the secretary of state and the joint legislative budget committee a report that details the course completion

rate for students who received remedial education during the 2021-2022 academic year.

Sec. 19. REGISTRAR OF CONTRACTORS

	2021-22
FTE positions	105.6
Operating lump sum appropriation	$ 11,672,400
Office of administrative hearings costs	1,017,600
Total appropriation — registrar of contractors	$ 12,690,000
Fund sources:	
Registrar of contractors fund	$ 12,690,000

Sec. 20. CORPORATION COMMISSION

	2021-22
FTE positions	300.9
Operating lump sum appropriation	$ 27,842,400
Corporation filings, same-day service	417,700
Utilities audits, studies, investigations and hearings	380,000*
Total appropriation — corporation commission	$ 28,640,100
Fund sources:	
State general fund	$ 647,100
Arizona arts trust fund	52,600
Investment management regulatory and enforcement fund	745,500
Public access fund	6,976,200
Securities regulatory and enforcement fund	5,286,100
Utility regulation revolving fund	14,932,600

Sec. 21. STATE DEPARTMENT OF CORRECTIONS

	2021-22
FTE positions	9,566.0
Operating lump sum appropriation	$ 917,888,200
Private prison per diem	215,012,100
Community corrections	24,429,600
Inmate health care contracted services	203,173,100
Medical staffing augmentation	15,000,000
Substance abuse treatment	5,000,600
Total appropriation — state department of corrections	$1,380,503,600

Fund sources:	
State general fund	$1,327,159,000
State education fund for correctional education	769,600
Alcohol abuse treatment fund	555,500
Penitentiary land fund	2,804,000
State charitable, penal and reformatory institutions land fund	2,661,800
Corrections fund	30,312,300
Transition program fund	2,400,100
Prison construction and operations fund	12,500,000
Inmate store proceeds fund	1,341,300

Of the amount appropriated in the operating lump sum, $440,795,600 is designated for personal services and $282,452,500 is designated for employee-related expenditures. The department shall submit an expenditure plan to the joint legislative budget committee for review before spending these monies other than for personal services or employee-related expenditures, except that until January 1, 2023, if the department makes a transfer between two line items to maximize the use of federal monies, the department shall submit an expenditure plan that is not subject to review before spending those monies.

Before placing any inmates in out-of-state provisional beds, the department shall place inmates in all available prison beds in facilities that are located in this state and that house Arizona inmates, unless the out-of-state provisional beds are of a comparable security level and price.

The state department of corrections shall forward to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the director of the joint legislative budget committee a monthly report comparing department expenditures for the month and year-to-date as compared to prior-year expenditures on or before the thirtieth of the following month. The report shall be in the same format as the prior fiscal year and include an estimate of potential shortfalls, potential surpluses that may be available to offset these shortfalls and a plan, if necessary, for eliminating any shortfall without a supplemental appropriation. The report shall include the number of filled and vacant correctional officer and medical staff positions departmentwide and by prison complex.

On or before November 1, 2021, the state department of corrections shall provide a report on bed capacity to the joint legislative budget committee for review. The report shall reflect the bed capacity for each security classification by gender at each state-run and private

institution, divided by rated and total beds. The report shall include bed capacity data for June 30, 2020 and June 30, 2021 and the projected capacity for June 30, 2022, as well as the reasons for any change within that time period. Within the total bed count, the department shall provide the number of temporary and special use beds. The report shall also address the department's rationale for eliminating any permanent beds rather than reducing the level of temporary beds. The report shall also include any plans to vacate beds but not permanently remove the beds from the bed count. If the department develops a plan after its November 1 report to open or close state-operated prison rated beds or cancel or not renew contracts for privately operated prison beds, the department shall submit a bed plan detailing the proposed bed closures for review by the joint legislative budget committee before implementing these changes.

One hundred percent of land earnings and interest from the penitentiary land fund shall be distributed to the state department of corrections in compliance with the enabling act and the Constitution of Arizona to be used to support state penal institutions.

On or before December 15, 2021 and July 15, 2022, the state department of corrections shall submit a report to the joint legislative budget committee on the progress made in meeting the staffing needs for correctional officers. Each report shall include the number of filled correctional officer positions, the number of vacant correctional officer positions, the number of people in training, the number of separations and the number of hours of overtime worked year-to-date. The report shall detail these amounts both departmentwide and by prison complex.

On or before March 31, 2022, the state department of corrections, in cooperation with the Arizona strategic enterprise technology office, shall submit a report to the joint legislative budget committee on the progress made to incorporate all sentence calculations into the Arizona corrections information system. The report shall also include a detailed description of any other work needed to fully implement other system functions and the cost and staffing requirements to complete that work.

Twenty-five percent of land earnings and interest from the state charitable, penal and reformatory institutions land fund shall be distributed to the state department of corrections in compliance with the enabling act and the Constitution of Arizona to be used to support state penal institutions.

Before spending any state education fund for correctional education monies in excess of $769,600, the state department of corrections shall report the intended use of the monies to the director of the joint legislative budget committee.

On or before August 1, 2021 and February 1, 2022, the state department of corrections shall submit a report to the joint legislative budget committee on the status of the performance measures tracked by the department as required by the Parson v. Ryan stipulation agreement, a copy

of any court-ordered compliance reports filed by the department or a contracted provider during the reporting period and a copy of any report produced by a court-appointed monitor regarding the delivery of health services during each reporting period. Each report shall include the number of performance measures in total and by facility with which the department is not in substantial compliance, an explanation for why the department is not in substantial compliance and the department's plans to comply with the measures. The report shall also list the measures the department is no longer required to track as a result of compliance with the stipulation.

Before implementing any changes in contracted rates for inmate health care contracted services, the state department of corrections shall submit its expenditure plan for review by the joint legislative budget committee.

On or before August 1, 2021, the state department of corrections shall transfer to the public safety personnel retirement system via the department of administration its estimated required annual contribution to the corrections officer retirement plan for fiscal year 2021-2022.

On or before December 15, 2021 and July 15, 2022, the state department of corrections shall submit a report to the joint legislative budget committee on the medical staffing augmentation line item. The report must include, at a minimum, the actual expenditures made to date by purpose and the expenditure plan for all remaining monies by purpose.

The $15,000,000 appropriation from the state general fund for the medical staffing augmentation line item is a continuing appropriation and is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriation.

Sec. 22. BOARD OF COSMETOLOGY

	2021-22
FTE positions	24.5
Lump sum appropriation	$ 1,904,200
Fund sources:	
Board of cosmetology fund	$ 1,904,200

Sec. 23. ARIZONA CRIMINAL JUSTICE COMMISSION

	2021-22
FTE positions	11.0
Operating lump sum appropriation	$ 1,292,700
Coordinated reentry planning database	1,000,000
State aid to county attorneys	973,700
State aid to indigent defense	700,000
Victim compensation and assistance	4,229,900
Total appropriation — Arizona criminal justice commission	$ 8,196,300

Fund sources:	
State general fund	$ 1,000,000
Criminal justice enhancement fund	668,500
Resource center fund	624,200
State aid to county attorneys fund	973,700
State aid to indigent defense fund	700,000
Victim compensation and assistance fund	4,229,900

All victim compensation and assistance fund monies received by the Arizona criminal justice commission in excess of $4,229,900 in fiscal year 2021-2022 are appropriated to the crime victims program. Before spending any victim compensation and assistance fund monies in excess of $4,229,900 in fiscal year 2021-2022, the Arizona criminal justice commission shall report the intended use of the monies to the joint legislative budget committee.

All monies received by the Arizona criminal justice commission in excess of $973,700 in fiscal year 2021-2022 from the state aid to county attorneys fund established by section 11-539, Arizona Revised Statutes, are appropriated to the state aid to county attorneys program. Before spending any state aid to county attorneys fund monies in excess of $973,700 in fiscal year 2021-2022, the Arizona criminal justice commission shall report the intended use of the monies to the joint legislative budget committee.

Sec. 24. ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND

	2021-22
FTE positions	562.2
Administration/statewide	$ 7,946,600
Phoenix day school for the deaf	10,678,200
Tucson campus	12,649,600
Preschool/outreach programs	6,538,800
School bus/agency vehicle replacement	369,000
Cooperative services	17,914,500
Total appropriation — Arizona state schools for the deaf and the blind	$ 56,096,700
Fund sources:	
State general fund	$ 23,865,500
Schools for the deaf and the blind fund	14,316,700
Cooperative services fund	17,914,500

Before spending any schools for the deaf and the blind fund monies in excess of $14,316,700 in fiscal year 2021-2022, the Arizona state schools for the deaf and the blind shall report to the joint legislative budget committee the intended use of the monies.

Before spending any cooperative services fund monies in excess of $17,914,500 in fiscal year 2021-2022, the Arizona state schools for the deaf and the blind shall report to the joint legislative budget committee the intended use of the monies.

Sec. 25. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

	2021-22
FTE positions	17.0
Operating lump sum appropriation	$ 4,493,900
Support services for the deaf-blind	192,000
Total appropriation — commission for the deaf and the hard of hearing	$ 4,685,900
Fund sources:	
Telecommunication fund for the deaf	$ 4,685,900

Sec. 26. STATE BOARD OF DENTAL EXAMINERS

	2021-22
FTE positions	11.0
Lump sum appropriation	$ 1,842,200
Fund sources:	
Dental board fund	$ 1,842,200

Sec. 27. OFFICE OF ECONOMIC OPPORTUNITY

	2021-22
FTE positions	5.0
Lump sum appropriation	$ 485,500
Fund sources:	
State general fund	$ 485,500

Sec. 28. DEPARTMENT OF ECONOMIC SECURITY

	2021-22
FTE positions	4,381.8
Operating lump sum appropriation	$163,229,600
Administration	
Attorney general legal services	11,540,100
Aging and adult services	
Adult services	11,205,900
Community and emergency services	3,724,000
Coordinated homeless services	2,522,600
Domestic violence prevention	14,003,700
Sexual violence services	8,000,000
Long-term care ombudsman	1,000,000
After school and summer youth program	500,000

Benefits and medical eligibility	
Temporary assistance for needy families — cash benefits	22,736,400
Pandemic emergency assistance	14,546,500
Coordinated hunger services	1,754,600
Tribal pass-through funding	4,680,300
Child support enforcement	
County participation	8,539,700
Developmental disabilities	
DDD administration	119,354,600
DDD premium tax payment	50,055,200
Case management — medicaid	87,972,500
Home and community based services — medicaid	1,822,493,000
Institutional services — medicaid	34,881,700
Physical and behavioral health services — medicaid	465,349,400
Medicare clawback payments	4,661,200
Targeted case management — medicaid	13,191,900
Case management — state-only	6,311,900
Home and community based services — state-only	13,589,000
Cost effectiveness study — client services	1,220,000
Arizona early intervention program	6,319,000
State-funded long-term care services	41,579,100
Employment and rehabilitation services	
JOBS	11,005,600
Child care subsidy	1,273,693,000
Independent living rehabilitation services	1,289,400
Rehabilitation services	7,249,100
Workforce investment act services	53,654,600
Return to work grants	7,500,000
Total appropriation and expenditure authority — department of economic security	$4,289,353,600
Fund sources:	
State general fund	$ 853,324,200
Federal child care and development fund block grant	1,286,155,800

Federal temporary assistance for needy families block grant	65,839,800
Federal pandemic emergency assistance fund	14,546,500
Long-term care system fund	32,463,800
Public assistance collections fund	423,600
Sexual violence service fund	8,000,000
Special administration fund	4,550,000
Spinal and head injuries trust fund	2,340,200
Statewide cost allocation plan fund	1,000,000
Child support enforcement administration fund	17,531,300
Domestic violence services fund	4,000,000
Workforce investment act grant	56,085,500
Child support enforcement administration fund expenditure authority	43,192,400
Developmental disabilities medicaid expenditure authority	1,873,037,300
Health care investment fund expenditure authority	26,863,200

Aging and adult services

All domestic violence services fund monies in excess of $4,000,000 received by the department of economic security are appropriated for the domestic violence prevention line item. Before spending these increased monies, the department shall report the intended use of monies in excess of $4,000,000 to the joint legislative budget committee.

On or before December 15, 2021, the department of economic security shall report to the joint legislative budget committee the amount of state and federal monies available statewide for domestic violence prevention funding. The report shall include, at a minimum, the amount of monies available and the state fiscal agent receiving those monies.

The amount appropriated for the after school and summer youth program line item shall be distributed to a charitable organization that is qualified under section 501(c)(3) of the internal revenue code, that is located in the city of Phoenix and that provides after school and summer youth programs dealing with gang violence for at-risk youth.

Benefits and medical eligibility

The operating lump sum appropriation may be spent on Arizona health care cost containment system eligibility determinations based on the results of the Arizona random moment sampling survey.

On or before December 15, 2021 and July 15, 2022, the department of economic security shall submit a report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the joint legislative budget committee on federal pandemic emergency assistance monies provided from the American rescue plan act of 2021. The report must include, at a minimum, the actual expenditures made to date by purpose, the expenditure plan for all remaining monies by purpose and the number of individuals served.

Child support enforcement

All state shares of retained earnings, fees and federal incentives in excess of $17,531,300 received by the division of child support enforcement are appropriated for operating expenditures. New FTE positions are authorized with the increased funding. Before spending these increased monies, the department of economic security shall report the intended use of the monies to the joint legislative budget committee.

Before the department spends any monies to replace the child support information technology system, the Arizona strategic enterprise technology office shall submit, on behalf of the department of economic security, an expenditure plan to the joint legislative budget committee for review. The expenditure plan shall include the project cost, deliverables, timeline for completion and method of procurement consistent with the department's prior reports for its appropriation from the automation projects fund pursuant to section 41-714, Arizona Revised Statutes.

Developmental disabilities

On or before September 1, 2022, the department of economic security shall report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the director of the joint legislative budget committee any new placement into a state-owned ICF-IID or the Arizona training program at the Coolidge campus in fiscal year 2021-2022 and the reason this placement, rather than a placement into a privately run facility for persons with developmental disabilities, was deemed as the most appropriate placement. The department shall also report if no new placements were made. On or before September 1, 2022, the department shall also report to the director of the joint legislative budget committee the total costs associated with the Arizona training program at Coolidge in fiscal year 2021-2022.

The department shall report to the joint legislative budget committee on or before March 1 of each year on preliminary actuarial estimates of the capitation rate changes for the following fiscal year along with the reasons for the estimated changes. For any actuarial estimates that include a range, the total range from minimum to maximum may not be more than two percent. Before implementing any changes in capitation rates for the long-term care system, the department shall

submit a report for review by the joint legislative budget committee. Before the department implements any change in policy affecting the amount, sufficiency, duration and scope of health care services and who may provide services, the department shall prepare a fiscal impact analysis on the potential effects of this change on the following year's capitation rates. If the fiscal impact analysis demonstrates that this change will result in additional state costs of $500,000 or more for any fiscal year, the department shall submit the policy change for review by the joint legislative budget committee.

Before implementing developmental disabilities or long-term care statewide provider rate adjustments that are not already specifically authorized by the legislature, court mandates or changes to federal law, the department shall submit a report for review by the joint legislative budget committee that includes, at a minimum, the estimated cost of the provider rate adjustment and the ongoing source of funding for the adjustment, if applicable.

Before transferring any monies in or out of the case management — medicaid, case management — state-only and DDD administration line items, the department shall submit a report for review by the joint legislative budget committee.

The department shall submit an expenditure plan report to the joint legislative budget committee of any new division of developmental disabilities salary adjustments not previously reviewed by the joint legislative budget committee.

On or before August 1, 2021, the department shall report to the joint legislative budget committee the number of filled positions for case managers and non-case managers in the division of developmental disabilities as of June 30, 2021. The department shall submit an expenditure plan of its staffing levels for review by the joint legislative budget committee if the department plans on hiring staff for non-case manager, non-case aide, non-case unit supervisor and non-case section manager positions above the staffing level indicated in the August 1, 2021 report.

The legislature intends that the division reallocate $15,000,000 of its base appropriation that the division spent for onetime developmental disabilities purposes in fiscal year 2020-2021 in order to partially finance the $30,000,000 provider rate increase in fiscal year 2021-2022.

Employment and rehabilitation services

On or before September 15, 2021 and March 15, 2022, the department of economic security shall submit a report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the joint legislative budget committee on child care development block grant monies provided from the coronavirus aid, relief, and economic security act, the consolidated appropriations act, 2021, and the American rescue

plan act of 2021. The report must include, at a minimum, the actual expenditures made to date by purpose and, separately, by federal legislation, the expenditure plan for all remaining monies by purpose and, separately, by federal legislation, the number of children served with the monies on average each month, the average child care reimbursement rates for the entire program, including these monies, and the number of child care settings with a quality rating.

On or before March 15, 2022, the department of economic security shall submit a report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the joint legislative budget committee on the number of individuals who have received child care support through return to work grants and the number of those individuals who did not return to receiving unemployment insurance within six months.

Of the amount appropriated for the child care subsidy line item, a total of $1,086,612,800 from the federal child care and development fund block grant is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations. The legislature intends that provider rate increases funded from this amount be contingent on available federal funding and not continue in future years after these monies have been spent.

The department of economic security shall forward to the joint legislative budget committee a monthly report listing data on the child care population served. The report must include, at a minimum, in each program the number of unduplicated children enrolled in child care within the department of economic security and the department of child safety by program and the average amount paid per child plus quality-related spending.

All workforce investment act grant monies that are received by this state in excess of $56,085,500 are appropriated to the workforce investment act services line item. Before spending these increased monies, the department shall report the intended use of monies in excess of $56,085,500 to the joint legislative budget committee.

The appropriated amount for the return to work grants line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2024.

Departmentwide

The above appropriations are in addition to monies granted to this state by the federal government for the same purposes but are deemed to include the sums deposited in the state treasury to the credit of the department of economic security pursuant to section 42-5029, Arizona Revised Statutes.

The department of economic security shall forward to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations

committees and the director of the joint legislative budget committee a monthly report comparing total expenditures for the month and year-to-date as compared to prior-year totals on or before the thirtieth of the following month. The report shall include an estimate of potential shortfalls in entitlement programs and potential federal and other monies, such as the statewide assessment for indirect costs, and any projected surplus in state-supported programs that may be available to offset these shortfalls and a plan, if necessary, for eliminating any shortfall without a supplemental appropriation.

Sec. 29. STATE BOARD OF EDUCATION

	2021-22
FTE positions	19.0
Operating lump sum appropriation	$ 2,212,800
Arizona empowerment scholarship account appeals	150,000
Total appropriation — state board of education	$ 2,362,800
Fund sources:	
State general fund	$ 2,362,800

Sec. 30. SUPERINTENDENT OF PUBLIC INSTRUCTION

	2021-22
FTE positions	202.9
Operating lump sum appropriation	$ 13,010,600
Formula programs	
Basic state aid	4,650,447,200
Results-based funding	68,600,000
Special education fund	36,029,200
Other state aid to districts	983,900
Classroom site fund	977,025,600
Instructional improvement fund	63,765,400
Property tax relief	
Additional state aid	460,630,300
Non-formula programs	
Accountability and achievement testing	21,428,100
Adult education	5,005,900
Alternative teacher development program	500,000
Arizona empowerment scholarship account administration	2,233,400
Arizona structured English immersion fund	4,960,400
CTED completion grants	1,000,000
CTED soft capital and equipment	1,000,000

College credit by examination incentive program	7,472,100
College placement exam fee waiver	1,265,800
Computer science pilot program	1,000,000
Early literacy	12,000,000
Education learning and accountability system	5,351,900
English learner administration	6,541,600
Extraordinary special education needs fund deposit	5,000,000
Geographic literacy	100,000
Gifted assessments	850,000
Jobs for Arizona graduates	100,000
School safety program	31,950,900
State block grant for vocational education	11,651,800
Student level data access	350,000
Teacher certification	2,467,200
Tribal college dual enrollment program	325,000
Total appropriation and expenditure authority — superintendent of public instruction	$6,393,046,300
Fund sources:	
State general fund	$4,869,746,700
Proposition 301 fund	7,000,000
Permanent state school fund	309,832,400
Teacher certification fund	2,420,700
Tribal college dual enrollment program fund	325,000
Department of education professional development revolving fund	2,700,000
Department of education empowerment scholarship account fund	350,000
Expenditure authority	1,200,671,500

Operating budget

The operating lump sum appropriation includes $683,900 and 8.5 FTE positions for average daily membership auditing and $200,000 and 2 FTE positions for information technology security services.

The amount appropriated for the department's operating budget includes $500,000 for technical assistance and state-level administration of the K-3 reading program established pursuant to section 15-211, Arizona Revised Statutes.

Any monies available to the department of education pursuant to section 42-5029, subsection E, paragraph 8, Arizona Revised Statutes, for the failing schools tutoring fund established by section 15-241, Arizona Revised Statutes, in excess of the expenditure authority amounts are allocated for the purposes of section 42-5029, subsection E, paragraph 8, Arizona Revised Statutes.

Any monies available to the department of education pursuant to section 42-5029, subsection E, paragraph 6, Arizona Revised Statutes, for character education matching grants pursuant to section 15-154.01, Arizona Revised Statutes, in excess of the expenditure authority amounts are allocated for the purposes of section 42-5029, subsection E, paragraph 6, Arizona Revised Statutes.

Basic state aid

The appropriation for basic state aid provides basic state support to school districts for maintenance and operations funding as provided by section 15-973, Arizona Revised Statutes, and includes an estimated $309,832,400 in expendable income derived from the permanent state school fund and from state trust lands pursuant to section 37-521, subsection B, Arizona Revised Statutes, for fiscal year 2021-2022.

Monies derived from the permanent state school fund and any other non-state general fund revenue source that is dedicated to fund basic state aid shall be spent, whenever possible, before spending state general fund monies.

Except as required by section 37-521, Arizona Revised Statutes, all monies received during the fiscal year from national forests, interest collected on deferred payments on the purchase of state lands, income from investing permanent state school funds as prescribed by the enabling act and the Constitution of Arizona and all monies received by the superintendent of public instruction from whatever source, except monies received pursuant to sections 15-237 and 15-531, Arizona Revised Statutes, when paid into the state treasury are appropriated for apportionment to the various counties in accordance with law. An expenditure may not be made except as specifically authorized above.

Any monies available to the department of education pursuant to section 42-5029, subsection E, paragraph 5, Arizona Revised Statutes, for the increased cost of basic state aid due to added school days in excess of the expenditure authority amounts are allocated for the purposes of section 42-5029, subsection E, paragraph 5, Arizona Revised Statutes.

Other programs

Any monies available to the department of education for the classroom site fund pursuant to section 37-521, subsection B, paragraph 4 and section 42-5029, subsection E, paragraph 10, Arizona Revised Statutes, in excess of expenditure authority amounts are allocated for the purposes of section 37-521, subsection B, paragraph 4 and section 42-5029, subsection E, paragraph 10, Arizona Revised Statutes.

Any monies available to the department of education from the instructional improvement fund established by section 15-979, Arizona Revised Statutes, in excess of the expenditure authority amounts are allocated for the purposes of section 15-979, Arizona Revised Statutes.

Before making any changes to the achievement testing program that will increase program costs, the department of education and the state board of education shall submit the estimated fiscal impact of those changes to the joint legislative budget committee for review.

Any monies available to the department of education for accountability purposes pursuant to section 42-5029, subsection E, paragraph 7, Arizona Revised Statutes, in excess of the expenditure authority amounts are allocated for the purposes of section 42-5029, subsection E, paragraph 7, Arizona Revised Statutes.

Monies appropriated for CTED completion grants are intended to help fund program completion for students who complete at least fifty percent of a career technical education program before graduating from high school and who successfully complete the career technical education district program after graduating from high school. The application procedures shall award grant funding only after an eligible student has successfully completed a career technical education district program.

If the appropriated amount for CTED completion grants is insufficient to fund all grant requests from career technical education districts, the department of education shall reduce grant amounts on a proportional basis in order to cap total statewide allocations at $1,000,000.

The appropriated amount for CTED completion grants is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

The department of education shall distribute the appropriated amount for CTED soft capital and equipment to career technical education districts with fewer than two thousand average daily membership pupils for soft capital and equipment expenses. The appropriated amount shall be allocated on a pro rata basis based on the average daily membership of eligible career technical education districts.

The department of education shall use the appropriated amount for English learner administration to provide English language acquisition services for the purposes of section 15-756.07, Arizona Revised Statutes, and for the costs of providing English language proficiency assessments, scoring and ancillary materials as prescribed by the department of education to school districts and charter schools for the purposes of title 15, chapter 7, article 3.1, Arizona Revised Statutes. The department may use a portion of the appropriated amount to hire staff or contract with a third party to carry out the purposes of section 15-756.07, Arizona Revised Statutes. Notwithstanding section 41-192, Arizona Revised Statutes, the superintendent of public instruction also

may use a portion of the appropriated amount to contract with one or more private attorneys to provide legal services in connection with the case of Flores v. State of Arizona, No. CIV 92-596-TUC-RCC.

The department of education shall use the appropriated amount for geographic literacy to issue a grant to a statewide geographic alliance for strengthening geographic literacy in this state.

The department of education shall use the appropriated amount for gifted assessments to procure an assessment that local education agencies may administer to pupils in second grade to identify gifted pupils as prescribed in section 15-779.02, Arizona Revised Statutes.

The department of education shall use the appropriated amount for jobs for Arizona graduates to issue a grant to a nonprofit organization for a JOBS for Arizona graduates program.

Any monies available to the department of education for school safety pursuant to section 42-5029, subsection E, paragraph 6, Arizona Revised Statutes, in excess of the expenditure authority amounts are allocated for the purposes of section 42-5029, subsection E, paragraph 6, Arizona Revised Statutes.

On or before December 31, 2021, the department of education shall report to the joint legislative budget committee how the monies appropriated for student level data access are being used to manage access and protect student level data as prescribed in section 15-1043, Arizona Revised Statutes.

After review by the joint legislative budget committee, in fiscal year 2021-2022, the department of education may use a portion of its fiscal year 2021-2022 state general fund appropriations for basic state aid, additional state aid or the special education fund, to fund a shortfall in funding for basic state aid, additional state aid or the special education fund, if any, that occurred in fiscal year 2020-2021.

The department shall provide an updated report on its budget status every three months for the first half of each fiscal year and every month thereafter to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees, the director of the joint legislative budget committee and the director of the governor's office of strategic planning and budgeting. Each report shall include, at a minimum, the department's current funding surplus or shortfall projections for basic state aid and other major formula-based programs and is due thirty days after the end of the applicable reporting period.

Within fifteen days after each apportionment of state aid that occurs pursuant to section 15-973, subsection B, Arizona Revised Statutes, the department shall post on its website the amount of state aid apportioned to each recipient and the underlying data.

Sec. 31. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

	2021-22
FTE positions	63.1
Administration	$ 1,858,100
Emergency management	754,200
Military affairs	2,083,300
Emergency management matching funds	1,590,300
National guard cyber response revolving fund deposit	300,000
National guard matching funds	1,712,800
National guard tuition reimbursement	1,000,000
Total appropriation — department of emergency and military affairs	$ 9,298,700
Fund sources:	
State general fund	$ 9,298,700

The $1,712,800 national guard matching funds appropriation is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that all fiscal year 2021-2022 monies remaining unexpended and unencumbered on December 31, 2022 revert to the state general fund.

The appropriated amount for the national guard tuition reimbursement line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until September 30, 2022.

Sec. 32. DEPARTMENT OF ENVIRONMENTAL QUALITY

	2021-22
FTE positions	322.0
Operating lump sum appropriation	$ 48,297,700
Safe drinking water program	1,854,700
Emissions control contractor payment	26,219,500
Total appropriation — department of environmental quality	$ 76,371,900
Fund sources:	
Air quality fund	$ 5,472,400
Emergency response fund	132,800
Emissions inspection fund	30,365,800
Hazardous waste management fund	1,785,000
Indirect cost recovery fund	14,025,500
Permit administration fund	7,327,100
Recycling fund	1,596,800
Safe drinking water program fund	2,254,700
Solid waste fee fund	1,884,700

Underground storage tank revolving fund	160,800
Voluntary vehicle repair and retrofit program fund	560,000
Water quality fee fund	10,806,300

The department of environmental quality shall report annually on the progress of WQARF activities, including emergency response, priority site remediation, cost recovery activity, revenue and expenditure activity and other WQARF-funded program activity. The department shall submit the fiscal year 2021-2022 report to the joint legislative budget committee on or before September 1, 2021. This report shall also include a budget for the WQARF program that is developed in consultation with the WQARF advisory board. This budget shall specify the monies budgeted for each listed site during fiscal year 2021-2022. In addition, the department and the advisory board shall prepare and submit to the joint legislative budget committee, on or before October 1, 2021, a report in a table format summarizing the current progress on remediation of each listed site on the WQARF registry. The table shall include the stage of remediation for each site at the end of fiscal year 2020-2021, indicate whether the current stage of remediation is anticipated to be completed in fiscal year 2021-2022 and indicate the anticipated stage of remediation at each listed site at the end of fiscal year 2021-2022, assuming fiscal year 2021-2022 funding levels. The department and advisory board may include other relevant information about the listed sites in the table.

All permit administration fund monies received by the department of environmental quality in excess of $7,327,100 in fiscal year 2021-2022 are appropriated to the department. Before spending permit administration fund monies in excess of $7,327,100 in fiscal year 2021-2022, the department shall report the intended use of the monies to the joint legislative budget committee.

All indirect cost recovery fund monies received by the department of environmental quality in excess of $14,025,500 in fiscal year 2021-2022 are appropriated to the department. Before spending indirect cost recovery fund monies in excess of $14,025,500 in fiscal year 2021-2022, the department shall report the intended use of the monies to the joint legislative budget committee.

Sec. 33. GOVERNOR'S OFFICE OF EQUAL OPPORTUNITY

		2021-22
FTE positions		4.0
Lump sum appropriation	$	197,700
Fund sources:		
Personnel division fund	$	197,700

Sec. 34. STATE BOARD OF EQUALIZATION

	2021-22
FTE positions	7.0
Lump sum appropriation	$ 673,200
Fund sources:	
State general fund	$ 673,200

Sec. 35. BOARD OF EXECUTIVE CLEMENCY

	2021-22
FTE positions	14.5
Lump sum appropriation	$ $1,184,500
Fund sources:	
State general fund	$ 1,184,500

On or before November 1, 2021, the board of executive clemency shall report to the directors of the joint legislative budget committee and the governor's office of strategic planning and budgeting the total number and types of cases the board reviewed in fiscal year 2020-2021.

Sec. 36. ARIZONA EXPOSITION AND STATE FAIR BOARD

	2021-22
FTE positions	184.0
Lump sum appropriation	$ 13,523,700
Fund sources:	
Arizona exposition and state fair fund	$ 13,523,700

Sec. 37. ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

	2021-22
FTE positions	213.0
Operating lump sum appropriation	$ 3,205,800
Environmental county grants	250,000
Inmate firefighting crews	727,500
Postrelease firefighting crews	1,063,400
Fire suppression	200,000
Rural fire district reimbursement	2,500,000
State fire marshal	1,120,600
State fire school	275,300
Hazardous vegetation removal	3,000,000
Total appropriation — Arizona department of forestry and fire management	$12,342,600
Fund sources:	
State general fund	$12,342,600

The appropriation for the rural fire district reimbursement line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

The appropriation for the hazardous vegetation removal line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

Sec. 38. STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 410,700
Fund sources:	
Board of funeral directors' and embalmers' fund	$ 410,700

Sec. 39. ARIZONA GAME AND FISH DEPARTMENT

	2021-22
FTE positions	273.5
Operating lump sum appropriation	$ 44,598,700
Pittman-Robertson/Dingell-Johnson act	3,058,000
Total appropriation — Arizona game and fish department	$ 47,656,700
Fund sources:	
Capital improvement fund	$ 1,001,200
Game and fish fund	41,241,500
Wildlife endowment fund	16,200
Watercraft licensing fund	5,030,400
Game, nongame, fish and endangered species fund	367,400

Sec. 40. DEPARTMENT OF GAMING

	2021-22
FTE positions	155.8
Operating lump sum appropriation	$ 9,973,100
Arizona breeders' award	250,000
Casino operations certification	2,176,500
County fairs livestock and agriculture promotion	5,759,500
Division of racing	2,318,300
Racing purse enhancement	5,000,000
Racetrack purse and maintenance and operations funding	5,000,000
Problem gambling	2,484,000
Total appropriation — department of gaming	$ 32,961,400
Fund sources:	
State general fund	$ 15,759,500
Fantasy sports contest fund	145,000
Tribal-state compact fund	2,176,500
Arizona benefits fund	12,012,100
State lottery fund	300,000
Racing regulation fund	2,466,000
Racing regulation fund — unarmed combat subaccount	102,300

The amount appropriated to the county fairs livestock and agriculture promotion line item is for deposit in the county fairs livestock and agriculture promotion fund established by section 5-113, Arizona Revised Statutes, and to be administered by the office of the governor.

The amount appropriated to the racing purse enhancement line item shall be distributed to a recognized nonprofit horsemen's organization that has represented since 1988 the horsemen participating in racing meetings to be used to promote racing and enhance the general purse structure for eligible horse races held in this state.

The appropriation made in the racetrack purse and maintenance and operations funding line item shall be distributed to commercial live racing permittees based on each permittee's three-year average of race days reflected in the length of the permit. The monies shall be used to enhance the general purse structure and for track maintenance and operations.

Sec. 41. OFFICE OF THE GOVERNOR

	2021-22
Operating lump sum appropriation	$ 7,424,800*
Foster youth education success fund deposit	1,500,000
Arizona civics corps	1,000,000
Total appropriation — office of the governor	$ 9,924,800
Fund sources:	
State general fund	$ 9,924,800

Included in the lump sum appropriation of $7,424,800 for fiscal year 2021-2022 is $10,000 for the purchase of mementos and items for visiting officials.

Sec. 42. GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING

	2021-22
FTE positions	22.0
Lump sum appropriation	$ 2,765,100*
Fund sources:	
State general fund	$ 2,765,100

Sec. 43. DEPARTMENT OF HEALTH SERVICES

	2021-22
FTE positions	1,135.5
Operating lump sum appropriation	$ 55,409,900
Public health/family health	
Adult cystic fibrosis care	105,200
AIDS reporting and surveillance	1,000,000
Alzheimer's disease research	3,625,000
Biomedical research support	2,000,000
Breast and cervical cancer and bone density screening	1,369,400

County tuberculosis provider care and control	590,700
Family health pilot program	1,500,000
Folic acid program	400,000
High-risk perinatal services	2,343,400
Homeless pregnant women services	200,000
Medical student loan fund deposit	2,000,000
Newborn screening program	13,144,100
Nonrenal disease management	198,000
Nursing care special projects	100,000
Poison control centers funding	990,000
Radiation regulation	2,360,200
Renal dental care and nutrition supplements	300,000
Renal transplant drugs	183,000
Arizona state hospital	
Arizona state hospital — operating	65,862,900
Arizona state hospital — restoration to competency	900,000
Arizona state hospital — sexually violent persons	10,010,700
Total appropriation — department of health services	$164,592,500
Fund sources:	
State general fund	$104,982,600
Arizona state hospital fund	2,883,400
Arizona state hospital land fund	650,000
Child fatality review fund	199,200
Disease control research fund	1,000,000
DHS indirect cost fund	11,353,100
Emergency medical services operating fund	3,912,600
Environmental laboratory licensure revolving fund	952,000
Federal child care and development fund block grant	1,911,500
Health services licensing fund	15,931,300
Health services lottery monies fund	200,000
Newborn screening program fund	13,576,900
Nursing care institution resident protection revolving fund	138,200
Prescription drug rebate fund — state	2,500,000

Tobacco tax and health care fund — medically needy account	700,000
Vital records electronic systems fund	3,701,700

Public health/family health

The department of health services may use up to four percent of the amount appropriated for nonrenal disease management for the administrative costs to implement the program.

The department of health services shall distribute the monies appropriated for the family health pilot program line item to at least two nonprofit organizations to implement a statewide system to provide direct services, support services, social services case management and referrals to the biological or adoptive parents of children under two years of age, including unborn children. The purpose of the statewide system is to encourage healthy childbirth, support childbirth as an alternative to abortion, promote family formation, aid successful parenting and increase families' economic self-sufficiency. The statewide system services must be available to all residents of this state in both urban and rural areas. Monies may not be used for abortion referral services or distributed to entities that promote, provide referrals for or perform abortions. Each nonprofit organization that receives the monies must demonstrate both:

1. Experience in marketing and serving the eligible patient population.

2. That the organization can begin serving clients statewide within sixty days after receiving monies pursuant to this section.

When determining which nonprofit organizations will participate in the family health pilot program, the department shall give preference to nonprofit organizations that are working and providing services in this state.

Each nonprofit organization that participates in the family health pilot program shall submit to the department of health services on a form prescribed by the department a quarterly report of the services and referrals the nonprofit organization provides, including all of the following information:

1. The number of clients served, either by referral or direct services.

2. The number of direct services provided and referrals made.

3. The number of women referred for medical services or medical care.

4. The number of women who received prenatal care.

5. The number of women who were referred for prenatal care.

6. The number of women who received nutrition services.

7. The number of women who were referred for nutrition services.

8. The number of individuals who received adoption services.

9. The number of individuals who were referred for adoption services.

10. The number of individuals who received educational and employment services.

The department of health services shall distribute monies appropriated for homeless pregnant women services to nonprofit organizations that are located in a county with a population of more than three million persons and whose primary function is to provide shelter, food, clothing, transportation for health services and support to homeless pregnant women and their children who are under one year of age. Monies may not be granted for abortion referral services or distributed to entities that promote, refer or perform abortions.

The department of health services shall distribute monies appropriated for the biomedical research support line item to a nonprofit medical research institute headquartered in this state that specializes in biomedical research focusing on applying genomic technologies and sequencing to clinical care, that has served as a resource to this state to conduct molecular epidemiologic analyses to assist with disease outbreak investigations and that collaborates with universities, hospitals and health science research centers and other public and private bioscience and related industries in this state. The recipient of these monies shall commission an audit of the expenditure of these monies and shall submit a copy of the audit to the department of health services on or before February 1, 2023.

The department of health services shall distribute monies appropriated for Alzheimer's disease research through a grant to a charitable organization that is qualified under section 501(c)(3) of the internal revenue code and that meets the following criteria:

1. Is headquartered in this state.

2. Has been operating in this state for at least the last ten years.

3. Has participating member institutions that work together to end Alzheimer's disease within a statewide collaborative model by using their complementary strengths in brain imaging, computer science, genomics, basic and cognitive neurosciences and clinical and neuropathology research.

4. Has participating member institutions that educate residents of this state about Alzheimer's disease, research progress and resources to help patients, families and professionals manage the disease.

The terms of the grant made to the charitable organization may not impose any requirements that were not imposed in prior grant agreements entered into between the department of health services and the charitable organization.

Arizona state hospital

In addition to the appropriation for the department of health services, earnings on state lands and interest on the investment of the permanent state land funds are appropriated to the Arizona state hospital in compliance with the enabling act and the Constitution of Arizona.

Departmentwide

The department of health services shall electronically forward to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house of representatives appropriations committees and the director of the joint legislative budget committee a monthly report comparing total expenditures for the month and year-to-date as compared to prior-year totals on or before the thirtieth of the following month. Each report shall include an estimate of potential shortfalls in programs, potential federal and other monies, such as the statewide assessment for indirect costs, that may be available to offset these shortfalls, and a plan, if necessary, for eliminating any shortfall without a supplemental appropriation.

Sec. 44. ARIZONA HISTORICAL SOCIETY

	2021-22
FTE positions	50.9
Operating lump sum appropriation	$ 2,571,500
Field services and grants	65,800
Papago park museum	558,300
Total appropriation — Arizona historical society	$ 3,195,600
Fund sources:	
State general fund	$ 3,195,600

Sec. 45. PRESCOTT HISTORICAL SOCIETY

	2021-22
FTE positions	13.0
Lump sum appropriation	$ 917,700
Fund sources:	
State general fund	$ 917,700

Sec. 46. BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS

	2021-22
FTE positions	1.0
Lump sum appropriation	$ 46,600
Fund sources:	
Board of homeopathic and integrated medicine examiners' fund	$ 46,600

Sec. 47. ARIZONA DEPARTMENT OF HOUSING

	2021-22
FTE positions	3.0
Lump sum appropriation	$ 332,500

Fund sources:	
Housing trust fund	332,500

Sec. 48. INDEPENDENT REDISTRICTING COMMISSION

	2021-22
FTE positions	6.0
Lump sum appropriation	$ 7,900,000*
Fund sources:	
State general fund	$ 7,900,000

Sec. 49. INDUSTRIAL COMMISSION OF ARIZONA

	2021-22
FTE positions	236.6
Operating lump sum appropriation	$ 20,593,100
Municipal firefighter reimbursement administration	95,000
Total appropriation - industrial commission of Arizona	$ 20,688,100
Fund sources:	
State general fund	$ 95,000
Administrative fund	20,593,100

The legislature intends that the state general fund appropriation be used only for administrative costs of title 23, chapter 11, Arizona Revised Statutes, and that this appropriation does not convey any responsibility for firefighter cancer compensation and benefits claims on to this state.

Sec. 50. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

	2021-22
FTE positions	151.4
Operating lump sum appropriation	$ 10,200,400
Arizona vehicle theft task force	4,343,500
Automobile theft authority operating budget	672,300
Insurance fraud unit	1,848,000
Local grants	957,700
Reimbursable programs	50,000
Total appropriation — department of insurance and financial institutions	$ 18,071,900
Fund sources:	
State general fund	$ 7,840,700
Automobile theft authority fund	6,023,500
Financial services fund	4,157,400
Department revolving fund	50,300

Monies in the Arizona vehicle theft task force line item shall be used by the department of insurance and financial institutions to pay seventy-five percent of the personal services and employee-related

expenditures for city, town and county sworn officers who participate in the Arizona vehicle theft task force.

Local grants shall be awarded with consideration given to areas with greater automobile theft problems and shall be used to combat economic automobile theft operations.

The department of insurance and financial institutions shall submit a report to the joint legislative budget committee before spending any monies for the reimbursable programs line item. The department shall show sufficient monies collected to cover the expenses indicated in the report.

Of the department fees required to be deposited in the state general fund by statute, the legislature intends that the department of insurance and financial institutions shall assess and set the fees at a level to ensure that the monies deposited in the state general fund will equal or exceed the department's expenditure from the state general fund.

Sec. 51. ARIZONA JUDICIARY

	2021-22
Supreme court	
FTE positions	187.0
Operating lump sum appropriation	$ 16,062,400
Automation	21,711,500
County reimbursements	187,900
Court appointed special advocate	4,009,800
Courthouse security	750,000
Domestic relations	661,600
State foster care review board	3,343,800
Commission on judicial conduct	537,700
Judicial nominations and performance review	553,000
Model court	659,700
State aid	5,735,800
Total appropriation — supreme court	$ 54,213,200
Fund sources:	
State general fund	$ 22,652,400
Confidential intermediary and fiduciary fund	509,400
Court appointed special advocate fund	4,092,400
Criminal justice enhancement fund	4,497,100
Defensive driving school fund	4,316,900
Judicial collection enhancement fund	15,198,700
State aid to the courts fund	2,946,300

On or before September 1, 2021, the supreme court shall report to the joint legislative budget committee and the governor's office of strategic planning and budgeting on current and future automation projects

coordinated by the administrative office of the courts. The report shall include a list of court automation projects that receive or are anticipated to receive state monies in the current or next two fiscal years as well as a description of each project, the number of FTE positions, the entities involved and the goals and anticipated results for each automation project. The report shall be submitted in one summary document. The report shall indicate each project's total multiyear cost by fund source and budget line item, including any prior-year, current-year and future-year expenditures.

Automation expenses of the judiciary shall be funded only from the automation line item. Monies in the operating lump sum appropriation or other line items intended for automation purposes shall be transferred to the automation line item before expenditure.

Included in the operating lump sum appropriation for the supreme court is $1,000 for the purchase of mementos and items for visiting officials.

Of the $187,900 appropriated for county reimbursements, state grand jury is limited to $97,900 and capital postconviction relief is limited to $90,000.

Of the amount appropriated in the automation line item, $133,900 is to expand and maintain the court's electronic case management system for water adjudication.

Court of appeals

FTE positions	136.8
Division one	$ 11,895,500
Division two	5,284,100
Total appropriation — court of appeals	$ 17,179,600
Fund sources:	
State general fund	$ 17,179,600

Of the 136.8 FTE positions for fiscal year 2021-2022, 98.3 FTE positions are for division one and 38.5 FTE positions are for division two.

Superior court

FTE positions	238.5
Operating lump sum appropriation	$ 4,819,700
Judges' compensation	23,970,700
Centralized service payments	3,676,200
Adult standard probation	21,824,200
Adult intensive probation	12,892,100
Community punishment	2,310,300
Court-ordered removals	315,000
Interstate compact	503,300
Drug court	1,080,000
General adjudication personnel and support fund deposit	2,000,000

Juvenile standard probation	3,705,600
Juvenile intensive probation	5,969,300
Juvenile treatment services	20,697,900
Juvenile family counseling	500,000
Juvenile crime reduction	3,327,000
Juvenile diversion consequences	8,918,600
Probation incentive payments	1,000,000
Probation officer vehicles	187,500
Special water master	502,100
Total appropriation — superior court	$118,199,500
Fund sources:	
State general fund	$106,205,100
Criminal justice enhancement fund	5,475,800
Drug treatment and education fund	503,400
Judicial collection enhancement fund	6,015,200

Operating budget

All expenditures made by the administrative office of the courts to administer superior court line items shall be funded only from the superior court operating budget. Monies in superior court line items intended for this purpose shall be transferred to the superior court operating budget before expenditure.

Judges

Of the 238.5 FTE positions, 180 FTE positions represent superior court judges. This FTE position clarification does not limit the counties' ability to add judges pursuant to section 12-121, Arizona Revised Statutes.

All monies in the judges' compensation line item shall be used to pay for fifty percent of superior court judges' salaries, elected officials' retirement plan costs and related state benefit costs for judges pursuant to section 12-128, Arizona Revised Statutes. Monies in the operating lump sum appropriation or other line items intended for this purpose shall be transferred to the judges' compensation line item before expenditure.

Probation

Monies appropriated to juvenile treatment services and juvenile diversion consequences shall be deposited in the juvenile probation services fund established by section 8-322, Arizona Revised Statutes.

Receipt of state probation monies by the counties is contingent on the county maintenance of fiscal year 2019-2020 expenditure levels for each probation program. State probation monies are not intended to supplant county dollars for probation programs.

On or before November 1, 2021, the administrative office of the courts shall report to the joint legislative budget committee and the governor's office of strategic planning and budgeting the fiscal year 2020-2021 actual, fiscal year 2021-2022 estimated and fiscal year 2022-2023 requested amounts for each of the following:

1. On a county-by-county basis, the number of authorized and filled case carrying probation positions and non-case carrying probation positions, distinguishing between adult standard, adult intensive, juvenile standard and juvenile intensive. The report shall indicate the level of state probation funding, other state funding, county funding and probation surcharge funding for those positions.

2. Total receipts and expenditures by county and fund source for the adult standard, adult intensive, juvenile standard and juvenile intensive probation line items, including the amount of personal services spent from each revenue source of each account.

All centralized service payments made by the administrative office of the courts on behalf of counties shall be funded only from the centralized service payments line item. Centralized service payments include only training, motor vehicle payments, CORP review board funding, LEARN funding, research, operational reviews and GPS vendor payments. This footnote does not apply to treatment or counseling services payments made from the juvenile treatment services and juvenile diversion consequences line items. Monies in the operating lump sum appropriation or other line items intended for centralized service payments shall be transferred to the centralized service payments line item before expenditure.

All monies in the adult standard probation, adult intensive probation, community punishment, interstate compact, juvenile standard probation, juvenile intensive probation, juvenile treatment services, juvenile diversion consequences, juvenile crime reduction and probation incentive payments line items shall be used only as pass-through monies to county probation departments. Monies in the operating lump sum appropriation or other line items intended as pass-through for the purpose of administering a county probation program shall be transferred to the appropriate probation line item before expenditure.

On or before November 1, 2021, the administrative office of the courts shall submit a report for review by the joint legislative budget committee on the county-approved salary adjustments provided to probation officers since the last report on November 1, 2020. The administrative office shall also submit a copy of the report to the governor's office of strategic planning and budgeting. The report shall include, for each county, the:

1. Approved percentage salary increase by year.

2. Net increase in the amount allocated to each probation department by the administrative office of the courts for each applicable year.

3. Average number of probation officers by applicable year.

4. Average salary of probation officers for each applicable year.

The amounts appropriated in the adult standard probation, adult intensive probation, interstate compact, drug court, juvenile standard probation, juvenile intensive probation, juvenile treatment services and juvenile diversion consequences line items in fiscal year 2021-2022 include an increase of $4,251,500 to cover the state's share of probation officer salary increases for fiscal years 2018-2019, 2019-2020, 2020-2021 and 2021-2022. If the counties approve probation officer step or inflation salary increases in fiscal year 2021-2022 that increase the state's share above the amount appropriated, the legislature intends that the counties absorb any additional cost to this state in fiscal year 2021-2022 and subsequent years.

Water adjudication

The amount appropriated in the special water master line item includes an increase of $147,600 for two paralegal FTE positions and $109,700 is for one law clerk FTE position.

Sec. 52. DEPARTMENT OF JUVENILE CORRECTIONS

	2021-22
FTE positions	738.5
Lump sum appropriation	$ 47,290,100
Fund sources:	
State general fund	$ 32,290,000
State charitable, penal and reformatory institutions land fund	4,017,000
Criminal justice enhancement fund	546,200
State education fund for committed youth	1,986,000
Department of juvenile corrections local cost sharing fund	8,450,900

Twenty-five percent of land earnings and interest from the state charitable, penal and reformatory institutions land fund shall be distributed to the department of juvenile corrections, in compliance with section 25 of the enabling act and the Constitution of Arizona, to be used to support state juvenile institutions and reformatories.

Sec. 53. STATE LAND DEPARTMENT

	2021-22
FTE positions	129.7
Operating lump sum appropriation	$ 16,678,200
Natural resource conservation districts	650,000

CAP user fees	1,700,000
Due diligence fund deposit	1,500,000
Due diligence program	5,000,000
Fire suppression	800,000
Streambed navigability litigation	220,000
Total appropriation — state land department	$ 26,548,200
Fund sources:	
State general fund	$ 13,967,500
Environmental special plate fund	260,600
Due diligence fund	5,000,000
Trust land management fund	7,320,100

The appropriation includes $1,700,000 for CAP user fees in fiscal year 2021-2022. For fiscal year 2021-2022, from municipalities that assume their allocation of central Arizona project water for every dollar received as reimbursement to the state for past central Arizona water conservation district payments, $1 reverts to the state general fund in the year that the reimbursement is collected.

Of the amount appropriated for natural resource conservation districts in fiscal year 2021-2022, $30,000 shall be used to provide grants to natural resource conservation districts environmental education centers.

Sec. 54. LEGISLATURE

	2021-22
Senate	
Lump sum appropriation	$ 18,253,900*
Fund sources:	
State general fund	$ 18,253,900

Included in the lump sum appropriation of $18,253,900 for fiscal year 2021-2022 is $1,000 for the purchase of mementos and items for visiting officials.

House of representatives	
Lump sum appropriation	$ 21,830,000*
Fund sources:	
State general fund	$ 21,830,000

Included in the lump sum appropriation of $21,830,000 for fiscal year 2021-2022 is $1,000 for the purchase of mementos and items for visiting officials.

Legislative council	
FTE positions	66.0
Operating lump sum appropriation	$ 9,121,800
Ombudsman-citizens aide office	1,141,300
Total appropriation — legislative council	$ 10,263,100*
Fund sources:	
State general fund	$ 10,263,100

Dues for the council of state governments may be expended only on an affirmative vote of the legislative council.

The legislature intends that the ombudsman-citizens aide prioritize investigating and processing complaints relating to the department of child safety.

Joint legislative budget committee	
FTE positions	29.0
Lump sum appropriation	$ 2,934,700*
Fund sources:	
State general fund	$ 2,934,700
Auditor general	
FTE positions	200.8
Lump sum appropriation	$ 21,406,500*
Fund sources:	
State general fund	$ 21,406,500

The auditor general shall compile information on how all Arizona school districts and charter schools spent or plan to spend stimulus monies specified in the federal acts related to the COVID-19 pandemic and how the department of education spent or plans to spend its stimulus discretionary monies specified in the federal acts related to the COVID-19 pandemic in fiscal years 2019-2020, 2020-2021 and 2021-2022. On or before January 1, 2022, the auditor general shall issue a report that includes the fiscal years 2019-2020 and 2020-2021 information and on or before January 1, 2023, the auditor general shall issue a report that includes the fiscal year 2021-2022 information. For both reports, the auditor general may develop recommendations, as necessary. The school districts and charter schools shall cooperate with and provide information and records to the auditor general in a format prescribed by the auditor general to facilitate the reporting required in this section. The department of education and other state or local agencies that passed stimulus monies through to school districts and charter schools shall cooperate with and provide necessary information to the auditor general.

The auditor general shall conduct a special audit of financial and related information of any private, nongovernmental grant monies used for this state's 2020 elections and Maricopa county's procurement of voting systems. On or before March 31, 2022, the auditor general shall submit a report to the governor, the president of the senate and the speaker of the house of representatives on all of the following:

1. Private, nongovernmental grant monies received and expended by the secretary of state's office for the 2020 elections and any balance remaining unexpended on June 30, 2021, for the following:

(a) Educating voters how to sign up for the permanent early voting list or how to request an early ballot. The report shall include the type of information provided and where the information was provided.

(b) Recruiting poll workers. The report shall include where the recruitment was targeted and advertised and the requirements for poll worker selection.

(c) Combating misinformation and disinformation about the 2020 elections. The report shall include the methods used, the type of information provided and where the information was provided.

(d) Personnel and employee-related expenses. The report shall include an analysis of why the monies were used for these specific purposes.

2. Private, nongovernmental grant monies received and expended by Maricopa county on programs and processes for the 2020 elections, including the purpose of the expenditures, the amount spent for personnel and employee-related expenses and any balance remaining unexpended on June 30, 2021.

3. Private, nongovernmental grant monies received and expended by Pima county on programs and processes for the 2020 elections, including the purpose of the expenditures, the amount spent for personnel and employee-related expenses and any balance remaining unexpended on June 30, 2021.

4. Maricopa county's process to acquire Dominion Voting Systems, including information regarding:

(a) Compliance with the county's procurement code.

(b) Agreement terms, including acquisition costs, time frames and machine maintenance and security.

(c) The Maricopa county board of supervisors meetings to discuss the acquisition, including any public comment.

(d) The security and technical analysis that occurred before the acquisition.

Sec. 55. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

	2021-22
FTE positions	51.2
Lump sum appropriation	$ 4,523,200
Fund sources:	
Liquor licenses fund	$ 4,523,200

Sec. 56. ARIZONA STATE LOTTERY COMMISSION

	2021-22
FTE positions	98.8
Operating lump sum appropriation	$ 9,498,700
Advertising	15,500,000
Total appropriation — Arizona state lottery commission	$ 24,998,700
Fund sources:	
State lottery fund	$ 24,998,700

An amount equal to twenty percent of tab ticket sales is appropriated to pay sales commissions to charitable organizations. This amount is currently estimated to be $1,311,400 in fiscal year 2021-2022.

An amount equal to 3.6 percent of actual instant ticket sales is appropriated to print instant tickets or to pay contractual obligations concerning instant ticket distribution. This amount is currently estimated to be $34,507,200 in fiscal year 2021-2022.

An amount equal to a percentage of actual online game sales as determined by contract is appropriated to pay online vendor fees. This amount is currently estimated to be $10,720,100, or 4.256 percent of actual online ticket sales, in fiscal year 2021-2022.

An amount equal to 6.5 percent of gross lottery game sales, minus charitable tab tickets, is appropriated to pay sales commissions to ticket retailers. An additional amount not to exceed 0.5 percent of gross lottery game sales is appropriated to pay sales commissions to ticket retailers. The combined amount is currently estimated to be 6.7 percent of total ticket sales, or $80,658,500, in fiscal year 2021-2022.

Sec. 57. BOARD OF MASSAGE THERAPY

	2021-22
FTE positions	5.0
Lump sum appropriation	$ 486,100
Fund sources:	
Board of massage therapy fund	$ 486,100

Sec. 58. ARIZONA MEDICAL BOARD

	2021-22
FTE positions	61.5
Operating lump sum appropriation	$ 7,512,100
Employee performance incentive program	165,600
Total appropriation — Arizona medical board	$ 7,677,700
Fund sources:	
Arizona medical board fund	$ 7,677,700

Sec. 59. STATE MINE INSPECTOR

	2021-22
FTE positions	16.0
Operating lump sum appropriation	$ 1,287,500
Abandoned mines	194,700
Aggregate mining land reclamation	181,800
Total appropriation — state mine inspector	$ 1,664,000
Fund sources:	
State general fund	$ 1,551,100
Aggregate mining reclamation fund	112,900

All aggregate mining reclamation fund monies received by the state mine inspector in excess of $112,900 in fiscal year 2021-2022 are appropriated to the aggregate mining land reclamation line item. Before spending any aggregate mining reclamation fund monies in excess of $112,900 in fiscal year 2021-2022, the state mine inspector shall report the intended use of the monies to the joint legislative budget committee and the governor's office of strategic planning and budgeting.

Sec. 60. NATUROPATHIC PHYSICIANS MEDICAL BOARD

	2021-22
FTE positions	2.0
Lump sum appropriation	$ 197,600
Fund sources:	
Naturopathic physicians medical board fund	$ 197,600

Sec. 61. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

	2021-22
FTE positions	2.0
Lump sum appropriation	$ 333,000
Fund sources:	
State general fund	$ 133,000
Arizona water banking fund	200,000

Sec. 62. ARIZONA STATE BOARD OF NURSING

	2021-22
FTE positions	52.0
Operating lump sum appropriation	$ 4,869,500
Certified nursing assistant credentialing program	538,400
Total appropriation — Arizona state board of nursing	$ 5,407,900
Fund sources:	
Board of nursing fund	$ 5,407,900

Sec. 63. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

	2021-22
FTE positions	7.0
Lump sum appropriation	$ 538,700
Fund sources:	
Nursing care institution administrators' licensing and assisted living facility managers' certification fund	$ 538,700

Sec. 64. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

	2021-22
FTE positions	1.5
Lump sum appropriation	$ 204,700

	Fund sources:	
	Occupational therapy fund	$ 204,700
Sec. 65.	STATE BOARD OF DISPENSING OPTICIANS	
		2021-22
	FTE positions	1.0
	Lump sum appropriation	$ 166,200
	Fund sources:	
	Board of dispensing opticians fund	$ 166,200
Sec. 66.	STATE BOARD OF OPTOMETRY	
		2021-22
	FTE positions	2.0
	Lump sum appropriation	$ 248,200
	Fund sources:	
	Board of optometry fund	$ 248,200
Sec. 67.	ARIZONA BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY	
		2021-22
	FTE positions	9.0
	Lump sum appropriation	$ 1,091,400
	Fund sources:	
	Arizona board of osteopathic examiners in medicine and surgery fund	$ 1,091,400
Sec. 68.	ARIZONA STATE PARKS BOARD	
		2021-22
	FTE positions	163.0
	Operating lump sum appropriation	$ 16,121,400
	Arizona trail	250,000
	Arizona state parks heritage fund deposit	5,000,000
	State parks store	1,000,000
	SPRF deposit to state parks store fund	1,000,000
	Onetime cabin debt payoff	528,400
	State lake improvement fund deposit	4,000,000
	Kartchner caverns state park	2,441,000
Total appropriation — Arizona state parks board		$ 30,340,800
	Fund sources:	
	State general fund	$ 9,000,000
	State parks revenue fund	20,330,600
	State parks store fund	1,000,000
	Off-highway vehicle recreation fund	10,200

In addition to the operating lump sum appropriation, an amount equal to the revenue share agreement with the United States forest service for Fool Hollow Lake recreation area is appropriated to the Arizona state parks board from the state parks revenue fund established by section 41-511.21, Arizona Revised Statutes.

The appropriation made in the Arizona trail line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

Sec. 69. STATE PERSONNEL BOARD

	2021-22
FTE positions	2.0
Lump sum appropriation	$ 332,500
Fund sources:	
Personnel division fund — personnel board subaccount	$ 332,500

Sec. 70. ARIZONA STATE BOARD OF PHARMACY

	2021-22
FTE positions	25.4
Operating lump sum appropriation	$ 3,085,000
Prescriber report card	50,000
Total appropriation — Arizona state board of pharmacy	$ 3,135,000
Fund sources:	
Arizona state board of pharmacy fund	$ 3,135,000

On or before September 30, 2021, the Arizona state board of pharmacy shall submit a report to the joint legislative budget committee on the progress of the board's implementation of recommendations included in the auditor general's September 2020 report, including recommendations regarding policies and procedures for verifying possession of fingerprint clearance cards, ensuring that continuing education requirements are met, documenting complaint jurisdiction, meeting inspection time frames and enforcing compliance with the controlled substances prescription monitoring program requirements. The report shall include information regarding the board's review of its direct and indirect costs and its determination of the appropriate license and permit fees.

Sec. 71. BOARD OF PHYSICAL THERAPY

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 513,900
Fund sources:	
Board of physical therapy fund	$ 513,900

Sec. 72. ARIZONA PIONEERS' HOME

	2021-22
FTE positions	106.3
Lump sum appropriation	$ 7,227,000
Fund sources:	
Miners' hospital for miners with disabilities land fund	$ 2,137,500
State charitable fund	5,089,500

Earnings on state lands and interest on the investment of the permanent land funds are appropriated for the Arizona pioneers' home and the state hospital for miners with disabilities in compliance with the enabling act and the Constitution of Arizona.

Sec. 73. STATE BOARD OF PODIATRY EXAMINERS

	2021-22
FTE positions	1.0
Lump sum appropriation	$ 171,600
Fund sources:	
Podiatry fund	$ 171,600

Sec. 74. COMMISSION FOR POSTSECONDARY EDUCATION

	2021-22
FTE positions	5.0
Operating lump sum appropriation	$ 226,700
Leveraging educational assistance partnership (LEAP)	2,319,500
Arizona college and career guide	21,300
Arizona teacher student loan program	426,000
Arizona minority educational policy analysis center	100,700
Twelve plus partnership	130,400
Total appropriation — commission for postsecondary education	$ 3,224,600
Fund sources:	
State general fund	$ 1,680,900
Postsecondary education fund	1,543,700

In order to be eligible to receive state matching monies under the leveraging educational assistance partnership for grants to students, each participating institution, public or private, shall provide an amount of institutional matching monies that equals the amount of monies provided by this state to the institution for the leveraging educational assistance partnership. Administrative expenses incurred by the commission for postsecondary education shall be paid from institutional matching monies and may not exceed twelve percent of the monies in fiscal year 2021-2022.

Any unencumbered balance remaining in the postsecondary education fund established by section 15-1853, Arizona Revised Statutes, on June 30, 2021, and all grant monies and other revenues received by the commission for postsecondary education, when paid into the state treasury, are appropriated for the specific purposes designated by line items and for additional responsibilities prescribed in sections 15-1851 and 15-1852, Arizona Revised Statutes.

The appropriations for the Arizona college and career guide, Arizona minority educational policy analysis center and twelve plus partnership are estimates representing all monies distributed to these programs, including balance forward, revenue and transfers, during fiscal year 2021-2022. The appropriations shall be adjusted as necessary to reflect actual final monies credited to the postsecondary education fund.

Sec. 75. STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 436,300
Fund sources:	
Board for private postsecondary education fund	$ 436,300

Sec. 76. STATE BOARD OF PSYCHOLOGIST EXAMINERS

	2021-22
FTE positions	4.5
Lump sum appropriation	$ 563,000
Fund sources:	
Board of psychologist examiners fund	$ 563,000

Sec. 77. DEPARTMENT OF PUBLIC SAFETY

	2021-22
FTE positions	2,046.7
Operating lump sum appropriation	$333,219,900
ACTIC	1,450,000
Border strike task force ongoing	9,102,100
Border strike task force local support	1,261,700
Civil air patrol	150,000
DPS — rapid DNA testing equipment	600,000
GIITEM	28,541,500
GIITEM subaccount	2,411,600
Motor vehicle fuel	5,454,600
Onetime active shooter equipment	2,912,900
Onetime AZPOST support	1,196,300

Pharmaceutical diversion and drug theft task force	711,200
Public safety equipment	2,890,000
Total appropriation — department of public safety	$ 389,901,800
Fund sources:	
State general fund	$ 293,637,700
State highway fund	8,169,100
Arizona highway patrol fund	44,991,200
Criminal justice enhancement fund	2,999,700
Department of public safety forensics fund	23,235,600
Gang and immigration intelligence team enforcement mission border security and law enforcement subaccount	2,411,600
Motorcycle safety fund	205,000
Motor vehicle liability insurance enforcement fund	1,302,700
Risk management revolving fund	1,408,600
Parity compensation fund	4,175,500
Public safety equipment fund	2,893,700
Concealed weapons permit fund	2,875,300
Fingerprint clearance card fund	1,596,100

Of the $28,541,500 appropriated to the GIITEM line item, $15,029,400 shall be used for one hundred department of public safety GIITEM personnel. The additional staff shall include at least fifty sworn department of public safety positions to be used for immigration enforcement and border security and fifty department of public safety positions to assist GIITEM in various efforts, including:

1. Strictly enforcing all federal laws relating to illegal aliens and arresting illegal aliens.

2. Responding to or assisting any county sheriff or attorney in investigating complaints of employment of illegal aliens.

3. Enforcing Arizona's law known as the Legal Arizona Workers Act, strictly enforcing Arizona's SB 1070, Arizona's "Support Our Law Enforcement and Safe Neighborhoods Act" and investigating crimes of identity theft in the context of hiring illegal aliens and the unlawful entry into this country.

4. Taking strict enforcement action.

Any change in the GIITEM mission or allocation of monies shall be approved by the joint legislative budget committee. The department shall submit an expenditure plan to the joint legislative budget committee for review before expending any monies not identified in the department's previous expenditure plans.

Of the $28,541,500 appropriated to the GIITEM line item, only $1,403,400 is deposited in the GIITEM fund established by section 41-1724, Arizona Revised Statutes, and is appropriated for the purposes of that section. The $1,403,400 is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations. This state recognizes that states have inherent authority to arrest a person for any immigration violation.

Any monies remaining in the department of public safety joint account on June 30, 2022 revert to the funds from which they were appropriated. The reverted monies shall be returned in direct proportion to the amounts appropriated.

On or before September 1, 2021, the department of public safety shall submit an expenditure plan for the border strike task force local support line item to the joint legislature budget committee and the governor's office of strategic planning and budgeting.

Of the $1,261,700 appropriated for the border strike task force local support line item, $761,700 shall be used to fund local law enforcement officer positions within the border strike task force. Any city, town, county or other entity that enters into an agreement with the department to participate in the border strike task force shall provide at least twenty-five percent of the cost of the services, and the department shall provide not more than seventy-five percent of personal services and employee-related expenditures for each agreement or contract. The department may fund all capital-related equipment.

Of the $1,261,700 appropriated for the border strike task force local support line item, $500,000 shall be used for grants to cities, towns or counties for costs associated with prosecuting and imprisoning individuals charged with drug trafficking, human smuggling, illegal immigration and other border-related crimes.

Notwithstanding Laws 2019, chapter 263, section 80, the $1,047,500 appropriated to the department of public safety by Laws 2019, chapter 263, section 80 for the peace officer training equipment line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2022. Any monies remaining unexpended on June 30, 2022 revert to the fund from which the monies were appropriated.

The $600,000 appropriated to the DPS - rapid DNA testing equipment line item in fiscal year 2021-2022 to the department of public safety shall be used to:

1. Purchase and deploy rapid DNA testing devices throughout this state.

2. Subject to the availability of monies and on the request of a county sheriff, train that county sheriff's personnel on properly using the rapid DNA testing devices.

On or before October 15, 2021, January 15, 2022, April 15, 2022 and July 15, 2022, the director of the department of public safety shall submit a report to the chairpersons of the judiciary committee of the house of representatives and the judiciary committee of the senate, or their successor committees, containing at least the following information relating to the devices and training prescribed by this section:

1. The number of rapid DNA tests performed by the department and county sheriffs.

2. The number of criminal suspects identified or matched by rapid DNA testing to the combined DNA index system.

3. The total number and types of crimes identified or matched by rapid DNA testing.

Sec. 78. STATE REAL ESTATE DEPARTMENT

	2021-22
FTE positions	37.0
Lump sum appropriation	$ 2,997,600
Fund sources:	
State general fund	$ 2,997,600

Sec. 79. RESIDENTIAL UTILITY CONSUMER OFFICE

	2021-22
FTE positions	11.0
Operating lump sum appropriation	$ 1,243,900
Professional witnesses	145,000*
Total appropriation — residential utility consumer office	$ 1,388,900
Fund sources:	
Residential utility consumer office revolving fund	$ 1,388,900

Sec. 80. BOARD OF RESPIRATORY CARE EXAMINERS

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 333,300
Fund sources:	
Board of respiratory care examiners fund	$ 333,300

Sec. 81. ARIZONA STATE RETIREMENT SYSTEM

	2021-22
FTE positions	240.9
Lump sum appropriation	$ 25,695,800

Fund sources:	
Arizona state retirement system administration account	$ 23,895,800
Long-term disability trust fund administration account	1,800,000

Sec. 82. DEPARTMENT OF REVENUE

	2021-22
FTE positions	880.8
Operating lump sum appropriation	$ 67,520,200
BRITS operational support	7,723,700
E-commerce compliance and outreach	854,900
Income tax information technology	466,300
Unclaimed property administration and audit	1,467,800
TPT simplification	1,020,000
Tax fraud prevention	3,150,000
Total appropriation — department of revenue	$ 82,202,900
Fund sources:	
State general fund	$ 53,876,500
Department of revenue administrative fund	26,816,200
Liability setoff program revolving fund	815,500
Tobacco tax and health care fund	694,700

The appropriation for the income tax information technology line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2024.

If the total value of properties retained by unclaimed property contract auditors exceeds $1,467,800, the excess amount is transferred from the state general fund to the department of revenue administrative fund established by section 42-1116.01, Arizona Revised Statutes, and is appropriated to the department for contract auditor fees.

The department shall report the department's general fund revenue enforcement goals for fiscal year 2021-2022 to the joint legislative budget committee on or before September 30, 2021. On or before September 30, 2022, the department shall provide an annual progress report to the joint legislative budget committee as to the effectiveness of the department's overall enforcement and collections program for fiscal year 2021-2022. The reports shall compare projected and actual state general fund, total state tax, total county tax and total municipal tax revenue enforcement collections for fiscal year 2020-2021 and fiscal year 2021-2022, including the amount of projected and actual enforcement collections for all tax types. The reports shall also include the total number of transaction privilege tax delinquent accounts, the total dollar value of those accounts classified by age of account and the total dollar

amount of delinquent account write-offs determined to be uncollectible for fiscal year 2020-2021.

The department may not transfer any monies to or from the tax fraud prevention line item without prior review by the joint legislative budget committee.

The operating lump sum appropriation includes $2,000,000 and 25 FTE positions for additional audit and collections staff.

On or before November 1, 2021, the department shall report the results of private fraud prevention investigation services during fiscal year 2020-2021 to the joint legislative budget committee. The report shall include the total number of fraudulent returns prevented and the total dollar amount of fraudulent returns prevented during fiscal year 2020-2021.

Sec. 83. SCHOOL FACILITIES BOARD

	2021-22
FTE positions	17.0
Operating lump sum appropriation	$ 1,771,100
New school facilities debt service	67,176,800
Building renewal grants	107,500,000
Kirkland elementary replacement school	3,000,000
Yuma union high school	16,515,200
New school facilities	140,407,900
Total appropriation — school facilities board	$336,371,000
Fund sources:	
State general fund	$336,371,000

Pursuant to section 35-142.01, Arizona Revised Statutes, any reimbursement received by or allocated to the school facilities board under the federal qualified school construction bond program in fiscal year 2021-2022 shall be deposited in or revert to the state general fund.

At least thirty days before any monies are transferred out of the new school facilities debt service line item, the school facilities board shall report the proposed transfer to the director of the joint legislative budget committee.

Pursuant to section 15-2041, Arizona Revised Statutes, the amount appropriated for new school facilities shall be used only for facilities and land costs for school districts that received final approval from the school facilities board on or before December 15, 2020.

The amount appropriated in the Kirkland elementary replacement school line item shall be distributed to the Kirkland elementary school district to replace an existing school building, including necessary demolition of existing buildings.

The amount appropriated in the Yuma union high school line item shall be distributed to the Yuma union high school district for the construction of a new high school.

Sec. 84. DEPARTMENT OF STATE — SECRETARY OF STATE

	2021-22
FTE positions	143.1
Operating lump sum appropriation	$ 13,703,000
Arizona voter information database	192,500
Library grants-in-aid	651,400*
Statewide radio reading service for the blind	97,000
Uniform state laws commission	99,000
Total appropriation — department of state — secretary of state	$ 14,742,900
Fund sources:	
State general fund	$ 13,263,600
Election systems improvement fund	192,500
Records services fund	1,286,800

Included in the operating lump sum appropriation of $13,703,000 for fiscal year 2021-2022 is $5,000 for the purchase of mementos and items for visiting officials.

Included in the operating lump sum appropriation of $13,703,000 for fiscal year 2021-2022 is $1,286,800 from the records services fund. This appropriation may be used for the payment of obligations incurred in fiscal years 2019-2020, 2020-2021 and 2021-2022.

The secretary of state may hire one full-time equivalent position to serve as legal advisor and to represent the secretary of state, but the secretary of state may not make expenditures or incur indebtedness to employ outside or private attorneys to provide representation or services.

Sec. 85. STATE BOARD OF TAX APPEALS

	2021-22
FTE positions	4.0
Lump sum appropriation	$ 292,200
Fund sources:	
State general fund	$ 292,200

Sec. 86. STATE BOARD OF TECHNICAL REGISTRATION

	2021-22
FTE positions	25.0
Lump sum appropriation	$ 2,408,300
Fund sources:	
Technical registration fund	$ 2,408,300

Sec. 87. OFFICE OF TOURISM

	2021-22
FTE positions	28.0
Tourism fund deposit	$ 7,235,100
Arizona promotion	1,000,000
Southern Arizona study committee	250,000
Wine promotion	100,000
Total appropriation — office of tourism	$ 8,585,100
Fund sources:	
State general fund	$ 8,585,100

The appropriation for the southern Arizona study committee line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 88. DEPARTMENT OF TRANSPORTATION

	2021-22
FTE positions	4,554.0
Operating lump sum appropriation	$219,600,100
Attorney general legal services	3,623,700
Highway maintenance	152,502,400
Vehicles and heavy equipment	19,755,200
State fleet operations	13,767,700
State fleet vehicle replacement	4,500,000
Driver safety and livestock control	800,000
Vehicle replacement	15,300,000
Highway damage recovery account	8,000,000
Preventive surface treatments	36,142,000
Authorized third parties	2,162,300
Total appropriation — department of transportation	$476,153,400
Fund sources:	
Air quality fund	$ 326,000
Arizona highway user revenue fund	688,800
Highway damage recovery account	8,000,000
Ignition interlock device fund	362,200
Motor vehicle liability insurance enforcement fund	1,823,500
State fleet operations fund	13,767,700
State vehicle replacement fund	4,500,000
State aviation fund	2,064,800
State highway fund	422,701,400
Transportation department equipment fund	19,755,200
Vehicle inspection and certificate of title enforcement fund	2,163,800

Motor vehicle division

The department shall submit an annual report to the joint legislative budget committee on progress in improving motor vehicle division wait times and vehicle registration renewal by mail turnaround times in a format similar to prior years. The report is due on or before July 31, 2022 for fiscal year 2021-2022.

On or before February 1, 2022, the Arizona strategic enterprise technology office shall submit, on behalf of the department of transportation, an annual progress report to the joint legislative budget committee staff. The annual report shall provide updated plans for spending the department-dedicated portion of the authorized third-party electronic service partner's fee retention on the motor vehicle modernization project in fiscal year 2021-2022, including any amounts for stabilization, maintenance, ongoing operations, support and enhancements for the motor vehicle modernization solution, maintenance of legacy mainframe processing and support capability, and other system projects outside the scope of the motor vehicle modernization project.

On or before August 1, 2021, the department shall report to the director of the joint legislative budget committee the state's share of fees retained by the service Arizona vendor in the prior fiscal year. The report shall include the amount spent by the service Arizona vendor on behalf of this state in the prior fiscal year and a list of the projects funded with those monies.

Other

Of the total amount appropriated, $152,502,400 in fiscal year 2021-2022 for highway maintenance is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that all unexpended and unencumbered monies of the appropriation revert to the state highway fund established by section 28-6991, Arizona Revised Statutes, on August 31, 2022.

The amount appropriated to the preventive surface treatments line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that all unexpended and unencumbered monies of the appropriation revert to the state highway fund established by section 28-6991, Arizona Revised Statutes, on August 31, 2022.

Of the total amount appropriated, the department of transportation shall pay $15,981,300 in fiscal year 2021-2022 from all funds to the department of administration for its risk management payment.

All expenditures made by the department of transportation for attorney general legal services shall be funded only from the attorney general legal services line item. Monies in the operating lump sum appropriation or other line items intended for this purpose shall be transferred to the attorney general legal services line item before expenditure.

In accordance with section 35-142.01, Arizona Revised Statutes, reimbursements for monies expended from the highway maintenance line item may not be credited to the account out of which the expenditure was incurred. The department shall deposit all reimbursements for monies expended from the highway maintenance line item in the highway damage recovery account established by section 28-6994, Arizona Revised Statutes.

Expenditures made by the department of transportation for vehicle and heavy equipment replacement shall be funded only from the vehicle replacement line item. Monies in the operating lump sum appropriation or other line items intended for this purpose shall be transferred to the vehicle replacement line item before expenditure.

Sec. 89. STATE TREASURER

	2021-22
FTE positions	35.4
Operating lump sum appropriation	$ 4,024,900
Justice of the peace salaries	1,205,100
School safety program	2,500,000*
Rural county interoperability communication system	1,500,000*
Law enforcement/boating safety fund grants	2,183,800
Total appropriation - state treasurer	$ 11,413,800
Fund sources:	
State general fund	$ 1,548,800
Arizona highway patrol fund	2,500,000
Law enforcement and boating safety fund	2,183,800
School safety interoperability fund	1,500,000
State treasurer's operating fund	3,681,200

On or before June 30, 2022, the state treasurer shall report to the joint legislative budget committee staff on the state treasurer's current fiscal year and estimated next fiscal year expenditures of interest earnings spent pursuant to sections 35-315 and 35-318, Arizona Revised Statutes, for the state treasurer's banking service contract, external investment management agreement, administrative and information technology costs and any other costs.

The monies appropriated in the rural county interoperability communication system line item may be spent for an interoperability communication system that:

1. Enables the deployment of secure, multimedia data communications system to a user base consisting of public safety agencies.

2. Provides a communications solution environment that allows for identifying system users' identity, location and operational status during an incident, secure text messaging and file sharing to all users involved in an incident, secure sharing of collaborative maps, building floor plans

and images, integrating manually activated panic alarm systems that, when activated, establish direct collaboration between public safety agencies, using multiple forms of real-time communications and information collaboration, including voice and full-motion video sharing, during an incident.

3. Is capable of being deployed to end users on existing communication assets owned by participating entities.

4. Allows each participating entity to maintain discretionary real-time control of all communications assets owned or operated by the entity.

5. Encrypts all media communications.

6. Ensures staff privacy.

7. Is United States department of homeland security safety act certified qualified antiterrorism technology.

8. Is compatible with federal emergency management agency interoperable gateway systems for disaster communications.

Of the amount appropriated to the rural county interoperability communication system line item, $1,500,000 shall be distributed in fiscal year 2021-2022 for costs associated with implementing an interoperable communications sharing platform for public safety needs as follows:

1. Gila county sheriff $430,540
2. Graham county sheriff $224,930
3. Greenlee county sheriff $189,338
4. Pinal county sheriff $655,192

On or before November 1, 2021, November 1, 2022 and November 1, 2023, the Gila county sheriff, Graham county sheriff, Greenlee county sheriff and Pinal county sheriff shall submit a report to the joint legislative budget committee of all expenditures made from the rural county interoperability communication system line item in the preceding fiscal year.

The amount appropriated in the school safety program line item in fiscal year 2021-2022 shall be deposited in the school safety interoperability fund established by section 41-1733, Arizona Revised Statutes, and shall be distributed as follows:

1. Maricopa county sheriff $2,100,000
2. Mohave county sheriff $ 100,000
3. Yavapai and Navajo county sheriffs $ 300,000

Sec. 90. GOVERNOR'S OFFICE ON TRIBAL RELATIONS

	2021-22
FTE positions	3.0
Lump sum appropriation	$ 64,700
Fund sources:	
State general fund	$ 64,700

Sec. 91. ARIZONA BOARD OF REGENTS

	2021-22
FTE positions	25.9
Operating lump sum appropriation	$ 2,485,300
Adaptive athletics	160,000
Arizona promise program	7,500,000
Arizona teachers academy	15,000,000
Arizona teachers incentive program	90,000
Arizona transfer articulation support system	213,700
Washington, D.C. internships	300,000
Western interstate commission office	153,000
WICHE student subsidies	4,078,000
Total appropriation - Arizona board of regents	$ 29,980,000
Fund sources:	
State general fund	$ 29,980,000

The Arizona board of regents shall distribute monies appropriated for the adaptive athletics line item to each university under the jurisdiction of the board to maintain and operate an intercollegiate adaptive athletics program that provides opportunities for competitive wheelchair and adaptive sports to students and community members with disabilities. The monies may be spent only when the university collects matching monies of gifts, grants and donations for the intercollegiate adaptive athletics program from sources other than this state. Universities may spend the monies only on scholarships, equipment, uniforms, travel expenses and tournament fees for participants in the intercollegiate adaptive athletics program. The monies may not be used for administrative costs, personal services or employee-related expenditures.

The Arizona board of regents shall distribute monies appropriated for Washington, D.C. internships in equal amounts to each of the three universities under the jurisdiction of the board to provide full-time students with student internships in Washington, D.C. in partnership with a third-party organization. The Arizona board of regents shall reallocate any monies that are unspent on March 15, 2022 and shall make the monies available to any full-time student enrolled at a university under the jurisdiction of the board to provide student internships in Washington, D.C. The third-party organization must meet the following requirements:

1. Have partnerships with Washington, D.C.—based organizations to provide full-time, semester-long student internships.

2. Provide at least one academic course and a full-time internship schedule Monday through Thursday each week throughout the duration of student internships.

3. Have the ability to place as many students in internships as needed by the universities.

4. Have experience placing students in internships for at least ten consecutive years.

5. Have dedicated staff to ensure that student interns have access to internships in their areas of interest.

6. Have fully furnished housing available for student interns.

The appropriation made by Laws 2020, chapter 58, section 90 for the Washington, D.C. internships line item is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2022.

Within ten days after the acceptance of the universities' semiannual all funds budget reports, the Arizona board of regents shall submit a current year expenditure plan to the joint legislative budget committee for review. The expenditure plan shall include the use of all projected tuition and fee revenues by expenditure category, including operating expenses, plant fund, debt service and financial aid. The plan shall include the amount by which each expenditure category is projected to increase over the prior year and shall provide as much detail as the university budget requests. The plan shall include the total revenue and expenditure amounts from all tuition and student fee revenues, including base tuition, differential tuition, program fees, course fees, summer session fees and other miscellaneous and mandatory student fee revenues.

When determining any statewide adjustments, the joint legislative budget committee staff shall use the overall allocation of state general fund and appropriated tuition monies for each university in determining that university's specific adjustment.

Sec. 92. ARIZONA STATE UNIVERSITY

	2021-22
FTE positions	7,727.6
Operating lump sum appropriation	$840,864,200
Biomedical informatics	3,746,100
Eastern Europe cultural collaborative	250,000
School of civic and economic thought and leadership	5,774,700
Political history and leadership program	250,000
Arizona financial aid trust	5,985,800
Downtown Phoenix campus	106,732,200
Total appropriation — Arizona state university	$963,603,000

Fund sources:

State general fund	$360,027,100
University collections fund	603,575,900

The state general fund appropriation may not be used for alumni association funding.

The increased state general fund appropriation from Laws 2014, chapter 18 may not be used for medical marijuana research.

Other than scholarships awarded through the Arizona financial aid trust, the appropriated monies may not be used for scholarships or any student newspaper.

The appropriated monies may not be used by the Arizona state university college of law legal clinic for any lawsuits involving inmates of the state department of corrections in which this state is the adverse party.

The amount appropriated for the operating budget includes $5,718,300 to backfill tuition costs associated with the fiscal year 2021-2022 employer health insurance premium increases. The legislature intends that any future employer health insurance premium increases continue to be allocated using the overall allocation of state general fund and appropriated tuition monies.

Arizona state university shall use monies appropriated for the eastern Europe cultural collaborative to facilitate cultural and academic exchanges between university faculty and students and academic institutions in eastern Europe.

The appropriated amount for the school of civic and economic thought and leadership line item shall be used to operate a single stand-alone academic entity within Arizona state university. The appropriated amount may not supplant any existing state funding or private or external donations to the existing centers or to the school. The appropriated monies and all private and external donations to the school, including any remaining balances from prior fiscal years, shall be deposited in a separate account, shall be used only for the direct operation of the school and may not be used for indirect costs of the university. On or before October 1, 2021, the school shall submit a report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate education committee and the house of representatives education committee and the director of the joint legislative budget committee that includes at least the following information for the school:

1. The total amount of funding received from all sources.
2. A description of faculty positions and courses offered.
3. The total undergraduate and graduate student enrollment.
4. Significant community events, initiatives or publications.

The chairpersons of the senate education committee and the house of representatives education committee may request the director of the school to appear before the committees to report on the school's annual achievements.

The appropriation made in the political history and leadership program line item is to expand the political history and leadership program within the school of historical, philosophical and religious studies at Arizona state university. The monies shall be used at the sole discretion and approval of the lead of the political history and leadership program, and the monies shall be used only to directly support the program of political history and leadership, including teaching staff and teaching support.

Any unencumbered balances remaining in the university collections fund on June 30, 2021 and all collections received by the university during the fiscal year are appropriated for operating expenditures, capital outlay and fixed charges. Earnings on state lands and interest on the investment of the permanent land funds are appropriated in compliance with the enabling act and the Constitution of Arizona. No part of this appropriation may be spent for supplemental life insurance or supplemental retirement.

Sec. 93. NORTHERN ARIZONA UNIVERSITY

	2021-22
FTE positions	2,653.5
Operating lump sum appropriation	$254,158,800
NAU — Yuma	3,076,600
Arizona financial aid trust	1,326,000
Teacher training	2,293,000
Economic policy institute	750,300
Biomedical research funding	3,000,000
Total appropriation — Northern Arizona university	$264,604,700
Fund sources:	
State general fund	$125,683,400
University collections fund	138,921,300

The state general fund appropriation may not be used for alumni association funding.

The increased state general fund appropriation from Laws 2014, chapter 18 may not be used for medical marijuana research.

The amount appropriated for the operating budget includes $244,900 to backfill tuition costs associated with the fiscal year 2021-2022 employer health insurance premium increases. The legislature intends that any future employer health insurance premium increases continue to be allocated using the overall allocation of state general fund and appropriated tuition monies.

Other than scholarships awarded through the Arizona financial aid trust, the appropriated monies may not be used for scholarships or any student newspaper.

The appropriated amount for the teacher training line item shall be distributed to the Arizona K-12 center for program implementation and mentor training for the Arizona mentor teacher program prescribed by the state board of education.

Any unencumbered balances remaining in the university collections fund on June 30, 2021 and all collections received by the university during the fiscal year are appropriated for operating expenditures, capital outlay and fixed charges. Earnings on state lands and interest on the investment of the permanent land funds are appropriated in compliance with the enabling act and the Constitution of Arizona. No part of this appropriation may be spent for supplemental life insurance or supplemental retirement.

The biomedical research funding shall be distributed to a nonprofit medical research foundation in this state that collaborates with universities, hospitals and biotechnology and health research centers. A nonprofit foundation that receives monies shall submit an expenditure and performance report to Northern Arizona university. The university shall transmit the report to the joint legislative budget committee and the director of the governor's office of strategic planning and budgeting on or before February 1, 2022. The report must include at least the following:

1. The type and amount of expenditures from all state sources of monies, including the amount leveraged for local, state, federal and private grants.

2. A description of each grant received as well as the percentage and locations of positions funded solely or partly by state monies and the nonprofit foundation's projects with which those positions are associated.

3. Performance measures, including:

(a) Outcomes that are specifically related to the use of state monies.

(b) Progress that has been made toward achieving each outcome, including activities, resources and other evidence of the progress.

(c) Reportable inventions or discoveries related to each outcome.

(d) Publications, presentations and narratives related to each outcome and how the expenditures from all state sources of monies that the nonprofit foundation received have benefited this state.

The appropriated amount for the economic policy institute line item may not supplant any existing state funding or private or external donations to the institute or to the university. The appropriated monies and all private and external donations to the institute, including any remaining balances from prior fiscal years, shall be deposited in a separate account, shall be used only for the direct operation of the

institute and may not be used for indirect costs of the university. On or before October 1, 2021, the institute shall submit to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate education committee and the house of representatives education committee and the director of the joint legislative budget committee a report that includes at least the following information for the institute:

1. The total amount of funding received from all sources.
2. A description of the faculty positions and courses offered.
3. The total undergraduate and graduate student participation.
4. Significant community events, initiatives or publications.

The chairpersons of the senate education committee and the house of representatives education committee may request the director of the institute to appear before the committees to report on the institute's annual achievements.

Sec. 94. UNIVERSITY OF ARIZONA

	2021-22
Main campus	
FTE positions	5,769.2
Operating lump sum appropriation	$473,637,300
Agriculture	41,739,700
Arizona cooperative extension	15,176,400
Center for the philosophy of freedom	3,806,800
Kazakhstan studies program	250,000
Sierra Vista campus	6,250,700
Arizona financial aid trust	2,729,400
School of mining	4,000,000
Mining, mineral and natural resources educational museum	428,800
Arizona geological survey	1,148,500
Natural resource users law and policy center	500,000
Total — main campus	$549,667,600
Fund sources:	
State general fund	$227,404,000
University collections fund	322,263,600
Health sciences center	
FTE positions	1,308.8
Operating lump sum appropriation	$ 89,192,500
Clinical rural rotation	353,600
Clinical teaching support	8,587,000
Liver research institute	440,400
Phoenix medical campus	33,517,600
Telemedicine network	1,670,000
Total — health sciences center	$133,761,100

Fund sources:	
State general fund	$ 76,897,700
University collections fund	56,863,400
Total appropriation - university of Arizona	$683,428,700
Fund sources:	
State general fund	$304,301,700
University collections fund	379,127,000

The state general fund appropriation may not be used for alumni association funding.

The increased state general fund appropriation from Laws 2014, chapter 18 may not be used for medical marijuana research.

Other than scholarships awarded through the Arizona financial aid trust, the appropriated monies may not be used for scholarships or any student newspaper.

The amount appropriated for the operating budget includes $5,886,500 to backfill tuition costs associated with the fiscal year 2021-2022 employer health insurance premium increases. The legislature intends that any future employer health insurance premium increases continue to be allocated using the overall allocation of state general fund and appropriated tuition monies.

The university of Arizona shall use monies appropriated for the Kazakhstan studies program to facilitate academic exchanges between university students and academic institutions in Kazakhstan.

The university of Arizona may not use monies appropriated for the Arizona geological survey line item for any other purpose and may not transfer the monies appropriated for the Arizona geological survey to the operating budget or any other line item.

The legislature intends that $8,000,000 of the amount appropriated to the health sciences center operating lump sum appropriation line item be used to expand the college of medicine Phoenix campus and to develop and administer a primary care physician scholarship program at the college of medicine Phoenix campus and the college of medicine Tucson campus. The legislature intends that the $8,000,000 not be annualized in future years.

The appropriated amount for the center for the philosophy of freedom line item may not supplant any existing state funding or private or external donations to the center or the philosophy department of the university of Arizona. The appropriated monies and all private and external donations to the center, including any remaining balances from prior fiscal years, shall be deposited in a separate account, shall be used only for the direct operation of the center and may not be used for indirect costs of the university. On or before October 1, 2021, the center shall submit a report to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate education committee and the house of representatives education committee and the

director of the joint legislative budget committee that includes at least the following information for the center:

1. The total amount of funding received from all sources.
2. A description of faculty positions and courses offered.
3. The total undergraduate and graduate student participation.
4. Significant community events, initiatives or publications.

The chairpersons of the senate education committee and the house of representatives education committee may request the director of the center to appear before the committees to report on the center's annual achievements.

The amount appropriated for the natural resource users law and policy center line item shall be used by the natural resource users law and policy center within the Arizona cooperative extension to assist claimants in the general stream adjudication of water rights pursuant to section 15-1647, Arizona Revised Statutes.

Any unencumbered balances remaining in the university collections fund on June 30, 2021 and all collections received by the university during the fiscal year are appropriated for operating expenditures, capital outlay and fixed charges. Earnings on state lands and interest on the investment of the permanent land funds are appropriated in compliance with the enabling act and the Constitution of Arizona. No part of this appropriation may be spent for supplemental life insurance or supplemental retirement.

Sec. 95. DEPARTMENT OF VETERANS' SERVICES

	2021-22
FTE positions	772.3
Operating lump sum appropriation	$ 2,407,900
Arizona state veterans' homes	51,278,200
Arizona state veterans' cemeteries	962,900
Veterans' benefit counseling	3,708,300
Veterans' support services	1,228,400
Veterans' trauma treatment services	450,000
Total appropriation — department of veterans' services	$ 60,035,700
Fund sources:	
State general fund	$ 8,757,500
State home for veterans' trust fund	51,278,200

The amount appropriated for veterans' support services line item shall be distributed to a nonprofit veterans' services organization that provides support services among this state's military and veteran population. The department may spend up to $78,600 of this appropriation to hire a program specialist to liaise between the department and the selected nonprofit organization. Before the expenditure of the monies,

the department shall submit an expenditure report to the joint legislative budget committee that includes the status of non-state matching grant monies.

Monies appropriated for the veterans' trauma treatment services line item shall be used to provide grants to contractors as defined in section 36-2901, Arizona Revised Statutes, that provide trauma treatment services training to any of the following health professionals licensed pursuant to title 32, Arizona Revised Statutes:

1. Physicians.
2. Registered nurse practitioners.
3. Physician assistants.
4. Psychologists.
5. Behavioral health professionals who are either licensed for individual practice or supervised by a psychologist, registered nurse practitioner or behavioral health professional licensed pursuant to title 32, Arizona Revised Statutes, for independent practice.

Sec. 96. ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

	2021-22
FTE positions	6.0
Lump sum appropriation	$ 618,300
Fund sources:	
Veterinary medical examining board fund	$ 618,300

Sec. 97. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

	2021-22
Water supply development revolving fund deposit	$ 6,000,000
Small drinking water systems fund deposit	1,000,000
Water projects assistance grants	5,000,000*
Total appropriation — water infrastructure finance authority of Arizona	$ 12,000,000
Fund sources:	
State general fund	$ 12,000,000

Of the amount appropriated to the water projects assistance grants line item, $3,000,000 is allocated to provide financial assistance to cities and towns that provide water in Navajo and Apache counties to contract for services of outside advisors, attorneys, consultants and aides that are reasonably necessary or desirable to enable the cities and towns to adequately perform their duties. The water infrastructure finance authority of Arizona shall develop a separate grant program to distribute these monies to qualified entities on or before June 30, 2022.

Of the amount appropriated to the water projects assistance grants line item, $2,000,000 is allocated to provide financial assistance to irrigation districts in Cochise and Graham counties to contract for

services of outside advisors, attorneys, consultants and aides that are reasonably necessary or desirable to enable the irrigation districts to adequately perform their duties. Each county shall receive a $1,000,000 allocation. The water infrastructure finance authority of Arizona shall develop a separate grant program to distribute these monies to qualified entities on or before June 30, 2022.

On or before December 31, 2021, December 31, 2022 and December 31, 2023, the water infrastructure finance authority of Arizona shall report to the joint legislative budget committee on the annual amount of expenditures from the small drinking water systems fund established by section 49-355, Arizona Revised Statutes, for grants to interim operators, interim managers or owners of small drinking water systems during the prior fiscal year.

Sec. 98. DEPARTMENT OF WATER RESOURCES

	2021-22
FTE positions	145.0
Operating lump sum appropriation	$ 13,294,200
Adjudication support	1,814,400
Arizona water protection fund deposit	1,250,000
Assured and adequate water supply administration	2,074,700
Rural water studies	1,201,500
Conservation and drought program	427,700
Automated groundwater monitoring	418,600
Colorado River legal expenses	500,000*
Agua Fria flood insurance study	350,000
Total appropriation - department of water resources	$ 21,331,100
Fund sources:	
State general fund	$ 18,864,300
Water resources fund	977,700
Assured and adequate water supply administration fund	276,700
Arizona water banking fund	1,212,400

Monies in the assured and adequate water supply administration line item may be used only for the exclusive purposes prescribed in sections 45-108 and 45-576 through 45-579, Arizona Revised Statutes. The department of water resources may not transfer any monies into or out of the assured and adequate water supply administration line item.

The legislature intends that monies in the rural water studies line item be spent only to assess local water use needs and to develop plans for sustainable future water supplies in rural areas outside this state's active management areas and not be made available for other department operating expenditures.

Monies in the adjudication support line item may be used only for the exclusive purposes prescribed in section 45-256 and section 45-257, subsection B, paragraph 4, Arizona Revised Statutes. The department of water resources may not transfer any monies into or out of the adjudication support line item.

The department of water resources may not transfer any monies from the Colorado River legal expenses line item without prior review by the joint legislative budget committee.

The department of water resources shall use the monies in the Agua Fria flood insurance study line item to complete a study of the hydrology and hydraulics of the Agua Fria River from New Waddell Dam to the confluence with the Gila River. The department may contract with an engineering firm that has not contracted with or otherwise associated with a county flood control district in an Arizona county with a population of more than one million five hundred thousand persons. On or before March 31, 2023, the department shall complete the report.

Fiscal Year 2020-2021 Appropriation Adjustments

Sec. 99. Supplemental appropriation; department of administration; risk management revolving fund; fiscal year 2020-2021; review

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $2,801,500 is appropriated from the risk management revolving fund established by section 41-622, Arizona Revised Statutes, in fiscal year 2020-2021 to the department of administration for the following purposes:

1. To pay disallowed costs relating to excess retained earnings.

2. To pay disallowed costs relating to the statewide information technology charges.

3. For fund transfers in fiscal year 2019-2020.

4. To pay interest owed from prior-year disallowed costs.

B. The legislature intends that the department of administration not enter into any agreements to pay for any federal reimbursements related to excess balances in the special employee health insurance trust fund established by section 38-654, Arizona Revised Statutes, unless the proposed agreements have been reviewed by the joint legislative budget committee.

Sec. 100. Supplemental appropriation; department of administration; refunds; Transwestern Pipeline litigation; fiscal year 2020-2021; reports; exemption

A. The sum of $17,043,300 is appropriated from the state general fund in fiscal year 2020-2021 to the department of administration to disburse to counties with political subdivisions in this state that paid refunds ordered in the Transwestern Pipeline Co. v. Arizona Department of

Revenue litigation. The department shall disburse to each county the following amounts:

Apache:	$2,029,600
Coconino:	$2,888,400
Maricopa:	$2,477,100
Mohave:	$3,500,300
Navajo:	$1,183,300
Pinal:	$1,058,300
Yavapai:	$3,906,300

B. From the amounts disbursed pursuant to subsection A of this section, each county shall distribute to each political subdivision within its jurisdiction an amount equal to refunds, including interest, ordered in the Transwestern Pipeline Co. v. Arizona Department of Revenue litigation for that political subdivision.

C. School districts may not receive distributions specified in subsection B of this section for refunds that are reimbursable under the K-12 formula. In computing the distributions specified in subsection B of this section, each county shall reduce each school district's distribution by an amount equal to the monies received by the school district as a result of state aid recalculations reported by the department of education pursuant to subsection D of this section.

D. On or before July 15, 2021, the department of education shall report to each county specified in subsection A of this section the amount of monies distributed to each school district within each county's jurisdiction as a result of state aid recalculations associated with the Transwestern Pipeline Co. v. Arizona Department of Revenue litigation pursuant to section 15-915, subsection B, Arizona Revised Statutes.

E. On or before July 30, 2021, each political subdivision that is eligible for a distribution under subsection B of this section shall submit a claim for reimbursement to the county in which the political subdivision is located.

F. On or before September 1, 2021, each county specified in subsection A of this section shall report to the director of the joint legislative budget committee on the total claims submitted pursuant to subsection E of this section. Each report shall include an estimate of the total dollar value of reimbursed claims and the total remaining unexpended and unencumbered monies, if any, from the disbursements specified in subsection A of this section. Any unexpended and unencumbered monies shall be transferred to the state treasurer on or before June 30, 2022 for deposit in the state general fund. If the disbursement in subsection A of this section is insufficient to reimburse the cost of all claims submitted on or before June 30, 2021, distributions under subsection B of this section shall be reduced proportionally to cover all eligible claims. The reports required by this subsection shall

include an estimate of the total dollar value of any unreimbursed claims delineated by political subdivision.

G. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 101. Supplemental appropriation; department of administration; financing agreements; fiscal year 2020-2021; notification; exemption

A. The sum of $977,100,000 is appropriated from the state general fund in fiscal year 2020-2021 to the department of administration to pay for the retirement or defeasance of financing agreements and state lottery revenue bonds. Of this amount:

1. $65,850,000 is for the retirement or defeasance of the financing agreement entered into pursuant to Laws 2016, chapter 119, section 24.

2. $171,700,000 is for the retirement or defeasance of the financing agreement entered into pursuant to Laws 2015, chapter 15, section 16.

3. $269,550,000 is for the retirement or defeasance of the state lottery revenue bonds issued pursuant to Laws 2010, sixth special session, chapter 4, section 1.

4. $470,000,000 is for the retirement or defeasance of the financing agreement entered into pursuant to Laws 2009, third special session, chapter 6, section 32.

B. The director of the department of administration, for and on behalf of the Arizona school facilities board, may execute and deliver documents, engage fiduciaries and take or direct all actions necessary in connection with the retirement and defeasance of the financing agreement described in subsection A, paragraph 2 of this section.

C. The director of the department of administration shall notify the director of the joint legislative budget committee not more than ten days after each retirement or defeasance is executed as required in subsection A of this section. Each notification shall include the date and final cost of each retirement or defeasance.

D. The monies appropriated in subsection A of the section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to the lapsing of appropriations. Any amounts remaining after the retirements or defeasances are executed as required by subsection A of this section revert to the state general fund.

Sec. 102. Department of child safety; supplemental appropriations; fiscal year 2020-2021

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $27,538,100 is appropriated from expenditure authority to the department of child safety in fiscal year 2020-2021 for caseload adjustments.

B. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $90,000 is appropriated from the child welfare licensing fee fund in fiscal year 2020-2021 to the department of child safety for expenses relating to licensing organizations that contract with other jurisdictions and do not contract with this state.

C. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $43,785,000 is appropriated from the department of child safety expenditure authority in fiscal year 2020-2021 to the department of child safety to cover increased costs associated with physical and behavioral health services.

Sec. 103. Department of economic security; supplemental appropriations; fiscal year 2020-2021; exemption

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $115,000,000 is appropriated from expenditure authority to the department of economic security in fiscal year 2020-2021 for caseload adjustments.

B. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $20,147,300 is appropriated from expenditure authority to the department of economic security in fiscal year 2020-2021 to the physical and behavioral health services and home and community based services line items for physician rate increases associated with the health care investment fund established by section 36-2999.73, Arizona Revised Statutes.

C. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $30,200,000 from the child care and development fund block grant is appropriated to the department of economic security in fiscal year 2020-2021 for child care expenses.

D. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $4,000,000 is appropriated from the long-term care system fund established by section 36-2913, Arizona Revised Statutes, to the department of economic security in fiscal year 2020-2021 for room and board costs.

E. The monies appropriated in subsection C of the section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to the lapsing of appropriations.

Sec. 104. Department of economic security; supplemental appropriation; unemployment compensation fund; fiscal year 2020-2021

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $62,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the department of economic security for deposit in the unemployment compensation fund established by section 23-701, Arizona Revised Statutes.

B. The department shall make the deposit prescribed in subsection A of this section on or before July 15, 2021.

Sec. 105. Superintendent of public instruction; transfer; fiscal year 2020-2021; reversion

Notwithstanding section 15-901.03, Arizona Revised Statutes, the superintendent of public instruction may transfer $5,000,000 from the state general fund appropriation for basic state aid for fiscal year 2020-2021 to the results-based funding program for fiscal year 2020-2021 without review by the joint legislative budget committee. Any amount transferred to the results-based funding program under this section that exceeds the amount needed to address a funding shortfall for the results-based funding program for fiscal year 2020-2021 reverts to the state general fund on June 30, 2021.

Sec. 106. Supplemental appropriation; department of emergency and military affairs; border security; fiscal year 2020-2021; exemption

The sum of $55,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the department of emergency and military affairs for deposit in the border security fund established by section 26-105, Arizona Revised Statutes. The department of emergency and military affairs shall allocate, in consultation with the department of public safety, this amount as follows:

1. $3,700,000 to distribute to Cochise county for the costs associated with the purposes provided in section 26-105, subsection A, paragraphs 1 and 2, Arizona Revised Statutes.

2. $2,500,000 to distribute to Yuma county for the costs associated with the purposes provided in section 26-105, subsection A, paragraphs 1 and 2, Arizona Revised Statutes.

3. $2,700,000 to operate a pilot program to reduce human trafficking. The department of emergency and military affairs shall distribute $675,000 to the department of public safety border strike force, $675,000 to the Cochise county sheriff's department, $675,000 to the Yuma county sheriff's department and $675,000 to the Pinal county sheriff's department. The pilot program may use private contractors and provide training, analytical services and human trafficking network discovery tools to law enforcement agencies in this state to:

(a) Proactively detect and track networks through technology that is calibrated to identify key players, assets and patterns of life and that augments current prosecutorial practices, which require traumatized victims to carry the burden of testimony, with quantifiable data that allows law enforcement to target entire trafficking networks and facilitators.

(b) Reduce by one-half the number of staff hours needed to detect and track investigative leads by applying tools and analytic methods developed by the private contractor.

(c) Foster law enforcement agency efficiency and interagency collaboration by identifying and thoroughly mapping a greater number of transnational criminal organizations in order to develop prosecutable evidence in a greatly reduced time frame.

4. $1,100,000 to distribute to the sheriffs in Cochise, Pima, Santa Cruz and Yuma counties to procure cameras and related equipment, software and services for southern Arizona border region enforcement.

5. $20,000,000 to distribute to cities, towns or counties for costs associated with prosecuting and imprisoning individuals charged with drug trafficking, human smuggling, illegal immigration and other border-related crimes.

6. $25,000,000 for costs incurred by Arizona national guard assets augmenting and supporting the department of public safety and local law enforcement agencies relating to violations of the laws of this state in the southern Arizona border region. These monies may not be made available to any other state agency or political subdivision.

Sec. 107. Supplemental appropriation; Arizona department of forestry and fire management; fire suppression costs; fiscal year 2020-2021; exemption

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $2,170,100 is appropriated from the state general fund in fiscal year 2020-2021 to the Arizona department of forestry and fire management for fire suppression costs incurred in fiscal years 2015-2016 through 2019-2020.

B. The monies appropriated in subsection A of the section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to the lapsing of appropriations until June 30, 2022.

Sec. 108. Full-time equivalent position authority; independent redistricting commission; fiscal year 2020-2021

Notwithstanding any other law, the independent redistricting commission is authorized six full-time equivalent positions in fiscal year 2020-2021.

Sec. 109. Supplemental appropriation; Arizona state parks board; Riordan Mansion state historic park; fiscal year 2020-2021

In addition to any other appropriations made in fiscal year 2020-2021, the sum of $147,100 is appropriated from the state parks revenue fund established by section 41-511.21, Arizona Revised Statutes, in fiscal year 2020-2021 to the Arizona state parks board for expenses related to shifting operational responsibility of the Riordan Mansion state historic park from the Arizona historical society to the Arizona state parks board.

Sec. 110. Supplemental appropriations; public safety personnel retirement system; pension liability; fiscal year 2020-2021

A. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $500,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the public safety personnel retirement system to be deposited in the employer account of the department of public safety public safety personnel retirement system group to reduce the unfunded accrued liability.

B. In addition to any other appropriations made in fiscal year 2020-2021, the sum of $500,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the public safety personnel retirement system to be deposited in the employer account of the state department of corrections corrections officer retirement plan group to reduce the unfunded accrued liability.

C. The board of trustees of the public safety personnel retirement system shall account for the appropriations made in this section in the June 30, 2021 actuarial valuation of both the department of public safety personnel retirement system group and the state department of corrections corrections officer retirement plan group. The board shall account for the appropriations when calculating the employee contribution rates and employer contribution rates, which the department of public safety personnel retirement system group shall use when making contributions pursuant to section 38-843, Arizona Revised Statutes, and the state department of corrections corrections officer retirement plan group shall use when making contributions pursuant to section 38-891, Arizona Revised Statutes, during fiscal year 2022-2023.

Sec. 111. Supplemental appropriation; school facilities board; building renewal grants; fiscal year 2020-2021

In addition to any other appropriations made in fiscal year 2020-2021, the sum of $38,759,000 is appropriated from the state general fund in fiscal year 2020-2021 to the school facilities board for building renewal grants.

Sec. 112. Supplemental appropriation; secretary of state; records management expenses; fiscal years 2019-2020 and 2020-2021

In addition to any other appropriations made in fiscal year 2020-2021, the sum of $494,500 is appropriated from the records services fund established by section 41-151.12, Arizona Revised Statutes, in fiscal year 2020-2021 to the secretary of state for records management expenses. This appropriation may be used to pay obligations incurred in fiscal years 2019-2020 and 2020-2021.

Sec. 113. Supplemental appropriation; department of veterans' services; veterans' income tax settlement fund; fiscal year 2020-2021; exemption

A. The sum of $100,000 is appropriated from the veterans' income tax settlement fund established by Laws 2016, chapter 125, section 21, as amended by Laws 2017, chapter 215, section 1, in fiscal year 2020-2021 to the department of veterans' services to distribute to a charitable organization that is qualified under section 501(c)(3) of the internal revenue code, that is located in southern Arizona and that works with regional veterans organizations to improve services to reduce veteran suicides.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023.

Sec. 114. Supplemental appropriation; drought mitigation revolving fund; fiscal year 2020-2021

A. The sum of $160,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the drought mitigation revolving fund established by section 49-193.01, Arizona Revised Statutes.

B. Of the amount appropriated in subsection A of this section:

1. Not more than $10,000,000 may be used for the purposes prescribed in section 49-193.04, subsection A, paragraph 1, Arizona Revised Statutes. This amount must be used on or before June 30, 2025.

2. Not more than $10,000,000 may be used for the purposes prescribed in section 49-193.04, subsection A, paragraph 2, Arizona Revised Statutes.

Sec. 115. Supplemental appropriation; water supply development revolving fund; fiscal year 2020-2021

The sum of $40,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the water supply development revolving fund established by section 49-1271, Arizona Revised Statutes. These monies shall be allocated for projects:

1. That are located throughout all regions of this state and outside of active management areas.

2. In amounts of not more than $1,000,000 per project.

Fiscal Year 2021-2022 Appropriations

Sec. 116. Appropriations; department of administration; counties; allocations; fiscal year 2021-2022

A. The sum of $7,150,650 is appropriated from the state general fund in fiscal year 2021-2022 to the department of administration for distribution to counties to maintain essential county services. The department shall allocate the appropriation equally among all counties with a population of less than nine hundred thousand persons according to the 2010 United States decennial census.

B. The sum of $500,000 is appropriated from the state general fund in fiscal year 2021-2022 to the department of administration for distribution to Graham county to maintain essential county services.

C. The sum of $3,000,000 is appropriated from the state general fund in fiscal year 2021-2022 to the department of administration for distribution to counties to supplement the normal cost plus an amount to amortize the unfunded accrued liability pursuant to section 38-810, subsection C, Arizona Revised Statutes. The department shall allocate the appropriation equally among all counties with a population of less than three hundred thousand persons according to the 2010 United States decennial census. The counties may use these monies only for required employer contributions to the elected officials' retirement plan.

D. The sum of $10,000,000 is appropriated from the state general fund in fiscal year 2021-2022 to the department of administration for distribution to counties to establish a coordinate reentry planning services program. The department shall allocate $5,000,000 of the appropriation to Mohave county, $4,000,000 to Pinal county and $1,000,000 to Yavapai county.

Sec. 117. Automation projects fund; appropriations; fiscal year 2021-2022; quarterly reports; exemption

A. The following amounts are appropriated from the department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration for the following automation and information projects at the department of administration:

1. $2,000,000 to relocate the Tucson data center to a third-party location.

2. $7,758,900 to develop a business one-stop web portal.

3. $3,000,000 to develop a K-12 school financial transparency reporting portal.

B. The sum of $614,100 is appropriated from the charter school board subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to replace the charter school board online platform.

C. The sum of $9,000,000 is appropriated from the department of economic security subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to update the child care management system at the department of economic security.

D. The sum of $7,200,000 is appropriated from the department of education subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to replace the school finance data system at the department of education. The amount appropriated for the school

finance system replacement includes $1,200,000 for the department of administration to engage consultants that provide project management to the department of education regarding replacing the school finance data system. This includes, at minimum, support in technical documentation, financial tracking and documentation and program management and governance.

E. The sum of $850,000 is appropriated from the department of gaming subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to develop an e-licensing solution for tribal gaming certification at the department of gaming.

F. The sum of $1,067,700 is appropriated from the industrial commission of Arizona subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to modernize and replace information technology systems at the industrial commission of Arizona.

G. The sum of $20,000 is appropriated from the state board of psychologist examiners subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to modify the e-licensing system at the state board of psychologist examiners.

H. The sum of $550,000 is appropriated from the department of public safety subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 to the department of administration to update the concealed weapons tracking system at the department of public safety.

Quarterly Reports

I. Within thirty days after the last day of each calendar quarter, the department of administration shall submit to the joint legislative budget committee a quarterly report on implementing projects approved by the information technology authorization committee established by section 18-121, Arizona Revised Statutes, including the projects' expenditures to date, deliverables, timeline for completion and current status.

Nonlapsing

J. Except for the amount appropriated to the department of administration for the K-12 school financial transparency reporting portal, the amounts appropriated pursuant to this section from the automation projects fund established by section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2023. The amount appropriated in fiscal year 2021-2022 to the department of administration for the K-12 school financial transparency reporting portal is exempt from the provisions of

section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2025.

Exemption

K. Notwithstanding section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022, with the exception of appropriations made for the department of administration business one-stop web portal, the department of economic security child care management system and the department of education school finance data system, the appropriations made in this section do not require review from the joint legislative budget committee pursuant to section 41-714, Arizona Revised Statutes.

Sec. 118. Appropriation; Arizona commerce authority; competes fund; fiscal year 2021-2022

In addition to any other appropriations made in this act, the sum of $50,000,000 is appropriated from the state general fund in fiscal year 2021-2022 to the Arizona commerce authority and credited to the Arizona competes fund established by section 41-1545.01, Arizona Revised Statutes.

Sec. 119. Appropriation; fiscal year 2021-2022; department of public safety; microwave backbone; reports; exemption; lapsing

A. The sum of $48,200,000 is appropriated from Arizona highway patrol fund established by section 41-1752, Arizona Revised Statutes, to the department of public safety to update the microwave backbone statewide communication system.

B. On or before May 31 of each year until the completion of the update, the department of public safety shall submit a report to the joint legislative budget committee staff on the status and expenditures of the update to the microwave backbone communication system. Each report shall include the current status of the update, update expenditures to date, expected expenditures to complete the update, any changes to the construction timeline, the expected completion date and any change to the scope of the update.

C. Notwithstanding section 41-1252, Arizona Revised Statutes, the appropriation made in subsection A of this section is not subject to review by the joint committee on capital review.

D. The appropriation made in subsection A of this section does not lapse until the purpose for which the appropriation was made has been accomplished or abandoned or the appropriation stands for a full fiscal year without an expenditure or encumbrance.

Sec. 120. Appropriation reductions; school facilities board; state department of corrections; state lottery revenue bonds; intent; fiscal year 2021-2022

A. The sum of $(74,702,000) is reduced from appropriations made from the state general fund in fiscal year 2021-2022 to eliminate debt service payments following the retirement or defeasance of financing

agreements entered into pursuant to Laws 2015, chapter 15, section 16 and Laws 2016, chapter 119, section 24. Of this amount:

1. The sum of $(57,238,700) is reduced from appropriations made from the state general fund in fiscal year 2021-2022 to the school facilities board new school facilities debt service line item.

2. The sum of $(17,463,300) is reduced from appropriations made from the state general fund in fiscal year 2021-2022 to the state department of corrections private prison per diem line item.

B. The legislature intends that the retirement or defeasance of state lottery revenue bonds entered into pursuant to Laws 2010, sixth special session, chapter 4, section 1 occur on or before June 30, 2022 and that no monies from the state lottery fund established by section 5-571, Arizona Revised Statutes, be distributed to the state lottery revenue bond debt service fund established by section 5-534, Arizona Revised Statutes, beginning in fiscal year 2021-2022 to allow the state general fund to receive savings from the retirement or defeasance of state lottery revenue bonds.

Sec. 121. Department of economic security; loans; reimbursement; fiscal year 2021-2022

On or after April 1, 2022, the department of economic security may use up to $25,000,000 from the budget stabilization fund established by section 35-144, Arizona Revised Statutes, for the purpose of providing funding for reimbursement grants. Before using the monies from the budget stabilization fund, the department shall notify the director of the joint legislative budget committee and the director of the governor's office of strategic planning and budgeting. Notwithstanding any other law, this appropriation must be fully reimbursed on or before September 1, 2022 and must be reimbursed in full as part of the closing process for fiscal year 2021-2022. The department shall notify the joint legislative budget committee of the reimbursement on or before September 1, 2022. The appropriation may not be used for additional programmatic expenditures.

Sec. 122. Phoenix convention center; allocation; fiscal year 2021-2022

Pursuant to section 9-602, Arizona Revised Statutes, $24,498,500 of state general fund revenue is allocated in fiscal year 2021-2022 to the Arizona convention center development fund established by section 9-601, Arizona Revised Statutes.

Sec. 123. Rio Nuevo multipurpose facility district; estimated distribution; fiscal year 2021-2022

Pursuant to section 42-5031, Arizona Revised Statutes, a portion of the state transaction privilege tax revenues will be distributed to a multipurpose facility district. The Rio Nuevo multipurpose facility district is estimated to receive $16,000,000 in fiscal year 2021-2022. The actual amount of the distribution will be made pursuant to section 42-5031, Arizona Revised Statutes.

Fiscal Year 2020-2021 and 2021-2022 Appropriations and Fund Balance Transfers

Sec. 124. Appropriations; fund balance transfers; fiscal year 2021-2022; automation projects fund

A. The sum of $2,000,000 is appropriated from the automation projects fund established by section 41-714, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to relocate the Tucson data center to a third-party location.

B. The sum of $3,000,000 is appropriated from the state general fund in fiscal year 2021-2022 for deposit in the department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to develop a K-12 school finance transparency reporting portal.

C. The sum of $614,100 is appropriated from the state general fund in fiscal year 2021-2022 for deposit in the charter school board subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to replace the charter school board online platform.

D. Notwithstanding any other law, the following amounts are transferred from the following funds in fiscal year 2021-2022 for deposit in the department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, develop a business one-stop web portal:

1. $3,000,000 from the state web portal fund established by section 18-421, Arizona Revised Statutes.

2. $4,758,900 from the automation operations fund established by section 41-711, Arizona Revised Statutes.

E. Notwithstanding any other law, the amount of $9,000,000 is transferred from the department of economic security federal child care development fund block grant in fiscal year 2021-2022 for deposit in the department of economic security subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to update the child care management system.

F. Notwithstanding any other law, the following amounts are transferred from the following funds in fiscal year 2021-2022 for deposit in the department of education subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to replace the school finance data system:

1. $4,448,900 from the department of education empowerment scholarship account fund established by section 15-2402, Arizona Revised Statutes.

2. $2,751,100 from the state treasurer empowerment scholarship account fund established by section 15-2402, Arizona Revised Statutes.

G. Notwithstanding any other law, the amount of $850,000 is transferred from the Arizona benefits fund established by section 5-601.02, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the department of gaming subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to develop an e-licensing solution.

H. Notwithstanding any other law, the amount of $1,067,700 is transferred from the administrative fund established by section 23-1081, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the industrial commission of Arizona subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to modernize and replace information technology systems at the industrial commission of Arizona.

I. Notwithstanding any other law, the amount of $550,000 is transferred from the concealed weapons permit fund established by section 41-1722, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the department of public safety subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to update the concealed weapons tracking system.

J. Notwithstanding any other law, the amount of $20,000 is transferred from the board of psychologist examiners fund established by section 32-2065, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the board of psychologist examiners subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to update the board's e-licensing system.

K. The transfers into the automation projects fund established by section 41-714, Arizona Revised Statutes, are not appropriations out of the automation projects fund. Only direct appropriations out of the automation projects fund are appropriations.

Sec. 125. Appropriation; fund balance transfer; state general fund; fiscal year 2020-2021

Notwithstanding any other law, the sum of $24,205,700 from the Arizona highway patrol fund established by section 41-1752, Arizona Revised Statutes, is transferred in fiscal year 2020-2021 to the state general fund for the purpose of providing adequate support and maintenance for agencies of this state.

Sec. 126. Appropriation; water quality fee fund; fiscal year 2020-2021

The sum of $1,500,000 is appropriated from the recycling fund established by section 49-837, Arizona Revised Statutes, in fiscal year 2020-2021 for deposit in the water quality fee fund established by section 49-210, Arizona Revised Statutes.

Sec. 127. Appropriation; department of transportation; vehicle license tax distribution; fiscal year 2021-2022

The sum of $3,300,000 is appropriated from the state general fund in fiscal year 2021-2022 to the department of transportation for distribution as prescribed in section 28-5808, subsection B, paragraph 2, Arizona Revised Statutes.

Sec. 128. Appropriation; highway expansion and extension loan program fund; fiscal year 2021-2022

The sum of $1,220,800 is appropriated from the highway expansion and extension loan program fund established by section 28-7674, Arizona Revised Statutes, in fiscal year 2021-2022 for deposit in the department's federal fund (DT2097).

Sec. 129. Appropriation; fund balance transfer; sexual violence service fund; fiscal year 2021-2022

Notwithstanding any other law, the following amounts are transferred from the funds listed below in fiscal year 2021-2022 for deposit in the sexual violence service fund established by section 36-3102, Arizona Revised Statutes:

1.	DHS - health services licensing fund	$2,370,900
2.	DHS - health services lottery monies fund	$ 93,700
3.	DHS - indirect cost fund	$1,339,000
4.	DPS - criminal justice enhancement fund	$ 343,700
5.	DPS - licensing fund	$ 251,900
6.	DPS - fingerprint clearance card fund	$1,356,400
7.	DPS - motor vehicle liability insurance enforcement fund	$ 306,800
8.	DPS - parity compensation fund	$ 921,900
9.	DPS - safety enforcement and transportation infrastructure fund	$ 202,500
10.	DOT - motor vehicle liability insurance enforcement fund	$ 247,800
11.	DOT - vehicle inspection and certificate of title enforcement fund	$ 565,400
Total transfer		$8,000,000

Payment Deferrals

Sec. 130. Reduction in school district state aid apportionment in fiscal year 2021-2022; appropriation in fiscal year 2022-2023

A. In addition to any other appropriation reductions made in fiscal year 2021-2022, notwithstanding any other law, the department of education shall defer until after June 30, 2022 but not later than July 12, 2022 $865,727,700 of the basic state aid and additional state aid entitlement that otherwise would be apportioned to school districts during fiscal year 2021-2022 pursuant to section 15-973, Arizona Revised Statutes. The

funding deferral required by this subsection does not apply to charter schools or to school districts with a student count of less than two thousand pupils. The department of education shall make the deferral by reducing the apportionment of state aid for each month in the fiscal year by the same amount.

B. In addition to any other appropriations made in fiscal year 2022-2023, the sum of $865,727,700 is appropriated from the state general fund in fiscal year 2022-2023 to the department of education and the superintendent of public instruction for basic state aid and additional state aid entitlement for fiscal year 2022-2023. This appropriation shall be disbursed after June 30, 2022 but not later than July 12, 2022 to the several counties for the school districts in each county in amounts equal to the reductions in apportionment of basic state aid and additional state aid that are required pursuant to subsection A of this section for fiscal year 2021-2022.

C. School districts shall include in the revenue estimates they use for computing their tax rates for fiscal year 2021-2022 the monies they will receive pursuant to subsection B of this section.

Statewide Adjustments

Sec. 131. Appropriations; operating adjustments

	2021-22
1. Employer health insurance contribution reduction	$ (38,565,400)
Fund sources:	
State general fund	$ (20,281,100)
Other funds	(18,284,300)
2. Employer health insurance contribution increase	$ 25,213,700
Fund sources:	
State general fund	$ 11,213,700
Other funds	14,000,000
3. Nonuniversity state employee 27th pay period reduction	$ (73,478,600)
Fund sources:	
State general fund	$ (43,078,600)
Other appropriated funds	(30,400,000)
4. Agency risk management adjustments	$ (1,557,200)
Fund sources:	
State general fund	$ (1,132,200)
Other funds	(425,000)
5. Agency retirement adjustments	$ 7,600,000
Fund sources:	
State general fund	$ 3,600,000
Other funds	4,000,000

6. Arizona financial information system adjustment	$	1,447,800
Fund sources:		
State general fund	$	447,800
Other funds		1,000,000
7. Agency rent adjustments	$	(141,700)
Fund sources:		
State general fund		(241,700)
Other funds		100,000
8. State fleet rate adjustments	$	4,525,200
Fund sources:		
State general fund	$	2,525,200
Other funds		2,000,000

Employer health insurance contribution reduction

The amount appropriated is for a onetime employer contribution rate reduction for employee health insurance in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the health insurance contribution adjustment. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to implement the reduction in employer health insurance contribution rates. The joint legislative budget committee staff shall use the overall allocation of state general fund and appropriated tuition monies for each university in determining that university's specific adjustment.

Employer health insurance contribution increase

The amount appropriated is for an employer contribution rate increase for employee health insurance in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the health insurance contribution adjustment. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to implement the increase in employer health insurance contribution rates. The joint legislative budget committee staff shall use the overall allocation of state general fund and appropriated tuition monies for each university in determining that university's specific adjustment.

Nonuniversity state employee 27th pay period reduction

The amount appropriated for nonuniversity state employee 27th pay period reduction in fiscal year 2021-2022 is to eliminate a one-time increase in state agency expenditures due to the occurrence of a 27th pay period in fiscal year 2020-2021. The adjustments apply only to nonuniversity state agencies. The joint legislative budget committee

staff shall determine and the department of administration shall allocate to each agency's or department's personal services and employee related expenditures an amount for the 27th pay period for employees. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow implementation of nonuniversity state employee 27th pay period adjustments.

Agency risk management adjustments

The amount appropriated is for agency risk management premium adjustments in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the risk management adjustments. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow implementation of the risk management adjustments.

Agency retirement adjustments

The amount appropriated is for agency retirement adjustments in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the agency retirement. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow implementation of the agency retirement adjustments.

Arizona financial information system adjustments

The amount appropriated is for upgrades to the Arizona financial information system in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the Arizona financial information system collection charge. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow for the payment of Arizona financial information system charges.

Agency rent adjustments

The amount appropriated is for agency rent adjustments for agencies relocating to and within state-owned and lease-purchase buildings in fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the rent adjustment. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow implementation of the agency rent adjustments.

State fleet rate adjustments

The amount appropriated is for state fleet rate adjustments fiscal year 2021-2022. The joint legislative budget committee staff shall determine and the department of administration shall allocate to each agency or department an amount for the state fleet rate adjustments. The joint legislative budget committee staff shall also determine and the department of administration shall allocate adjustments, as necessary, in expenditure authority to allow implementation of the state fleet rate adjustments.

Sec. 132. Department of law; general agency counsel charges; fiscal year 2021-2022

Pursuant to section 41-191.09, Arizona Revised Statutes, the following state agencies and departments are charged the following amounts in fiscal year 2021-2022 for general agency counsel provided by the department of law:

1.	Department of administration	$127,700
2.	Office of administrative hearings	$ 3,000
3.	Arizona arts commission	$ 3,100
4.	Citizens clean elections commission	$ 2,700
5.	State department of corrections	$ 2,000
6.	Arizona criminal justice commission	$ 8,700
7.	Arizona state schools for the deaf and the blind	$100,200
8.	Commission for the deaf and the hard of hearing	$ 4,100
9.	Arizona early childhood development and health board	$ 47,100
10.	Department of education	$132,000
11.	Department of emergency and military affairs	$ 30,000
12.	Department of environmental quality	$135,600
13.	Arizona exposition and state fair board	$ 20,900
14.	Arizona department of forestry and fire management	$ 13,400
15.	Department of gaming	$ 37,300
16.	Department of health services	$173,800
17.	Arizona historical society	$ 700
18.	Arizona department of housing	$ 19,300
19.	Department of insurance and financial institutions	$ 13,800
20.	Department of juvenile corrections	$ 9,400
21.	State land department	$ 2,100
22.	Department of liquor licenses and control	$ 11,400
23.	Arizona state lottery commission	$ 24,800
24.	Arizona state parks board	$ 45,800
25.	State personnel board	$ 600

26.	Arizona pioneers' home	$ 12,100
27.	Commission for postsecondary education	$ 1,800
28.	Department of public safety	$677,400
29.	Arizona state retirement system	$ 69,100
30.	Department of revenue	$ 4,900
31.	Department of state – secretary of state	$ 1,800
32.	State treasurer	$ 9,200
33.	Department of veterans' services	$ 52,700

Fiscal Year 2022-2023 and 2023-2024 appropriations

Sec. 133. Appropriations; department of administration; automation projects fund; fiscal years 2022-2023 and 2023-2024; use; exemption; reversion

A. The sum of $1,500,000 is appropriated from the department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, in each of fiscal years 2022-2023 and 2023-2024 to the department of administration to develop a K-12 school financial transparency reporting system.

B. The sum of $1,500,000 is appropriated from the state general fund in each of fiscal years 2022-2023 and 2023-2024 for deposit in department of administration subaccount in the automation projects fund established pursuant to section 41-714, Arizona Revised Statutes, to develop a K-12 school financial transparency reporting system.

C. Notwithstanding section 41-714, Arizona Revised Statutes, in each of fiscal years 2022-2023 and 2023-2024, the appropriations made in subsection A of this section do not require review from the joint legislative budget committee pursuant to section 41-714, Arizona Revised Statutes.

D. The amounts appropriated pursuant to this section from the automation projects fund established by section 41-714, Arizona Revised Statutes, in fiscal years 2022-2023 and 2023-2024 are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, until June 30, 2025.

Sec. 134. Appropriation; new school facilities fund; fiscal year 2022-2023; use

The sum of $47,950,000 is appropriated from the state general fund in fiscal year 2022-2023 for a onetime deposit in the new school facilities fund established by section 15-2041, Arizona Revised Statutes. The school facilities board shall use the monies only for facilities that will be constructed for school districts that received final approval from the school facilities board on or before December 15, 2020.

Sec. 135. Appropriation; Yuma union high school; fiscal year 2022-2023; use

The sum of $16,515,200 is appropriated from the state general fund in fiscal year 2022-2023 for to the school facilities board to distribute

to the Yuma union high school district for the construction of a new high school.

Sec. 136. Legislative intent; regional peace officer training academies

The legislature intends that after fiscal year 2021-2022, monies received by local law enforcement agencies pursuant to Proposition 207 as approved at the 2020 general election are expected to cover reimbursements to regional peace officer training academies for training officers.

Reporting Requirements and Definitions

Sec. 137. Legislative intent; expenditure reporting

The legislature intends that all departments, agencies and budget units receiving appropriations under the terms of this act continue to report actual, estimated and requested expenditures by budget programs and budget classes in a format that is similar to the budget programs and budget classes used for budgetary purposes in prior years. A different format may be used if deemed necessary to implement section 35-113, Arizona Revised Statutes, agreed to by the director of the joint legislative budget committee and incorporated into the budget preparation instructions adopted by the governor's office of strategic planning and budgeting pursuant to section 35-112, Arizona Revised Statutes.

Sec. 138. FTE positions; reporting; definition

Full-time equivalent (FTE) positions contained in this act are subject to appropriation. The director of the department of administration shall account for the use of all appropriated and nonappropriated FTE positions, excluding those in the universities. The director of the department of administration shall submit the fiscal year 2021-2022 report on or before October 1, 2022 to the director of the joint legislative budget committee. The report shall compare the level of appropriated FTE usage in each fiscal year to the appropriated level. For the purposes of this section, "FTE positions" means the total number of hours worked, including both regular and overtime hours as well as hours taken as leave, divided by the number of hours in a work year. The director of the department of administration shall notify the director of a budget unit if the budget unit's appropriated FTE usage has exceeded its number of appropriated FTE positions. Each university shall report to the director of the joint legislative budget committee in a manner comparable to the department of administration reporting.

Sec. 139. Filled FTE positions; reporting

On or before October 1, 2021, each agency, including the judiciary and universities, shall submit a report to the director of the joint legislative budget committee on the number of filled appropriated and nonappropriated FTE positions, by fund source, as of September 1, 2021.

Sec. 140. Transfer of spending authority

The department of administration shall report monthly to the director of the joint legislative budget committee any transfers of

spending authority made pursuant to section 35-173, subsection C, Arizona Revised Statutes, during the prior month.

Sec. 141. Interim reporting requirements

A. State general fund revenue for fiscal year 2020-2021, including a beginning balance of $372,457,000 and other onetime revenues, is forecasted to be $14,052,300,000.

B. State general fund revenue for fiscal year 2021-2022, including onetime revenues, is forecasted to be $12,996,100,000.

C. State general fund revenue for fiscal year 2022-2023, including onetime revenues, is forecasted to be $12,817,700,000. State general fund expenditures for fiscal year 2022-2023 are forecasted to be $12,775,600,000.

D. State general fund revenue for fiscal year 2023-2024, including onetime revenues, is forecasted to be $13,437,600,000. State general fund expenditures for fiscal year 2023-2024 are forecasted to be $13,014,200,000.

E. On or before September 15, 2021, the executive branch shall provide to the joint legislative budget committee a preliminary estimate of the fiscal year 2020-2021 state general fund ending balance. The estimate shall include projections of total revenues, total expenditures and ending balance. The department of administration shall continue to provide the final report for the fiscal year in its annual financial report pursuant to section 35-131, Arizona Revised Statutes.

F. Based on the information provided by the executive branch, the staff of the joint legislative budget committee shall report to the joint legislative budget committee on or before October 15, 2021 whether the fiscal year 2021-2022 revenues and ending balance are expected to change by more than $50,000,000 from the budgeted projections. The joint legislative budget committee staff may make technical adjustments to the revenue and expenditure estimates in this section to reflect other bills enacted into law. The executive branch may also provide its own estimates to the joint legislative budget committee on or before October 15, 2021.

Sec. 142. Definition

For the purposes of this act, "*" means this appropriation is a continuing appropriation and is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 143. Definition

For the purposes of this act, "expenditure authority" means that the fund sources are continuously appropriated monies that are included in the individual line items of appropriations.

Sec. 144. Definition

For the purposes of this act, "review by the joint legislative budget committee" means a review by a vote of a majority of a quorum of the members of the joint legislative budget committee.

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.

§ 32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.

3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

4. "Board" means the Arizona state board of nursing.

5. "Certified nurse midwife" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.

(d) Has an expanded scope of practice in providing health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:

(i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health care of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in delivering nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

(a) Is certified by the board as a clinical nurse specialist.

(b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.

(c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.

(d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.

(ii) Managing directly and indirectly a client's physical and psychosocial health status.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.

(iv) Developing, planning and guiding programs of care for populations of patients.

(v) Making independent nursing decisions to solve complex client care problems.

(vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.

(vii) Prescribing and dispensing durable medical equipment.

(viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.

(ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.

(x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

(xi) Prescribing, ordering and dispensing pharmacological agents subject to the requirements and limits specified in section 32-1651.

10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed $1,000 for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

13. "Health care institution" has the same meaning prescribed in section 36-401.

14. "Licensed health aide" means a person who:

(a) Is licensed pursuant to this chapter to provide or to assist in providing nursing-related services authorized pursuant to section 36-2939.

(b) Is the parent, guardian or family member of the Arizona long-term care system member receiving services who may provide licensed health aide services only to that member and only consistent with that member's plan of care.

(c) Has a scope of practice that is the same as a licensed nursing assistant and may also provide medication administration, tracheostomy care and enteral care and therapy and any other tasks approved by the board in rule.

15. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in delivering nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

16. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

17. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

18. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.

19. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

20. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse's scope of practice.

(d) Maintaining safe and effective nursing care that is rendered directly or indirectly.

(e) Participating in the evaluation of responses to interventions.

(f) Delegating nursing activities within the scope of practice of a practical nurse.

(g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

21. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.

22. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

23. "Registered nurse practitioner" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.

(d) Has an expanded scope of practice within a specialty area that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health status of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

24. "Registered nursing" includes the following:

(a) Diagnosing and treating human responses to actual or potential health problems.

(b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

(c) Assessing the health status of individuals and groups.

(d) Establishing a nursing diagnosis.

(e) Establishing goals to meet identified health care needs.

(f) Prescribing nursing interventions to implement a strategy of care.

(g) Delegating nursing interventions to others who are qualified to do so.

(h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.

(i) Evaluating responses to interventions.

(j) Teaching nursing knowledge and skills.

(k) Managing and supervising the practice of nursing.

(l) Consulting and coordinating with other health care professionals in the management of health care.

(m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

25. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

26. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.

(b) 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.

(c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.

(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.

(f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.

(g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.

(h) Committing an act that deceives, defrauds or harms the public.

(i) Failing to comply with a stipulated agreement, consent agreement or board order.

(j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

(k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:

(i) Incompetent to practice.

(ii) Guilty of unprofessional conduct.

(iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.

(l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.

(m) Cheating or assisting another to cheat on a licensure or certification examination.

History:

Amended by L. 2021, ch. 86,s. 1, eff. 9/29/2021. Amended by L. 2019, ch. 87,s. 1, eff. 8/27/2019. Amended by L. 2017, ch. 182,s. 1, eff. 8/9/2017. Amended by L. 2017, ch. 80,s. 1, eff. 8/9/2017.

§ 32-1606. [Effective ninety-one days after adjournment] Powers and duties of board

A. The board may:

1. Adopt and revise rules necessary to carry into effect this chapter.

2. Publish advisory opinions regarding registered and practical nursing practice and nursing education.

3. Issue limited licenses or certificates if it determines that an applicant or licensee cannot function safely in a specific setting or within the full scope of practice.

4. Refer criminal violations of this chapter to the appropriate law enforcement agency.

5. Establish a confidential program for monitoring licensees who are chemically dependent and who enroll in rehabilitation programs that meet the criteria established by the board. The board may take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. In order to protect the public health and safety, the confidentiality requirements of this paragraph do not apply if the licensee does not comply with the stipulated agreement.

6. On the applicant's or regulated party's request, establish a payment schedule with the applicant or regulated party.

7. Provide education regarding board functions.

8. Collect or assist in collecting workforce data.

9. Adopt rules to conduct pilot programs consistent with public safety for innovative applications in nursing practice, education and regulation.

10. Grant retirement status on request to retired nurses who are or were licensed under this chapter, who have no open complaint or investigation pending against them and who are not subject to discipline.

11. 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 the fiscal year.

B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.

2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.

3. Prepare and maintain a list of approved nursing programs to prepare registered nurses and practical nurses whose graduates are eligible for licensing under this chapter as registered nurses or as practical nurses if they satisfy the other requirements of this chapter and board rules.

4. Examine qualified registered nurse and practical nurse applicants.

5. License and renew the licenses of qualified registered nurse and practical nurse applicants and licensed nursing assistants who are not qualified to be licensed by the executive director.

6. Adopt a seal, which the executive director shall keep.

7. Keep a record of all proceedings.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.

9. Adopt rules to approve credential evaluation services that evaluate the qualifications of applicants who graduated from an international nursing program.

10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.

11. Perform functions necessary to carry out the requirements of the nursing assistant and nurse aide training and competency evaluation program as set forth in the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall include:

(a) Testing and registering certified nursing assistants.

(b) Testing and licensing licensed nursing assistants.

(c) Maintaining a list of board-approved training programs.

(d) Maintaining a registry of nursing assistants for all certified nursing assistants and licensed nursing assistants.

(e) Assessing fees.

12. Adopt rules establishing acts that may be performed by a registered nurse practitioner or certified nurse midwife, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.

13. Adopt rules that prohibit registered nurse practitioners, clinical nurse specialists or certified nurse midwives from dispensing 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 or as provided in section 32-3248.03.

14. Adopt rules establishing educational requirements to certify school nurses.

15. Publish copies of board rules and distribute these copies on request.

16. Require each applicant for initial licensure or certification to 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.

17. Except for a licensee who has been convicted of a felony that has been designated a misdemeanor pursuant to section 13-604, revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing an application pursuant to this chapter.

18. Establish standards to approve and reapprove registered nurse practitioner and clinical nurse specialist programs and provide for surveys of registered nurse practitioner and clinical nurse specialist programs as the board deems necessary.

19. Provide the licensing authorities of health care institutions, facilities and homes with any information the board receives regarding practices that place a patient's health at risk.

20. Limit the multistate licensure privilege of any person who holds or applies for a license in this state pursuant to section 32-1668.

21. Adopt rules to establish competency standards for obtaining and maintaining a license.

22. Adopt rules to qualify and certify clinical nurse specialists.

23. Adopt rules to approve and reapprove refresher courses for nurses who are not currently practicing.

24. Maintain a list of approved medication assistant training programs.

25. Test and certify medication assistants.

26. Maintain a registry and disciplinary record of medication assistants who are certified pursuant to this chapter.

27. Adopt rules to establish the requirements for a clinical nurse specialist to prescribe and dispense drugs and devices consistent with section 32-1651 and within the clinical nurse specialist's population or disease focus.

C. The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.

D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section 32-1668.

E. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license or a certificate.

F. The president or a member of the board designated by the president may administer oaths in transacting the business of the board.

History:

Amended by L. 2023, ch. 42,s. 3, eff. ninety-one days after adjournment. Amended by L. 2019, ch. 87,s. 2, eff. 8/27/2019. Amended by L. 2018, ch. 243,s. 5, eff. 8/3/2018. Amended by L. 2018, ch. 1,s. 17, eff. 8/3/2018. Amended by L. 2017, ch. 80,s. 2, eff. 8/9/2017. Amended by L. 2016, ch. 282,s. 1, eff. 7/1/2016.

SSOT:

This section is set out more than once due to postponed, multiple, or conflicting amendments.

§ 32-1643. Fees; penalties

A. The board by formal vote at its annual meeting shall establish fees not to exceed the following amounts:

1. Initial application for certification for certified registered nurse anesthetist, registered nurse practitioner and clinical nurse specialist in specialty areas, $150.

2. Initial application for school nurse certification, $75.

3. Initial application for license as a registered nurse, $150.

4. Initial application for license as a practical nurse, $150.

5. Application for reissuance of a registered or practical nursing license, $150.

6. Application for renewal of a registered nurse or a practical nurse license before expiration, $160.

7. Application for renewal of license after expiration, $160, plus a late fee of $50 for each month the license is lapsed, but not to exceed a total of $200.

8. Application for renewal of a school nurse certificate, $50.

9. Application for temporary registered nurse, practical nurse or licensed nursing assistant license, $50.

10. Retaking the registered nurse or practical nurse examination, $100.

11. Issuing a license to an applicant to become a licensed nursing assistant or licensed health aide, $50.

12. Issuing a license to a licensed nursing assistant or licensed health aide applicant for renewal, $50.

13. Application for renewal of a licensed nursing assistant or licensed health aide license after its expiration, $25 for each year it is expired, not to exceed a total of $100.

14. Issuing a duplicate license or certificate, $25.

15. Copying a nursing program transcript, $25.

16. Verification to another state or country of licensure for endorsement, certification for advanced practice or licensed nursing assistant licensure, $50.

17. Providing verification to an applicant for licensure or for licensed nursing assistant licensure by endorsement, $50.

18. Application to prescribe and dispense medication and application to prescribe medication, $150.

19. Application for renewal of prescribing and dispensing medication privileges before expiration and application for renewal of prescribing medication privileges before expiration, $20.

20. Application for renewal of prescribing and dispensing medication privileges after expiration and application for renewal of prescribing medication privileges after expiration, $35.

21. Issuing an inactive license, $50.

22. Writing the national council licensing examination for the first time, $150.

23. Sale of publications prepared by the board, $50.

24. Providing notary services, $2, or as allowed under section 41-316.

25. Copying records, documents, letters, minutes, applications and files, $.50 a page.

26. Processing fingerprint cards, $50.

27. Registration for board seminars, $100.

28. Failing to notify the board of a change of address pursuant to section 32-1609, $25.

B. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

History:

Amended by L. 2021, ch. 86,s. 2, eff. 9/29/2021.

§ 32-1643. Fees; penalties

A. The board by formal vote at its annual meeting shall establish fees not to exceed the following amounts:

1. Initial application for certification for certified registered nurse anesthetist, registered nurse practitioner and clinical nurse specialist in specialty areas, $150.

2. Initial application for school nurse certification, $75.

3. Initial application for license as a registered nurse, $150.

4. Initial application for license as a practical nurse, $150.

5. Application for reissuance of a registered or practical nursing license, $150.

6. Application for renewal of a registered nurse or a practical nurse license before expiration, $160.

7. Application for renewal of license after expiration, $160, plus a late fee of $50 for each month the license is lapsed, but not to exceed a total of $200.

8. Application for renewal of a school nurse certificate, $50.

9. Application for temporary registered nurse, practical nurse or licensed nursing assistant license, $50.

10. Retaking the registered nurse or practical nurse examination, $100.

11. Issuing a license to an applicant to become a licensed nursing assistant or licensed health aide, $50.

12. Issuing a license to a licensed nursing assistant or licensed health aide applicant for renewal, $50.

13. Application for renewal of a licensed nursing assistant or licensed health aide license after its expiration, $25 for each year it is expired, not to exceed a total of $100.

14. Issuing a duplicate license or certificate, $25.

15. Copying a nursing program transcript, $25.

16. Verification to another state or country of licensure for endorsement, certification for advanced practice or licensed nursing assistant licensure, $50.

17. Providing verification to an applicant for licensure or for licensed nursing assistant licensure by endorsement, $50.

18. Application to prescribe and dispense medication and application to prescribe medication, $150.

19. Application for renewal of prescribing and dispensing medication privileges before expiration and application for renewal of prescribing medication privileges before expiration, $20.

20. Application for renewal of prescribing and dispensing medication privileges after expiration and application for renewal of prescribing medication privileges after expiration, $35.

21. Issuing an inactive license, $50.

22. Writing the national council licensing examination for the first time, $150.

23. Sale of publications prepared by the board, $50.

24. Providing notary services, $2, or as allowed under section 41-316.

25. Copying records, documents, letters, minutes, applications and files, $.50 a page.

26. Processing fingerprint cards, $50.

27. Registration for board seminars, $100.

28. Failing to notify the board of a change of address pursuant to section 32-1609, $25.

B. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

History:

Amended by L. 2021, ch. 86,s. 2, eff. 9/29/2021.

§ 32-1645. Licensed nursing assistants; certified nursing assistants; licensed health aides; qualifications

A. A person who wishes to practice as a licensed nursing assistant shall file a verified application on a form prescribed by the board and accompanied by the fee required pursuant to section 32-1643. The applicant shall also submit a verified statement that indicates whether the applicant has been convicted of a felony and, if convicted of one or more felonies, indicates the date of absolute discharge from the sentences for all felony convictions. The applicant shall also submit proof satisfactory to the board that the applicant meets all of the following:

1. Satisfactorily completed the basic curriculum of a program approved by the board.

2. Received a valid certificate from a training program approved by the board.

3. Satisfactorily completed a competency examination pursuant to section 32-1647.

B. A person who wishes to practice as a certified nursing assistant shall file a verified form prescribed by the board and authorized by the omnibus budget reconciliation act of 1987 (P.L. 100-123; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). The applicant shall also submit proof satisfactory to the board that the applicant meets all of the following:

1. Satisfactorily completed the basic curriculum of a program approved by the board.

2. Received a valid certificate from a training program approved by the board.

3. Satisfactorily completed the nursing assistant competency examinations pursuant to section 32-1647.

C. A person who wishes to practice as a licensed health aide shall file a verified application on a form prescribed by the board and accompanied by the fee required pursuant to section 32-1643. The applicant shall also submit proof satisfactory to the board that the applicant meets all of the following:

1. Is a parent, guardian or family member of an individual who is under twenty-one years of age and who is eligible to receive continuous skilled nursing or skilled nursing respite care services pursuant to section 36-2939, subsection G.

2. Satisfactorily completed the basic curriculum of and received a valid certificate from a training program approved by the board that includes medication administration, tracheostomy care, enteral care and therapy for persons under twenty-one years of age, and any other tasks approved by the board.

3. Satisfactorily completed a competency examination approved by the board.

D. A person who wishes to practice as a certified nursing assistant or a licensed nursing assistant shall be at least sixteen years of age.

History:

Amended by L. 2022, ch. 52,s. 1, eff. 9/23/2022. Amended by L. 2021, ch. 86,s. 3, eff. 9/29/2021.

§ 32-1663. Disciplinary action

A. If an applicant for licensure or certification commits an act of unprofessional conduct, the board, after an investigation, may deny the application or take other disciplinary action.

B. In its denial order, the board shall immediately invalidate any temporary license or certificate issued to the applicant.

C. Any person aggrieved by an order of the board issued under the authority granted by subsection A of this section may request an administrative hearing pursuant to title 41, chapter 6, article 10.

D. If the board finds, after affording an opportunity to request an administrative hearing pursuant to title 41, chapter 6, article 10, that a person who holds a license or certificate issued pursuant to this chapter has committed an act of unprofessional conduct, it may take disciplinary action.

E. If the board finds after giving the person an opportunity to request an administrative hearing pursuant to title 41, chapter 6, article 10 that a nurse who practices in this state and is licensed by another jurisdiction pursuant to section 32-1668 committed an act of unprofessional conduct, the board may limit, suspend or revoke the privilege of that nurse to practice in this state.

F. If the board determines pursuant to an investigation that reasonable grounds exist to discipline a person pursuant to subsection D or E of this section, the board may serve on the licensee or certificate holder a written notice that states:

1. That the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking disciplinary actions allowed by this chapter.

2. The nature of the allegations asserted and that cites the specific statutes or rules violated.

3. That unless the licensee or certificate holder submits a written request for a hearing within thirty days after service of the notice by certified mail, the board may consider the allegations admitted and may take any disciplinary action allowed pursuant to this chapter without conducting a hearing.

G. If the Arizona state board of nursing acts to modify any registered nurse practitioner's or clinical nurse specialist's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

History:

Amended by L. 2019, ch. 87,s. 7, eff. 8/27/2019.

§ 32-1664. Investigation; hearing; notice

A. In connection with an investigation, the board or its duly authorized agents or employees may obtain any documents, reports, records, papers, books and materials, including hospital records, medical staff records and medical staff review committee records, or any other physical evidence that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter:

1. By entering the premises, at any reasonable time, and inspecting and copying materials in the possession of a regulated party that relate to nursing competence, unprofessional conduct or mental or physical ability of a licensee to safely practice nursing.

2. By issuing a subpoena under the board's seal to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence. 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.

3. By submitting a written request for the information.

4. In the case of an applicant's or a regulated party's personal medical records, as defined in section 12-2291, by any means permitted by this section if the board either:

(a) Obtains from the applicant or regulated party, or the health care decision maker of the applicant or regulated party, a written authorization that satisfies the requirements of title 12, chapter 13, article 7.1.

(b) Reasonably believes that the records relate to information already in the board's possession regarding the competence, unprofessional conduct or mental or physical ability of the applicant or regulated party as it pertains to safe practice. If the board adopts a substantive policy statement pursuant to section 41-1091, it may authorize the executive director, or a designee in the absence of the executive director, to make the determination of reasonable belief.

B. A regulated party and a health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the licensee, certificate holder, health care institution or individual may have

that appears to show that a regulated party or applicant is, was or may be a threat to the public health or safety.

C. The board retains jurisdiction to proceed with an investigation or a disciplinary proceeding against a regulated party whose license or certificate expired not more than five years before the board initiates the investigation.

D. Any regulated party, health care institution or other person that reports or provides information to the board in good faith is not subject to civil liability. If requested the board shall not disclose the name of the reporter unless the information is essential to proceedings conducted pursuant to this section.

E. Any regulated party or person who is subject to an investigation may obtain representation by counsel.

F. On determination of reasonable cause, the board, or if delegated by the board the executive director, may require a licensee, certificate holder or applicant to undergo at the expense of the licensee, certificate holder or applicant any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the person's competence or ability to practice safely. These examinations may include bodily fluid testing and other examinations known to detect the presence of alcohol or drugs. If the executive director orders the licensee, applicant or certificate holder to undertake an examination, assessment or evaluation pursuant to this subsection, and the licensee, certificate holder or applicant fails to affirm to the board in writing within fifteen days after receipt of the notice of the order that the licensee, certificate holder or applicant intends to comply with the order, the executive director shall refer the matter to the board to permit the board to determine whether to issue an order pursuant to this subsection. At each regular meeting of the board the executive director shall report to the board data concerning orders issued by the executive director pursuant to this subsection since the last regular meeting of the board and any other data requested by the board.

G. The board shall provide the investigative report if requested pursuant to section 32-3206.

H. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the regulated party or applicant, it may take either of the following actions:

1. Dismiss if in the opinion of the board the information is without merit.

2. File a letter of concern if in the opinion of the board there is insufficient evidence to support disciplinary action against the regulated party or applicant but sufficient evidence for the board to notify the regulated party or applicant of its concern.

I. Except as provided pursuant to section 32-1663, subsection F and subsection J of this section, if the investigation in the opinion of the board reveals reasonable grounds to support the charge, the regulated party is entitled to an administrative hearing pursuant to title 41, chapter 6, article 10. If notice of the hearing is served by certified mail, service is complete on the date the notice is placed in the mail.

J. A regulated party shall respond in writing to the board within thirty days after notice of the hearing is served as prescribed in subsection I of this section. The board may consider a regulated party's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take disciplinary actions allowed by this chapter without conducting a hearing.

K. An administrative law judge or a panel of board members may conduct hearings pursuant to this section.

L. In any matters pending before it, the board may issue subpoenas under its seal to compel the attendance of witnesses.

M. 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 a patient's family might be identified or information received and records kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public and are not subject to discovery in civil or criminal proceedings.

N. Hospital records, medical staff records, medical staff review committee records, testimony concerning these records and proceedings related to the creation of these records shall not be available to the public. They shall be kept confidential by the board and shall be 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 these records and testimony during the course of investigations and proceedings pursuant to this chapter.

O. If the regulated party is found to have committed an act of unprofessional conduct or to have violated this chapter or a rule adopted pursuant to this chapter, the board may take disciplinary action.

P. The board may subsequently issue a denied license or certificate and may reissue a revoked or voluntarily surrendered license or certificate.

Q. On application by the board to any superior court judge, a person who without just cause fails to comply with a subpoena issued pursuant to this section may be ordered by the judge to comply with the subpoena and punished by the court for failing to comply. Subpoenas shall be served by regular or certified mail or in the manner required by the Arizona rules of civil procedure.

R. The board may share investigative information that is confidential under subsections M and N of this section with other state, federal and international health care agencies and with state, federal and international law enforcement authorities if the recipient is subject to confidentiality requirements similar to those established by this section. A disclosure made by the board pursuant to this subsection is not a waiver of the confidentiality requirements established by this section.

History:

Amended by L. 2016, ch. 282,s. 9, eff. 8/5/2016.

§ 36-2939. Long-term care system services; definition

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.

2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.

3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.

4. Case management services as provided in section 36-2938.

5. Health and medical services as provided in section 36-2907.

6. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, in an annual amount of not more than $1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that are in excess of the limit prescribed in subdivision (a) of this paragraph.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and who are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.

2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:

(a) Home health, which means the provision of nursing services, licensed health aide services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's or allowed practitioner's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

(b) Licensed health aide services, which means a home health agency service provided pursuant to subsection G of this section that is ordered by a physician or an allowed practitioner on the member's plan of care and provided by a licensed health aide who is licensed pursuant to title 32, chapter 15.

(c) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

(d) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

(e) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

(f) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(g) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(h) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(i) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(j) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's or allowed practitioner's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

2. Licensed health aide services, which means a home health agency service provided pursuant to subsection G of this section that is ordered by a physician or an allowed practitioner on the member's plan of care and provided by a licensed health aide who is licensed pursuant to title 32, chapter 15.

3. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

4. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

5. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

6. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

7. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

8. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

9. Transportation, which means a service that provides or assists in obtaining transportation for the member.

10. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.

11. Other services or licensed or certified settings approved by the director.

D. The amount of monies expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for allocating monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C, F and G of this section, a service may not be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental

payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Consistent with the services provided pursuant to subsections A, B, C and F of this section and subject to approval by the centers for medicare and medicaid services, the director shall implement a program under which licensed health aide services may be provided to members who are under twenty-one years of age, who are eligible pursuant to section 36-2934, including members with developmental disabilities as defined in chapter 5.1, article 1 of this title, and who require continuous skilled nursing or skilled nursing respite care services. The licensed health aide services may be provided only by a parent, guardian or family member who is a licensed health aide employed by a medicare-certified home health agency service provider. Not later than sixty days after the approval of the rules implementing section 32-1645, subsection C, the director shall request any necessary approvals from the centers for medicare and medicaid services to implement this subsection and to qualify for federal monies available under title XIX of the social security act or the section 1115 waiver. The reimbursement rate for services provided under this subsection shall reflect the special skills needed to meet the health care needs of these members and shall exceed the reimbursement rate for home health aide services.

H. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

I. For the purposes of this section, "allowed practitioner" means a nurse practitioner who is certified pursuant to title 32, chapter 15, a clinical nurse

specialist who is certified pursuant to title 32, chapter 15 or a physician assistant who is certified pursuant to title 32, chapter 25.

History:

Amended by L. 2021, ch. 86,s. 4, eff. 9/29/2021. Amended by L. 2021, ch. 265,s. 2, eff. 9/29/2021. Amended by L. 2020, ch. 17,s. 2, eff. 8/25/2020. Amended by L. 2019, ch. 106,s. 1, eff. 8/27/2019. Amended by L. 2016, ch. 286,s. 16, eff. 8/5/2016. Amended by L. 2016, ch. 122,s. 12, eff. 8/5/2016. Amended by L. 2015, ch. 18,s. 1, eff. 7/2/2015. Amended by L. 2014, ch. 215,s. 148, eff. 7/24/2014.

§ 36-2939. Long-term care system services; definition

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.

2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.

3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.

4. Case management services as provided in section 36-2938.

5. Health and medical services as provided in section 36-2907.

6. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, in an annual amount of not more than $1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that are in excess of the limit prescribed in subdivision (a) of this paragraph.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and who are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.

2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:

(a) Home health, which means the provision of nursing services, licensed health aide services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's or allowed practitioner's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

(b) Licensed health aide services, which means a home health agency service provided pursuant to subsection G of this section that is ordered by a physician or an allowed practitioner on the member's plan of care and provided by a licensed health aide who is licensed pursuant to title 32, chapter 15.

(c) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

(d) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

(e) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

(f) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(g) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(h) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(i) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(j) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's or allowed practitioner's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

2. Licensed health aide services, which means a home health agency service provided pursuant to subsection G of this section that is ordered by a physician or an allowed practitioner on the member's plan of care and provided by a licensed health aide who is licensed pursuant to title 32, chapter 15.

3. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

4. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

5. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

6. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

7. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

8. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

9. Transportation, which means a service that provides or assists in obtaining transportation for the member.

10. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.

11. Other services or licensed or certified settings approved by the director.

D. The amount of monies expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for allocating monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C, F and G of this section, a service may not be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental

payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Consistent with the services provided pursuant to subsections A, B, C and F of this section and subject to approval by the centers for medicare and medicaid services, the director shall implement a program under which licensed health aide services may be provided to members who are under twenty-one years of age, who are eligible pursuant to section 36-2934, including members with developmental disabilities as defined in chapter 5.1, article 1 of this title, and who require continuous skilled nursing or skilled nursing respite care services. The licensed health aide services may be provided only by a parent, guardian or family member who is a licensed health aide employed by a medicare-certified home health agency service provider. Not later than sixty days after the approval of the rules implementing section 32-1645, subsection C, the director shall request any necessary approvals from the centers for medicare and medicaid services to implement this subsection and to qualify for federal monies available under title XIX of the social security act or the section 1115 waiver. The reimbursement rate for services provided under this subsection shall reflect the special skills needed to meet the health care needs of these members and shall exceed the reimbursement rate for home health aide services.

H. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

I. For the purposes of this section, "allowed practitioner" means a nurse practitioner who is certified pursuant to title 32, chapter 15, a clinical nurse

specialist who is certified pursuant to title 32, chapter 15 or a physician assistant who is certified pursuant to title 32, chapter 25.

History:

Amended by L. 2021, ch. 86,s. 4, eff. 9/29/2021. Amended by L. 2021, ch. 265,s. 2, eff. 9/29/2021. Amended by L. 2020, ch. 17,s. 2, eff. 8/25/2020. Amended by L. 2019, ch. 106,s. 1, eff. 8/27/2019. Amended by L. 2016, ch. 286,s. 16, eff. 8/5/2016. Amended by L. 2016, ch. 122,s. 12, eff. 8/5/2016. Amended by L. 2015, ch. 18,s. 1, eff. 7/2/2015. Amended by L. 2014, ch. 215,s. 148, eff. 7/24/2014.

BOARD OF OPTOMETRY
Title 4, Chapter 21

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 8, 2023**

SUBJECT: **BOARD OF OPTOMETRY**
Title 4, Chapter 21

Summary

The purpose of the Arizona State Board of Optometry (Board) is to "protect the public's health by licensing and regulating optometrists." This five-year-review report (5YRR) covers twenty-three (23) rules and one (1) table in A.A.C. Title 4, Chapter 21, Articles 1, 2, and 3.

Article 1 sets forth definitions, fees, and time frames for Board actions. Article 2 covers processes and requirements to obtain, renew, or reinstate a license or Certificate of Special Qualification, and continuing education requirements. Article 3 regulates optometric advertising, vision examination and prescription standards, and procedures for review of Board decisions. Most of the rules were last amended in 2016, and rules R4-21-101 Definitions, R4-21-209 Continuing Education Requirement, R4-21-210 Approval of Continuing Education, and R4-21-211 Audit of Compliance with Continuing Education Requirement were amended in 2018.

Proposed Action

The Board completed their proposed course of action identified in their 5YRR approved by Council on December 4, 2018. The Board will open a docket to amend rules in December of 2023 pursuant to any statute changes made during the 2023 legislative session as well as any

recommendations set forth by the Auditor General Office regarding any issues with certain rules as part of its Sunset Review Audit.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   The Board cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

   The Board states that the impact of the rules has not changed since what was previously estimated in 2019: there are no increased revenues but the Board believes that clarifying the requirements for 1) the licensure, 2) supplies necessary to dispense medications safely, and for 3) timeframes will benefit the Board staff, optometrists, and applicants. Further, the Board states that the requirement that all optometrists dispensing pharmaceutical agents be certified in cardiopulmonary resuscitation will minimally increase costs to the optometrists currently.

   Stakeholders include the Board, optometrists, 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 Board states that the benefits from clarifying the rules, increasing safety for the public through increased training and equipment requirements, and keeping rules consistent with statute outweigh the cost of the rulemaking to the Board.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No, the Board states they have not received any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   The Board states that the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   The Board states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

   The Board says that generally, the rules are effective in achieving its objectives with the following exceptions:

R4-21-201: "Good Moral Character" needs to be removed.

R4-21-202: “Good Moral Character” needs to be removed.

R4-21-205.1: the rule needs further clarification on expiration dates.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board says the rules are enforced as written.

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

The Board 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?**

The Board states that they do not issue general permits, and that any alternative type of permit, license, or authorization is specifically authorized by statute.

11. **Conclusion**

As the Board mentioned, the rules are generally clear, concise, and understandable; consistent with other rules and statutes, and enforced as written. The Board plans on opening a rulemaking docket in December 2023 after the end of the legislative session and the sunset audit review. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Arizona State Board of Optometry
1740 West Adams St., Suite 3003
Phoenix, AZ 85007
Telephone (602) 542-8155 • Fax (602) 883-7253

May 1, 2023

Ms. Nicole Sornsin, Chair
Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

RE: Five-year review Report for Arizona Administrative Code Title 4, Chapter 21

Dear Ms. Sornsin:

The Arizona State Board of Optometry ("Board") wishes to inform the Governor's Regulatory Review Council that it does not have nor has it adopted any substantive policy statements this fiscal year. The Board continues to comply with the provisions of A.R.S. §41-1091(B)(C).

Please find attached our report for your review and approval.

I may be reached at margaret.whelan@optometry.az.gov or (602) 542-8155 for questions, comments, etc.

Thank you.

Sincerely,

Margaret Whelan
Executive Director

Attachment: 5-year Rules Review report

Copy: Patricia Grant, GRRC Analyst

ARIZONA STATE BOARD OF OPTOMETRY
FIVE-YEAR REVIEW REPORT
A.A.C. TITLE 4, CHAPTER 21
ARTICLES 1, 2, 3

FIVE –YEAR REVIEW REPORT
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FIVE-YEAR-REVIEW SUMMARY

The 24th Legislature Assembly of the Territory of Arizona established the Board in 1907 to protect the public's health safety and welfare by licensing and regulating optometrists.

The Arizona State Board Optometry acts in accordance with the highest standards of ethics, accountability, efficiency, and openness. We believe that by the vigorous enforcement of the law, we protect the public and ensure that the highest quality of comprehensive eye care is available to the citizens of Arizona and that it is delivered by qualified optometric practitioners.

Optometrists (Doctors of Optometry) are licensed by the Arizona State Board of Optometry. They are independent primary health care providers who examine, diagnose, treat and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions.

They examine the internal and external structure of the eyes to diagnose eye diseases including but not limited to glaucoma, cataracts and retinal disorders; systemic diseases like hypertension and diabetes; and vision conditions like nearsightedness, farsightedness, astigmatism and presbyopia. Optometrists also test to determine the patient's ability to focus and coordinate the eyes, and to judge depth and to distinguish colors accurately.

They prescribe eyeglasses and contact lenses, low vision aids, vision therapy and medicines to treat eye diseases. As primary eye care providers, optometrists are an integral part of the health care panel and an entry point into the health care system. They are skilled in the co-management of care that affects the eye health and vision of their patients and an excellent source of referral to other health care professionals.

The Board continues to meet its objective and purpose through licensure and regulation of optometrists, and is currently undergoing sunset review to meet the July 1, 2023 deadline.

The Board has 24 rules and 1 Table in Title 4, Chapter 21, Articles 1, 2 and 3. The majority of these rules were last amended to conform to Laws 2001, Chapter 331 and Laws 2003, Chapter 5; and approved by GRRC at the December 4, 2018 meeting with an effective date of April 5, 2019.

INFORMATION IDENTICAL FOR ALL RULES

The following information is the same for all the Board of Optometry (Board) rules:

1. General and specific statutes authorizing the rule;

   All of the rules have general authority under A.R.S. §32-1704(A), which states that the board "shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses."

   In addition, pursuant to A.R.S. §32-1704 (B) the Board may not adopt a rule that: 1) regulates a licensee's fees or charges to a patient; 2) regulates the place in which a licensee may practice; 3) prescribes the manner or method of accounting, billing or collection of fees; and 4) prohibits advertising by a licensee unless the advertising is consistent with section §44-1481.

2. Agency Enforcement Policy
All of these rules have been enforced consistently during the past five years through control of interpretation and application by agency staff of the Arizona State Board of Optometry ("Board"). The following report will detail those rules in which discrepancies, if any, in the enforcement may appear. The Board has not received any requests for rule waivers during this time period.

3. Summary of the written criticisms or analysis of the rule
The Board has not received any written criticisms or outside analysis of the rules in the last five years.

4. Estimated economic, small business and consumer impact statement
The Board estimated the following economic impact of the rules when they were last amended in 2019:

The economic, small business, and consumer impact statement contains the information necessary for compliance with A.R.S. §§41-1035, 1052 and 1055.

1. Increased Revenue / Decreased Costs:
There are no increased revenues. The Board believes that clarifying the requirements for the licensure, supplies necessary to dispense medications safely, and for timeframes will benefit the Board staff, optometrists, and applicants.

2. Decreased Revenue / Increased Costs:
There are no decreased revenues. The cost to PA dispensing optometrists to have emergency supplies in examination rooms is minimal to an individual. The requirement that all optometrists dispensing pharmaceutical agents be certified in cardiopulmonary resuscitation will minimally increase costs to the optometrists currently uncertified.

3. Do the probable benefits outweigh the probable costs?
The benefits from clarifying the rules, increasing safety for the public through increased training and equipment requirements, and keeping rules consistent with statute outweigh the cost of the rulemaking to the Board.

4. Small business impact reduction analysis:
The rulemaking has no reducible impact on small business or consumers. It is designed to enhance safety of the public in receiving services from optometrists and has minimal encumbrance on the regulated population.

The impact has not differed from the estimate since that time period.

5. Proposed course of action;

A docket may be opened to amend Rules no later than December of 2023 pursuant to any statute changes made during the 2023 legislative session as well as any recommendations set forth by the Auditor General Office regarding any issues with certain rules as part of its Sunset Review Audit.

6. Compliance with A.R.S. §41-1037
In addition, pursuant to A.R.S. §41-1056(A)(10), it has been determined that the rule as amended

does not have a corresponding federal law and is therefore not more stringent than any corresponding federal law. An analysis under A.R.S. 41-1037 is not necessary because the Agency does not issue general permits and the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

INFORMATION ON INDIVIDUAL RULES:

Article 1. General Provisions

R4-21-101. Definitions

Objective of the rule
To define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2019.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-102. Fees and other charges

Authorization of the rule by existing statutes
A.R.S. §32-1727

Objective of the rule
To establish and clarify specific fees authorized by A.R.S. §32-1727.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2016.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-103. Time-frames for Board Action.

Authorization of the rule by existing statutes
A.R.S. §41-1072; A.R.S. §32-1722; A.R.S. §32-1723

Objective of the rule
To establish and clarify specific timeframes for completing an initial application, license renewal and approval of Continuing Education (CE).

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

Table 1

Authorization of the rule by existing statutes
A.R.S. §41-1072 through 1079; A.R.S. §§32-1722 and 1723

Objective of the rule
To provide time frames for the Board to approve or deny a program and for completing an initial application, license renewal and approval of CE.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2016.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

Article 2. Licensing Provisions

R4-21-201. Licensure by Examination

Authorization of the rule by existing statutes
A.R.S. §32-1722

Objective of the rule
To specify what information and documentation must be submitted to the Board when applying for a license to practice the profession of optometry using the National Board of Examiners in Optometry (NBEO) examination.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Will be amended for statutory change removing "Good Moral Character".

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-202. Licensure by Endorsement

Authorization of the rule by existing statutes
A.R.S. §32-1723

Objective of the rule
To specify what information and documentation must be submitted to the Board when applying for a license to practice the profession of optometry as an endorsement candidate coming from a state with equal or higher scope than Arizona.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Will be amended for statutory change removing "Good Moral Character".

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-203. Jurisprudence

Authorization of the rule by existing statutes
A.R.S. §32-1724

Objective of the rule
To ensure all applicants for licensure have read and are familiar with the applicable statutes and rules which govern their practice.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2016.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-204 License Issuance

Authorization of the rule by existing statutes
A.R.S. §32-1725

Objective of the rule
To ensure the Board issues a license to all qualified applicants who have successfully met the requirements for licensure and who pay the license fees in a timely manner.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-205. License Renewal

Authorization of the rule by existing statutes
A.R.S. §32-1726

Objective of the rule
To provide criteria for a licensee to renew their active license.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-205.1. Cardiopulmonary Resuscitation ("CPR") Requirements

Authorization of the rule by existing statutes
A.R.S. §32-1726

Objective of the rule
To provide clarification of a requirement for holding the Pharmaceutical Agent Certificate.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written however, pursuant to current audit; the Rule needs further clarification on expiration dates. This rule was implemented in 2016 and may be amended in December of 2023 to accommodate Audit findings.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-206. License Reinstatement; Application for Licensure following License Expiration

Authorization of the rule by existing statutes
A.R.S. §32-1726

Objective of the rule
To provide criteria for a licensee to reinstate an expired license and address failure to renew a license.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-207. Course of Study Approval

Authorization of the rule by existing statutes
A.R.S. §32-1728

Objective of the rule
To provide criteria for Board approval of transcript quality courses utilized to determine required education for issuing licenses and PA certificates.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-208. Certificate of Special Qualification; Pharmaceutical Agent Number

Authorization of the rule by existing statutes
A.R.S. §32-1728

Objective of the rule
To issue a newly licensed optometrist or otherwise qualified currently licensed optometrist a Pharmaceutical Agent Number so as to practice at the highest scope. This rule defines the current level of practice within the State of Arizona.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-209. Continuing Education

Authorization of the rule by existing statutes
A.R.S. §§32-1704 and 32-1726

Objective of the rule
To establish criteria for the requirements of continuing education and limit the type, kind and number of continuing education hours that may be taken in any one area of practice.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2019.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-210. Approval of Continuing Education

Authorization of the rule by existing statutes
A.R.S. §32-1704

Objective of the rule
To establish criteria for the approval of continuing education programs.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2019.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-211. Audit of Compliance with Continuing Education Requirement

Authorization of the rule by existing statutes
A.R.S. §32-1704

Objective of the rule
To establish an audit process and requirements for a licensee to submit to the audit criteria for continuing education for renewal of license.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-212. Waiver of or Extension of Time to Complete Continuing Education Requirement

Authorization of the rule by existing statutes
A.R.S. §32-1726

Objective of the rule
To grant authority to the Board to review emergency situations that may occur to licensees which may prevent a timely completion of mandated continuing education programs and allow special accommodation for completion of required hours for that renewal period.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

Article 3. Standards; Recordkeeping; Rehearing or Review of Board Decision

R4-21-301. Display of License; Surrender of License

Authorization of the rule by existing statutes
A.R.S. §32-1744

Objective of the rule
To establish criteria for surrender of license when disciplined or revoked.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-302. Advertising

Authorization of the rule by existing statutes
A.R.S. §32-3213

Objective of the rule
This rule sets standards for the methods and manner in which an optometrist may advertise services and products.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-303. Affirmative Disclosures Required

Authorization of the rule by existing statutes
A.R.S. §32-3213

Objective of the rule
To set the requirements for specifications and clarification of advertisements.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-304. Vision Examination Standards

Authorization of the rule by existing statutes
A.R.S. §32-1701

Objective of the rule
To set guidelines for the standard of care when conducting eye exams.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-305 Recordkeeping

Authorization of the rule by existing statutes
A.R.S. §32-1701

Objective of the rule
To set the minimum level of record keeping pursuant to the national standard of care.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-306. Optometric Prescription Standards; Release to Patients

Authorization of the rule by existing statutes
A.R.S. §32-1701

Objective of the rule
To set standards for the content required for each type of prescription as well as the release of all eyeglasses, contact lenses and pharmaceutical agent prescriptions.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written. Rule was amended in 2016.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-307. Vision Rehabilitation

Authorization of the rule by existing statutes
A.R.S. §32-1701

Objective of the rule
To define the diagnosis, treatment and standards concerning vision rehabilitation pursuant to the national standards.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-308. Anaphylactic-related Supplies

Authorization of the rule by existing statutes
A.R.S. §32-1706

Objective of the rule
To define the need for and possible use of anaphylactic-related supplies as it pertains to the prescribing authority and the pharmaceutical agent use.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

R4-21-309. Rehearing or Review of Board Decision

Authorization of the rule by existing statutes
A.R.S. §41-1092.09

Objective of the rule
To describe how a party in a contested case may appeal a final decision made by the Board.

Effectiveness in achieving the objective;
The rule meets its objective and is effective as written.

Consistency with state and federal statutes and rules;
The entire rule is consistent with both state and federal statutes.

Clarity, conciseness, and understandability;
The rule is clear, concise, and understandable.

§ R4-21-101. Definitions

In addition to the definitions in A.R.S. §32-1701, the following apply to this Chapter:

"Accredited" means approved by the ACOE.

"ACCME" means Accreditation Council for Continuing Medical Education

"ACOE" means the Accreditation Council on Optometric Education.

"Active license" means a license that is current and has not expired.

"Advertisement" means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

"Applicant" means:

An individual who applies to the Board under A.R.S. §§ 32-1722 or 32-1723 and A.A.C. R4-21-201 or R4-21-202 for a license to practice the profession of optometry, but has not been granted the license;

A licensee who applies under A.R.S. §32-1726 and R4-21-205 for license renewal;

A licensee who applies under A.R.S. §32-1728 and R4-21-208 for a pharmaceutical agent number;

A licensee or provider of Continuing Education that applies for approval of a Continuing Education under R4-21-210

"Application package" means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant's behalf.

"Approved Continuing Education" means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

"ARBO" means the Association of Regulatory Boards of Optometry.

"Audit" means the selection of licensees and process of reviewing documents for verification of satisfactory completion of Continuing Education requirements during a specified time period.

"CPR" means Cardiopulmonary Resuscitation.

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

"Certificate of special qualification" means a document that specifies whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may prescribe, administer, and dispense a pharmaceutical agent and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

"Continuing Education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Continuing Education Report" means an online education report used to electronically track Continuing Education hours taken by a licensee.

"COPE" means the Council on Optometric Practitioner Education.

"Course of study" as used in A.R.S. §32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.

"DEA" means The Drug Enforcement Administration

"Drug Enforcement Administration" means the Drug Enforcement Administration in the Department of Justice.

"DEA Controlled Substance Registration" means registration required and permitted by 21 U.S.C. 823 of the Controlled Substances Act.

"Injectable Epinephrine" means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded syringe.

"Good cause" means a reason that is substantial enough to afford a legal excuse.

"Hour of Continuing Education" means no less than 50 minutes of learning in one hour of time.

"Incompetence," as used in A.R.S. §32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.

"Low vision" means chronic impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.

"Low-vision rehabilitation" means use of optical and non-optical devices, adaptive techniques, and community resources to assist an individual to compensate for low vision in performing daily routine activities.

"Negligence," as used in A.R.S. §32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.

"OE Tracker" means the ARBO Online Education Tracker used to electronically track Continuing Education hours taken by a licensee.

"Opiate" or "Opioid" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

"Oral pharmaceutical agent," as used in A.R.S. §32-1728, means an ingested prescription or non-prescription substance used to examine, diagnose, or treat disease of the eye and its adnexa.

"Party" has the same meaning as prescribed in A.R.S. §41-1001.

"Plano lenses" means contact lenses that have cosmetic function only.

"Practice management" means the study of management of the affairs of optometric practice.

"Self-instructed media" means educational material in a printed, audio, video, electronic or distance learning format.

"Topical diagnostic pharmaceutical agent," as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to examine and diagnose disease and conditions of the eye and its adnexa.

"Topical therapeutic pharmaceutical agent," as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to treat disease of the eye and its adnexa.

"Vision rehabilitation" means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa or develop compensatory approaches. Vision rehabilitation is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision rehabilitation includes, but is not limited to optical, non-optical, electronic, or other assistive treatments.

History:

Former Rule Section 1. Former Section R4-21-01 repealed, new Section R4-21-101adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016. Amended by final rulemaking at 25 A.A.R. 431, effective 4/5/2019.

§ R4-21-102. Fees and Other Charges

A. The Board shall collect the fees established by A.R.S. §32-1727.

B. Under the authority provided at A.R.S. §32-1727, the Board establishes and shall collect the following fees:

1. License issuance fee of $450, which is prorated from date of issuance to date of renewal;

2. Biennial license renewal fee of $450; and

3. Late renewal fee of $200.

C. Except as provided in subsection (C)(3), a person requesting a public record shall pay the following for searches and copies of Board records under A.R.S. §§39-121.01 or 39-121.03:

1. Noncommercial copy:

a. 5¢ per name and address for directory listings or 15¢ each if printed on labels, and

b. 25¢ per page for other records;

2. Commercial copy:

a. 25¢ per name and address for directory listings or 35¢ each if printed on labels, and

b. 50¢ per page for other records; and

3. The Board waives the charges listed in subsections (C)(1) and (C)(2) for a government agency.

D. The Board establishes and shall collect the following charges for the services specified:

1. Written or certified license verification: $10; and

2. Duplicate or replacement renewal receipt: $10.

History:

Former Rule Section 2. Former Section R4-21-02 repealed, new Section R4-21-102 adopted effective February 7, 1986 (Supp. 86-1). Amended effective November 5, 1998 (Supp. 98-4). Section repealed by final rulemaking at 11

A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section R4-21-102 renumbered from R4-21-103 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-103. Time-frames for Board Action

A. For each type of license, certificate, or approval issued by the Board, the overall time frame described in A.R.S. §41-1072(2) is listed in Table 1.

B. For each type of license, certificate, or approval issued by the Board, the administrative completeness review time frame described in A.R.S. §41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.

1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.

2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

3. If an application package is not completed with the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

C. For each type of license, certificate, or approval issued by the Board, the substantive review time frame described in A.R.S. §41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.

2. If, under A.R.S. §32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.

3. If the applicant fails to provide the additional information within the time provided to respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

D. An applicant may, pursuant to A.R.S. §41-1075(B), receive an extension of up to twenty-five percent of the overall time frame to respond under subsection (B)(3) or (C)(3) by sending a request for extension of time to the Board before expiration of the time to respond. The time frame for the Board to act remains suspended during any extension of time. If the applicant fails to provide the requested information during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

E. Within the overall time frame listed in the Table 1, the Board shall:

1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or

2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.

F. If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a fair hearing to appeal the denial;

3. The time for appealing the denial; and

4. The right to request an informal settlement conference.

G. In computing any period prescribed in this Section, the day of the act, event, or default after which the designated period begins to run is not included. The period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the

period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the period ends on the next business day.

History:

Former Section 3. Amended effective December 27, 1979 (Supp. 79-6). Former Section R4-21-03 renumbered without change as Section R4-21-211, former Section R4-21-06 renumbered without change as Section R4-21-103 effective February 7, 1986 (Supp. 86-1). Amended subsection (A) effective June 20, 1989 (Supp. 89-2). Amended effective September 14, 1998 (Supp. 98-3). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-103 renumbered to R4-21-102; new R4-21-103 renumbered from R4-21-203 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

TABLE 1. Time-frames (in calendar days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Licensure by examination A.R.S. §32-1722; R4-21-201	75	15	60	60	20
Licensure by endorsement A.R.S. §32-1723; R4-21-202	75	15	75	60	20
Renewal of license A.R.S. §32-1726; R4-21-205	45	15	20	30	20
Renewal of Pharmaceutical agents number A.R.S. § 32-1728; R4-21-208	75	15	60	60	20
Approval of a Continuing Education A.R.S. § 32-1704(D); R4-21-210	75	15	20	60	20

History:

Table 1 renumbered from Article 2 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-201. Licensure by Examination

A. An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).

B. To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:

1. Full legal name;

2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;

3. Social Security number;

4. Mailing address;

5. E-mail address, if any;

6. Residential, business, and mobile telephone numbers, if applicable;

7. Date and place of birth;

8. Residential addresses for the past five years;

9. Educational background including the name and address of, dates of attendance at, and date of graduation from:

a. An accredited optometry program,

b. A pre-optometric school or undergraduate educational institution, and

c. Other post-secondary schools attended, if any;

10. Experience in the practice of the profession of optometry including the business form and location of the practice;

11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;

12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;

13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;

14. Statement of whether the applicant:

a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;

b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;

c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;

d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;

e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;

f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;

g. Is currently, or has ever been addicted to narcotic substances or habitually abused alcohol within the last 10 years. If so, dates during which the addiction or abuse occurred, steps taken to address the addiction or abuse, current status, and a statement as to why the addiction or abuse does not amount to unprofessional conduct.

15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.

C. In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:

1. A passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;

2. A full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check;

3. To process the fingerprints; a cashier's check or money order payable to the Arizona Department of Public Safety in the amount listed on the application for licensure;

4. The application fee required under A.R.S. §32-1727;

5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination less than ten years before the date of the application;

6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;

7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;

8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;

9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and

10. A copy of the front and back of a current CPR card issued to the applicant.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final

rulemaking at 16 A.A.R. 2383, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-202. Licensure by Endorsement

A. An individual is eligible to apply for licensure by endorsement if the individual:

1. Graduated from an accredited optometry program;

2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements;

3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application; and

4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.

B. To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).

C. In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:

1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);

2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:

a. Name and title of the individual completing the verification form;

b. Applicant's optometry license number in the state;

c. Date on which the applicant was issued an optometry license by the state;

d. A statement of whether the applicant:

i. Has been licensed in the state for at least four of the last five years;

ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;

iii. Is currently in good standing in the state;

iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;

v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and

vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint; and

e. The dated, notarized signature of the individual completing the verification form; and

3. A letter on official letterhead, in substantially the form provided by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207; and

4. If the applicant does not meet the requirements listed in R4-21-201 or R4-21-202(A)(2), a current certificate issued by the CELMO or its successor organization.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-202 repealed; new Section R4-21-202 renumbered from R4-21-204 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-202 renumbered to R4-21-203; new R4-21-202made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-203. Jurisprudence Examination

A. To be licensed, an applicant shall obtain a score of at least 75% on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to the practice of optometry in Arizona.

B. An applicant may take the jurisprudence examination up to six months prior to submitting an application for licensure or after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).

C. The jurisprudence exam may be taken in person at the Arizona State Board of Optometry offices, through the National Board of Examiners in Optometry, or at a proctored testing center approved by the Board.

D. An applicant who fails the jurisprudence examination may retake the examination one time within. the deficiency time frame of the related application for licensure listed in Table 1.

E. The Board shall further consider an applicant who fails the jurisprudence examination a second time only if the applicant:

1. Waits at least six months from the date of the second taking of the jurisprudence examination;

2. Submits a new application form under R4-21-201(B) or R4-21-202(B);

3. Submits a full set of readable fingerprints taken by a criminal justice agency for the purpose of obtaining a state and federal criminal records check; and a cashier's check or money order payable to the Arizona Department of Public Safety in the amount listed on the application for licensure;

4. Submits a passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side;

5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application; and

6. Submits the application fee required under A.R.S. §32-1727.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-203 repealed; new Section R4-21-203

adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-203 renumbered to R4-21-103; new R4-21-203 renumbered from R4-21-202 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-204. License Issuance

A. When the Board determines that an applicant meets all of the substantive criteria required by statute and this Chapter, the Board shall send the applicant a written notice informing the applicant that the Board shall issue the applicant a license when the applicant pays the license issuance fee required under R4-21-102(B).

B. Under A.R.S. §32-1725, if an applicant fails to pay the license issuance fee within 60 days after receiving notice under subsection (A), the Board considers the application withdrawn. An individual whose application is withdrawn can be further considered for licensing only by complying with R4-21-201 or R4-21-202.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-204 renumbered to R4-21-202; new Section R4-21-204 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-204 renumbered to R4-21-205; new R4-21-204 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-205. License Renewal

A. To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.

B. To renew a license and, if applicable, certificate of special qualification, a licensee shall submit to the Board a license renewal application and provide the following information:

1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;

2. The licensee's current public mailing address, telephone and fax numbers;

3. The licensee's current residential address, e-mail address, and residential or mobile telephone numbers;

4. The licensee's current permanent and temporary practice addresses and telephone and fax numbers;

5. A statement of whether the licensee:

a. Has practiced the profession of optometry within the last two years;

b. Has been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;

c. Has been denied an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;

d. Has had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;

e. Has had disciplinary action instituted against the licensee by any optometric regulatory agency within the preceding two years and if so, the

name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;

f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the state or jurisdiction, date, reason for the investigation, and current status;

g. Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, the name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;

h. Is currently, or has been addicted to narcotic substances or habitually abused alcohol within the preceding two years. If so, dates during which the addiction or abuse occurred, steps taken to address the addiction or abuse, current statu, and a statement as to why the addiction or abuse does not amount to unprofessional conduct.

i. Has had the authority to prescribe, dispense, or administer pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of action taken, date, reason for action, and current status; and

j. Is in compliance with the provisions of A.R.S. §32-3211;

6. The following information about each approved Continuing Education course attended by the licensee during the preceding two years:

a. Name of Continuing Education provider,

b. Title,

c. COPE course identification number, if any

d. Date(s) of attendance, and

e. Number of hours of attendance; and

7. The licensee's dated signature affirming that the information provided is true and correct.

C. In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:

1. The license renewal fee listed at R4-21-102(B); and

2. The certificate of special qualification fee required under A.R.S. §32-1727 if the licensee has a certificate of special qualification; or

3. Written documentation that the licensee is currently certified in CPR if the licensee has a pharmaceutical agent number.

D. A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).

E. A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.

F. If a licensee timely applies for license renewal or complies with subsection (D), the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-205 renumbered to R4-21-207; new Section R4-21-205 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-205 renumbered to R4-21-207; new R4-21-205 renumbered from R4-21-204 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-205.1. Cardiopulmonary Resuscitation ("CPR") Requirements

1. A CPR course shall be as recommended by the American Heart Association, the American Red Cross, or the National Safety Council and shall include an exam of the materials presented in the course;

2. A CPR certification card or other documentation with an expiration date received from the CPR course provider shall be presented to the Board as proof of CPR certification.

3. Failure to maintain current CPR certification shall result in immediate loss of the licensee's Pharmaceutical Agent certification. The Pharmaceutical Agent certification shall not be reinstated until written documentation that the CPR certification deficiency has been met and proof of completion is presented to the Board; and

4. Any licensee whose Pharmaceutical Agent certification is suspended due to expiration of their CPR certification shall not prescribe utilizing the Pharmaceutical Agent certification. Upon submission of proof of current CPR certification to the Board, the Pharmaceutical Agent certification shall be immediately reinstated.

History:

Adopted by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-206. License Reinstatement; Application for Licensure Following License Expiration

A. Reinstatement following license expiration. Under A.R.S. §32-1726, if an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:

1. Submit the renewal form described in R4-21-205(B);

2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;

3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. §32-1727 for each biennial period that the license was not renewed;

4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;

5. Submit a $50 penalty fee for each year or portion of a year that the license was not renewed; and

6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical agent number.

B. Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall submit evidence of completing all terms of suspension imposed by the Board.

C. Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:

1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or

2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

History:

Adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-206 renumbered to R4-21-208; new R4-21-206made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-207. Course of Study Approval

The Board approves a course of study that:

1. Includes didactic and clinical training in:

a. Examining, diagnosing, and treating conditions of the human eye and its adnexa; and

b. Prescribing dispensing, and administering pharmaceutical agents;

2. Includes at least 120 hours of training, at least 12 of which address prescribing, dispensing, and administering oral pharmaceutical agents; and

3. Is provided by an educational institution with an accredited optometry program.

History:

Former Section R4-21-08 renumbered without change as Section R4-21-207 effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-207 renumbered to R4-21-208; new Section R4-21-207 renumbered from R4-21-205 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-207 renumbered to R4-21-301; new R4-21-207 renumbered from R4-21-205 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-208. Certificate of Special Qualification; Pharmaceutical Agent Number

A. The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:

1. Was licensed by the Board before July 1, 2000;

2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and

3. Pays the fee prescribed at A.R.S. §32-1727.

B. The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:

1. Was licensed by the Board before July 1, 2000,

2. Did not hold a certificate of special qualification issued by the Board before July 1, 2000, and

3. Pays the fee prescribed at A.R.S. §32-1727.

C. A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:

1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:

a. Name of licensee;

b. Social Security number;

c. Mailing address;

d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);

e. License number;

f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;

g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;

h. Residential address;

i. Telephone number at the address listed under subsection (C)(1)(h);

j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and

k. Applicant's dated signature affirming that the information provided is true and correct; and

2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and

3. Submit written documentation that the licensee is currently certified in CPR.

D. The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-208 renumbered to R4-21-209; new Section R4-21-208 renumbered from R4-21-207 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-208 renumbered to R4-21-209; new R4-21-208 renumbered from R4-21-206 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-209. Continuing Education Requirement

A. A licensee shall complete 32 hours of approved Continuing Education during each biennial license renewal period. The licensee shall ensure that in each biennial license renewal period:

1. At least eight hours of the approved Continuing Education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;

2. For licensees holding a current DEA Registration, at least three hours of the approved Continuing Education shall be obtained in the area of opioid-related, substance use disorder-related or addiction-related Continuing Education.

3. No more than 12 hours of the approved Continuing Education shall be obtained through self-instructed media. All self-instructed media shall be COPE or ACCME approved.

4. No more than four hours of the approved Continuing Education are in the area of practice management;

5. No more than one hour of approved Continuing Education is claimed for each day of instruction in a course of study approved under R4-21-207 to a maximum of four hours; and

6. No more than four hours of approved Continuing Education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.

7. No more than one (1) hour of Continuing Education requirements shall be claimed for obtaining CPR certification.

B. If a licensee obtains more than 32 hours of approved Continuing Education during a biennial renewal period, the licensee shall not claim the extra hours of approved Continuing Education during a subsequent biennial renewal period.

C. During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved Continuing Education for each month remaining in the biennial renewal period. The hours shall be calculated at four hours per quarter of a year to include the quarter in which the application for licensure is approved by the Board.

D. A licensee shall not claim as approved Continuing Education any educational program or course completed before being licensed in Arizona.

E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved Continuing Education attended that includes the following:

1. Name of the licensee,

2. License number of the licensee,

3. Name of the approved Continuing Education,

4. Name of the Continuing Education provider,

5. Date, time, and location of the approved Continuing Education, and

6. Number of hours of approved Continuing Education and number of hours relating to practice management.

F. For the purpose of license renewal, Continuing Education shall be verified through the ARBO OE Tracker or other comparable program, using the licensee's individual Continuing Education report.

G. A licensee shall maintain the report or other evidence of attendance described in subsection (E) for at least two years from the date of attendance.

H. A licensee shall submit to the Board a copy of the report obtained during a biennial renewal period as proof of attendance at Continuing Education courses.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Section R4-21-209 renumbered to R4-21-307 effective April 1, 1991 (Supp. 91-2). New Section R4-21-209 renumbered from R4-21-208 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-209 renumbered to R4-21-212; new R4-21-209 renumbered from R4-21-208 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016. Amended by final rulemaking at 25 A.A.R. 431, effective 4/5/2019.

§ R4-21-210. Approval of Continuing Education

A. The Board approves the following as Continuing Education:

1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and

2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry and:

a. Provided by an educational institution with an accredited optometry program; or

b. Sponsored or approved by the Association of Schools and Colleges of Optometry, The Council on Optometric Practitioner Education, Accreditation Council for Continuing Medical Education or a local, regional, or national optometric association.

3. Any opioid-related course that is approved by the Arizona State Board of Optometry, Arizona State Board of Pharmacy, Arizona Board of Osteopathic Examiners, Arizona Medical Board or the Arizona State Board of Nursing.

B. To obtain approval of a Continuing Education that is not approved under subsection (A), the provider of the Continuing Education or a licensee shall, before providing or participating in the Continuing Education:

1. Submit an application for approval, using a form that is available from the Board, and provide the following information:

a. Name of applicant,

b. Address and telephone number of applicant,

c. Provider of the Continuing Education,

d. Name and telephone number of a contact person with the Continuing Education provider,

e. Name of the Continuing Education,

f. Date and location of the Continuing Education,

g. Manner in which potential participants will be notified that the Continuing Education is available,

h. Number of hours of the Continuing Education and the number of hours that relate to practice management,

i. Name of instructor of the Continuing Education, and

j. Dated signature of the applicant;

2. Submit a curriculum vitae for the instructor of the Continuing Education; and

3. Submit a syllabus of the Continuing Education that identifies learning objectives, teaching methods, and content.

C. The provider of an approved Continuing Education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).

D. The Board shall approve a Continuing Education if the application required under subsection (B) is submitted and the Board determines that the Continuing Education is designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry.

History:

Former Section R4-21-02 renumbered without change as Section R4-21-210effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991 (Supp. 91-2). New Section adopted by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016. Amended by final rulemaking at 25 A.A.R. 431, effective 4/5/2019.

§ R4-21-211. Audit of Compliance with Continuing Education Requirement

A. At the time of license renewal, the Board shall audit Continuing Education hours to determine compliance with R4-21-209.

B. To perform an audit, the Board shall use the information entered into the ARBO OE Tracker software or other comparable Board approved program to perform its audit. The Board shall consider a licensee's Continuing Education requirement met if the licensee has recorded the required number of Continuing Education credits into the OE tracker.

C. At the time of license renewal, each licensee shall certify to the Board, through a Continuing Education report, completion of the Continuing Education required for license renewal. In the event that Continuing Education credits are not able to be recorded in the report, a licensee may submit to the Board certificates of attendance for those hours only to meet the Continuing Education requirement. A licensee may not renew the license until required Continuing Education hours are submitted.

History:

Former Section R4-21-03 renumbered without change as Section R4-21-211effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991 (Supp. 91-2). New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016. Amended by final rulemaking at 25 A.A.R. 431, effective 4/5/2019.

§ R4-21-212. Waiver of or Extension of Time to Complete Continuing Education Requirement

A. To obtain a waiver of some or all of the hours of approved continuing education required during a biennial renewal period, a licensee shall submit a written request to the Board that:

1. Specifies the number of hours of approved continuing education that the licensee requests the Board to waive, and

2. Documents that the licensee suffered a serious or disabling illness or other good cause that prevented the licensee from complying with the continuing education requirement.

B. The Board shall grant a waiver within seven days after receiving the request if the Board determines that the licensee demonstrated good cause.

C. To obtain an extension of time to complete the continuing education requirement, a licensee shall submit to the Board a written request that includes the following:

1. Ending date of the requested extension,

2. Continuing education completed during the biennial renewal period and the documentation required under R4-21-209(E),

3. Proof of registration for additional approved continuing education that is sufficient to enable the licensee to fulfill the continuing education requirement before the end of the requested extension, and

4. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent license renewal application.

D. The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:

1. Specifies an ending date no later than four months after the date of license expiration, and

2. Includes the required documentation and attestation.

History:

Former Section R4-21-04 renumbered without change as Section R4-21-212 effective February 7, 1986 (Supp. 86-1). Repealed effective April 1, 1991

(Supp. 91-2). New R4-21-212 renumbered from R4-21-209 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-213. [Repealed]

History:

New Section made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Repealed by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

TABLE 1. Renumbered

History:

Table 1 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Table 1 renumbered to Article 1 by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-301. Display of License; Surrender of License

A. License display. A licensee shall display the Board-issued license at each location at which the licensee practices the profession of optometry and in a manner that makes the license visible to the public.

B. License surrender. Upon order by the Board, a licensee shall surrender to the Board all copies of the license and, if applicable, certificate of special qualification issued to the licensee.

History:

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Section repealed; new R4-21-301 renumbered from R4-21-207 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-302. Advertising

A. A licensee shall not knowingly make, publish, or use an advertisement that contains a false, fraudulent, deceptive, or misleading representation.

B. A licensee may advertise that the licensee has a practice limited in some way if the licensee does not use the term "specialist" or any derivative of the term "specialist."

C. A licensee shall ensure that the content of an advertisement or directory that includes the name and address of the licensee is accurate.

D. An advertisement for health care services that includes a licensee's name shall identify the title and type of license the licensee holds.

History:

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-303. Affirmative Disclosures Required

A. A licensee shall ensure that an advertisement for or by the licensee clearly indicates within the advertisement:

1. Whether spectacle lenses or contact lenses advertised are single vision, multi-focal, or other;

2. Whether the price advertised for spectacles includes both the frame and lenses;

3. Whether the price advertised includes an eye examination;

4. Whether the price advertised for contact lenses includes all dispensing fees, follow-up care, and a contact lens accessory kit and if an accessory kit is included, the specific features of the kit;

5. Whether restrictions are imposed upon delivery, if delivery time is advertised;

6. The refund policy if refunds are advertised; and

7. A statement that other restrictions apply if there are other restrictions.

B. A licensee shall inform a patient of all professional fees before providing treatment.

C. A licensee who refers a patient to a facility in which the licensee or a member of the licensee's family has an ownership or employment interest shall advise the patient of the interest at the time of referral.

D. A licensee who charges a patient a fee for a warranty or a service or ophthalmic-goods-replacement agreement, shall:

1. Give the patient a written copy of the warranty or service or ophthalmic-goods-replacement agreement;

2. Ensure that the warranty or service or ophthalmic-goods-replacement agreement explains the coverage included and any limitation;

3. Document compliance with subsection (D)(1) by making a written entry on the patient's record; and

4. Place a copy of the warranty or service or ophthalmic-goods-replacement agreement, signed by the patient, in the patient's record.

History:

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-304. Vision Examination Standards

A licensee shall conduct an eye examination in accordance with the standards of care prevalent in the community and consistent with current industry practice.

History:

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3812, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-304 renumbered to R4-21-305; new R4-21-304 made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-305. Recordkeeping

A. A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a patient record is maintained for at least six years after the licensee's last contact with the patient and includes:

1. Patient's name and contact information;

2. Date on which an entry is made in the patient's record;

3. Identification of the person making the entry in the patient's record;

4. Complete health history;

5. Visual acuity of each eye: entering and best corrected;

6. Ocular health examination;

7. Assessment of intraocular and extra-ocular muscle function;

8. Objective or subjective refraction of the eyes;

9. Diagnosis, treatment, and disposition;

10. Type and dosage of each use of a pharmaceutical agent;

11. Final optometric prescription given, if any;

12. Corrective procedure program prescribed, if any; and

13. Signature of licensee providing diagnosis, treatment, and disposition.

B. A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.

C. A licensee who discontinues practice for any reason shall arrange for a patient's record to be available to the patient for six years from the date the licensee discontinues practice. Before discontinuing practice, a licensee shall notify the Board of the location at which patient records from the practice will be maintained.

D. A licensee who acquires the patient records of a licensee who discontinued practice, either with or without succeeding to the practice of the other licensee, shall ensure that the records are available to the patients for six years after the licensee from whom the records were acquired discontinued practice.

E. A licensee shall provide a tangible or electronic copy of a patient's record within five business days after receiving a written request from the patient. The licensee shall provide the copy to any person designated by the patient. The licensee may charge a fee to cover the costs of providing the copy. The licensee shall maintain a record of providing the copy for six years.

F. Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all laws regarding security, confidentiality, maintenance and release of the records.

History:

Adopted effective April 1, 1991 (Supp. 91-2). Amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-305 renumbered to R4-21-306; new R4-21-305 renumbered from R4-21-304 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-306. Optometric Prescription Standards; Release to Patients

A. When a licensee completes an eye examination and generates an optometric prescription, the licensee shall provide the patient with a copy of the optometric prescription without charging a fee other than the examination fee.

B. A licensee shall ensure that an optometric prescription written by the licensee includes:

1. For ophthalmic lenses other than contact lenses:

a. Name of the patient;

b. Refractive power of the lenses;

c. Printed name, office address, telephone number, and signature of the licensee; and

d. Date of the examination and expiration date of the prescription;

2. For contact lenses, including plano lenses:

a. Name of the patient;

b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase trial lenses at another optical establishment or location;

c. For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to reproduce the contact lenses accurately;

d. Printed name, office address, telephone number, license number, and signature of the licensee;

e. Date of the examination and the issue and expiration date of the prescription; and

f. Information regarding the prescribed contact lenses:

i. Refractive power;

ii. Base curve or other appropriate designation;

iii. Diameter, if appropriate;

iv. Tint, if applicable;

v. Material, manufacturer, or both; and

vi. In the case of private-label contact lenses, manufacturer, trade name, and, if applicable, trade name of equivalent brand name; and

3. For pharmaceutical agents:

a. Name and address of the patient;

b. Date the prescription is issued;

c. Name, strength, and quantity of the pharmaceutical agent prescribed;

d. Directions for use of the pharmaceutical agent prescribed;

e. Name, office address, and telephone number of the prescribing licensee;

f. When prescribing controlled substances, the DEA number of the prescribing licensee;

g. Two adjacent signature lines with the following printed words:

i. "Dispense as written" under the left signature line, and

ii. "Substitution permissible" under the right signature line; and

h. Original signature of the prescribing licensee on one of the signature lines; and

4. Additional information that the licensee considers necessary.

C. A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.

D. A licensee shall be available to verify that a prescription written by the licensee but filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verifying the accuracy or quality of ophthalmic goods dispensed by another provider.

E. A licensee shall not:

1. Require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of the prescription;

2. Require a payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription;

3. Require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Amended effective April 1, 1991 (Supp. 91-2). Section R4-21-306 renumbered to R4-21-307; new Section R4-21-306 adopted effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-306 renumbered to R4-21-307; new R4-21-306 renumbered from R4-21-305 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-307. Vision Rehabilitation

A. A licensee may use any objective or subjective method other than surgery to diagnose or treat any visual, muscular, neurological, or anatomical anomaly of the eye.

B. A licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye.

History:

Adopted effective February 7, 1986 (Supp. 86-1). Section R4-21-307 renumbered from R4-21-209 effective April 1, 1991 (Supp. 91-2). Section R4-21-307 renumbered to R4-21-308; new Section R4-21-307 renumbered from R4-21-306 and amended effective November 5, 1998 (Supp. 98-4). Repealed by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). New R4-21-307 renumbered from R4-21-306 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4).

§ R4-21-308. Anaphylactic-related Supplies

A. If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. §32-1706(F), use injectable epinephrine to counteract the anaphylactic reaction.

B. A licensee who maintains injectable epinephrine at the licensee's practice location shall also maintain the following medically necessary supportive equipment and supplies:

1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;

2. Syringes for injecting diphenhydramine;

3. Wristwatch with a second hand;

4. Sphygmomanometer with both adult and extra-large cuffs;

5. Stethoscope;

6. Adult-size pocket mask with one-way valve;

7. Tongue depressors; and

8. Telephone.

History:

Section R4-21-308 renumbered from R4-21-307 and amended effective November 5, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 1864, effective May 3, 2005 (Supp. 05-2). Former R4-21-308 renumbered to R4-21-309; new R4-21-308made by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ R4-21-309. Rehearing or Review of Board Decision

A. The Board 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. 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 the 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 penalties;

6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or in the course of the proceedings; and

7. The findings of fact or 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. Not later than 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. This period may be extended by the Board for a maximum of 20 days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.

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 peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing or review.

History:

Section R4-21-309 renumbered from R4-21-308 and amended by final rulemaking at 14 A.A.R. 12, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 22 A.A.R. 328, effective 3/28/2016.

§ 32-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of optometry.

2. "Conviction" means a judgment of conviction by any state or federal court of competent jurisdiction in a criminal cause, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.

3. "Licensee" means a person licensed to practice the profession of optometry pursuant to this chapter.

4. "Optometrist" or "doctor of optometry" means a person who has graduated from an accredited college of optometry.

5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa.

6. "Practice of the profession of optometry" means:

(a) The examination or refraction of the human eye and its appendages and the employment of any objective or subjective means or methods other than surgery for the purpose of diagnosing or treating any visual, muscular, neurological or anatomical anomalies of the eye.

(b) The use of pharmaceutical agents authorized pursuant to this chapter.

(c) The use of any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes.

(d) The prescribing, fitting or employment of any lens, prism, frame or mountings for the correction or relief of or aid to the visual function, provided that superficial foreign bodies may be removed from the eye and its appendages.

(e) The taking of smears of the human eye and its adnexa for culture analysis and the ordering or performing of clinical tests that are appropriate to diagnose, treat or manage conditions of the human eye and its adnexa and that are limited to those CLIA-waived clinical tests approved pursuant to 42 Code of Federal Regulations section 493.15.

7. "Surgery" means, in reference to the human eye and its appendages, an invasive procedure in which in vivo human tissue is cut, burned, vaporized, removed, coagulated or photodisrupted by use of an electrical cautery, a scalpel, a cryoprobe, a laser or ionizing radiation. Surgery does not include nonsurgical procedures, including the removal of superficial foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

8. "Unprofessional conduct" means:

(a) Wilful betrayal of a professional secret or wilful violation of a privileged communication except as otherwise required by law.

(b) 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 prohibit a bona fide lease based on the revenues earned by a licensee.

(c) Addiction to, or illegal use of, narcotic drugs or use of intoxicating beverages to excess or practicing or attempting to practice the profession of optometry while under the influence of intoxicating beverages or narcotic drugs.

(d) Impersonating another licensee.

(e) Knowingly having professional connection with or lending one's name to a person who is not a licensee.

(f) Gross negligence, repeated or continuing acts of negligence or incompetence in the practice of optometry.

(g) Any conduct or practice, including incompetency, that constitutes a danger to the health, welfare or safety of patients or the public.

(h) Prescribing, dispensing or pretending to use any secret means, methods, device or instrumentality.

(i) Refusing to divulge to the board on demand the means, methods, device or instrumentality used for optometric examination or therapy.

(j) Representing that a manifestly not correctable condition can be permanently corrected or that a correctable condition can be corrected within a stated time if this is not accurate.

(k) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of the profession of optometry, including advertising.

(l) Failing to comply with a board order or consent agreement.

(m) Fraud, forgery, unsworn falsification, false swearing or perjury involving a matter before the board or a written instrument submitted to the board.

(n) Wilfully and without legal justification failing to furnish in a timely manner information that is necessary for the board to conduct an investigation under this chapter and that has been requested or subpoenaed by the board.

(o) Conduct that discredits the profession.

(p) Sexual intimacies with a patient in the course of care or treatment.

(q) Falsely claiming attendance at a required continuing education course.

(r) Soliciting patients by fraudulent or misleading advertising of any kind.

(s) Aiding the practice of optometry by an unlicensed, incompetent or impaired person.

(t) Sharing fees with a person or organization in return for soliciting customers by that person or organization.

(u) Issuing a prescription order contingent on the purchase of ophthalmic services or materials.

History:

Amended by L. 2013, ch. 186,s. 1, eff. 9/13/2013.

§ 32-1704. Powers and duties of the board

A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.

B. The board may not adopt a rule that:

1. Regulates a licensee's fees or charges to a patient.

2. Regulates the place in which a licensee may practice.

3. Prescribes the manner or method of accounting, billing or collection of fees.

4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.

C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.

D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.

E. Subject to title 41, chapter 4, article 4, the board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.

F. The board may hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter, hire other employees subject to title 41, chapter 4, article 4 required to carry out this chapter and contract with other state agencies when required to carry out this chapter.

G. The board may:

1. Appoint advisory committees.

2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.

3. Charge reasonable fees for materials it has printed at its own expense.

4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.

H. Subject to title 41, chapter 4, article 4, the board may hire consultants and professional and clerical personnel as required to perform its duties.

I. The board may contract with other state or federal agencies as required to carry out this chapter.

J. Subject to the limitations 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.

K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts 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 action by personal delivery or certified mail to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.

L. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

History:

Amended by L. 2013, ch. 186,s. 3, eff. 9/13/2013. L12, ch 321, sec 57.

§ 32-1706. Use of pharmaceutical agents

A. A licensee may prescribe, dispense and administer over-the-counter pharmaceuticals and topical prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728.

B. Except as provided in subsection C of this section, a licensee may prescribe, dispense and administer the following oral prescription pharmaceuticals for the treatment of diseases of the eye and its adnexa for any one patient for each occurrence for a period of not more than the day limit recommended by the manufacturer or the physicians' desk reference, unless otherwise specified in this subsection, subject to the pharmaceutical agent classifications specified in section 32-1728:

1. Anti-infectives classified as tetracycline and its derivatives, cephalosporins, penicillin and its derivatives, macrolides, fluroquinolones and antivirals.

2. Antihistamines.

3. Nonsteroidal anti-inflammatory agents.

4. Agents for the treatment of angle-closure glaucoma, including carbonic anhydrase inhibitors.

5. Steroids in an amount that does not exceed the amount packaged for a single course of therapy of not more than seven days.

C. A licensee may not prescribe, dispense or administer an oral pharmaceutical specified in subsection B of this section or a controlled substance as specified in subsection D of this section to a person who is under six years of age.

D. A licensee may prescribe, dispense and administer a schedule III controlled substance only if it is an analgesic and may prescribe or administer any controlled substance only if it is an analgesic that is reclassified from schedule III to schedule II after January 1, 2014.

E. A licensee shall not prescribe, dispense or administer the following prescription substances:

1. An oral antifungal.

2. An oral antimetabolite.

3. An oral immunosuppressive.

4. A substance administered intravenously.

5. Except as provided in subsection F of this section, substances administered by injection.

6. Except as provided in subsection D of this section, a schedule I, II, IV or V controlled substance.

F. A licensee may use epinephrine auto-injectors to counteract an anaphylactic reaction.

History:

Amended by L. 2018, ch. 1,s. 18, eff. 8/3/2018. Amended by L. 2014, ch. 262,s. 1, eff. 7/24/2014.

§ 32-1722. Qualifications of applicant; applications

A. A person who wishes to engage in the practice of the profession of optometry shall file with the board a verified application with the required application fee that includes:

1. The applicant's name, age and address.

2. Documentation of graduation from a university or college that teaches the profession of optometry and that is accredited by a nationally accepted accrediting body on optometric education.

3. Documentation of satisfactory completion of an equivalent course of study that is approved by the board in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa and that either:

(a) Meets the contemporary educational requirements at colleges of optometry in the United States.

(b) Totals at least one hundred twenty hours.

4. Documentation of the successful passage of a written examination as prescribed by the board.

5. Background information on a form prescribed by the attorney general for the purpose of conducting an investigation into the existence of prior arrests and convictions.

6. Disclosure of any investigation conducted or pending by an optometric regulatory board in another jurisdiction in the United States.

B. On receipt of an application in proper form and containing the information prescribed in subsection A of this section, the board may investigate the applicant's ability and experience.

C. For the purposes of an investigation that is conducted pursuant to subsection B of this section, the board may subpoena witnesses, administer oaths and take testimony with respect to any matter affecting the application at a hearing held after sufficient notice has been given.

D. If the board finds that the applicant has passed the examination provided for under section 32-1724 and that the applicant's ability and experience are satisfactory, the board shall issue a license.

History:

Amended by L. 2022, ch. 59,s. 65, eff. 9/23/2022.

§ 32-1723. Licensure by endorsement

The board shall waive the written examination requirements of this chapter if all of the following are true:

1. The applicant submits a license or a certified copy of a license to practice optometry issued by the regulatory board of another jurisdiction of the United States that has licensure requirements that the board determines meet or exceed the requirements of this chapter.

2. The license of the applicant has not been suspended or revoked by any other licensing jurisdiction of the United States for any cause that is a ground for suspension or revocation of a license under this chapter.

3. The applicant has been engaged in the practice of the profession of optometry continuously in the other licensing jurisdiction or in a United States military branch of service for not less than four of the five years immediately preceding the application.

4. The information provided by national data banks designated by the board has successfully verified the applicant.

History:

Amended by L. 2022, ch. 59,s. 66, eff. 9/23/2022.

§ 32-1724. Examination of applicants; time of examination

A. Licensing examinations shall be conducted and graded according to rules prescribed by the board. The board shall not grade examinations on a curve.

B. The board may give applicants a written examination on subjects currently being taught in universities or colleges of optometry as well as on this state's statutes and rules relating to the practice of optometry. In lieu of its written examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that an applicant has passed board designated parts of the national board's examination. To receive a passing grade on a written examination administered by the board, an applicant shall receive a grade of not less than seventy-five per cent on the whole written examination and not less than fifty per cent in any one subject.

C. The board may give applicants a practical examination on subjects currently being taught in universities or colleges of optometry and shall give an examination on this state's statutes and rules relating to optometry. In lieu of its practical examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that the applicant has passed board designated parts of the national board's examination. To receive a passing grade on a practical examination, an applicant shall receive a grade of not less than seventy-five per cent.

D. Examinations shall be held at least once each year. Notice of examinations shall be given not less than sixty days before the date of examination. The board shall adopt rules to establish conditions under which an applicant who is unable to take the examination and who notifies the board before the date fixed for the examination may take the next examination.

§ 32-1725. Issuance and display of license and certificate

A. The board shall issue to each applicant who satisfactorily passes the examination and who pays the license issuance fee pursuant to section 32-1727 a license under the seal and signatures of the members of the board. An applicant who does not pay the issuance fee within sixty days must submit a new application and all applicable fees pursuant to section 32-1727.

B. A person who holds a license or certificate pursuant to this chapter must display the current, original document in a conspicuous place that is accessible to the public.

C. A person who practices, conducts business or is employed at more than one location and who maintains a continuing activity as authorized by the license or certificate must display a board-issued duplicate of that document at each location.

History:

Amended by L. 2013, ch. 186,s. 4, eff. 9/13/2013.

§ 32-1726. Renewal of license; continuing education; failure to renew

A. Except as provided in section 32-4301, beginning on September 1, 2001, a licensee who wishes to renew a license must do so every other year on or before the licensee's birthday by submitting a completed renewal form and the renewal fee prescribed by the board. A licensee who does not renew a license within thirty days after the licensee's birthday must also pay a late fee as prescribed by the board. A license expires if the licensee does not renew the license within four months after the licensee's birthday. A person who practices optometry in this state after that person's license has expired is in violation of this chapter.

B. As a condition of renewal or reinstatement each licensee shall complete thirty-two hours of continuing education as prescribed by the board. The board shall require continuing education on the subject of pharmaceutical use for doctors who are authorized by the board to prescribe, dispense, and administer pharmaceuticals. The board may waive or adjust the continuing education requirements for good cause shown.

C. To reinstate an expired license a person must submit a written application and pay all delinquent biennial fees, all late fees and a fifty dollar penalty fee for each year the license remains unrenewed. The board shall not require the applicant to pass an initial licensing examination if the applicant meets the requirements of this subsection within five years after the license expired.

D. A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry within a five year period shall pass an initial licensing examination before the license is renewed.

§ 32-1726. Renewal of license; continuing education; failure to renew

A. Except as provided in section 32-4301, beginning on September 1, 2001, a licensee who wishes to renew a license must do so every other year on or before the licensee's birthday by submitting a completed renewal form and the renewal fee prescribed by the board. A licensee who does not renew a license within thirty days after the licensee's birthday must also pay a late fee as prescribed by the board. A license expires if the licensee does not renew the license within four months after the licensee's birthday. A person who practices optometry in this state after that person's license has expired is in violation of this chapter.

B. As a condition of renewal or reinstatement each licensee shall complete thirty-two hours of continuing education as prescribed by the board. The board shall require continuing education on the subject of pharmaceutical use for doctors who are authorized by the board to prescribe, dispense, and administer pharmaceuticals. The board may waive or adjust the continuing education requirements for good cause shown.

C. To reinstate an expired license a person must submit a written application and pay all delinquent biennial fees, all late fees and a fifty dollar penalty fee for each year the license remains unrenewed. The board shall not require the applicant to pass an initial licensing examination if the applicant meets the requirements of this subsection within five years after the license expired.

D. A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry within a five year period shall pass an initial licensing examination before the license is renewed.

§ 32-1727. Fees

A. The following fees shall be paid to the board:

1. Filing an application for examination, one hundred fifty dollars.

2. License issuance fee as established by the board.

3. Renewal of a license to practice the profession of optometry as established by the board.

4. Late renewal of a license as established by the board.

5. Application for a license by endorsement, three hundred dollars.

6. Duplicate license fee, thirty dollars.

7. Certificates of special qualification, twenty dollars.

8. Duplicate certificates of special qualification, twenty dollars.

9. Optometry statute pamphlet fee, five dollars.

B. Fees are not refundable.

§ 32-1728. Pharmaceutical agents; certification; use; course of study

A. A licensee initially licensed after the effective date of the amendment to this section, a licensee licensed by endorsement after the effective date of the amendment to this section or a licensee who passed an examination conducted by the board for the use of oral pharmaceutical agents before the effective date of the amendment to this section may prescribe, dispense and administer a pharmaceutical agent subject to the limitations provided in this chapter.

B. The board may reissue a certificate for renewal for the use of pharmaceutical agents for topical diagnostic or topical therapeutic pharmaceutical agents, or both, to a person who holds an existing certificate issued on or before the effective date of the amendment to this section and who pays the certificate of special qualification fee prescribed in section 32-1727. The certificate may specify the following:

1. Use of no drugs.

2. Use of topical diagnostic agents.

3. Use of topical diagnostic and therapeutic agents.

C. The board may issue a certificate of special qualification to practice optometry without the use of pharmaceutical agents to a person who holds a current license as of July 1, 2000 and who pays the certificate of special qualification fee prescribed in section 32-1727.

D. The board shall adopt a course of study for certification to use oral pharmaceuticals after consultation with colleges of optometry accredited by a nationally accepted accrediting body on optometric education and with the college of pharmacy at the university of Arizona. The board shall design and implement the course in a manner that requires a licensee who wishes to have the privilege of dispensing, prescribing and administering topical and oral pharmaceutical agents pursuant to this chapter meet the contemporary educational requirements related to pharmaceuticals authorized for licensees pursuant to this chapter at colleges of optometry in the United States and to demonstrate competence in dispensing, prescribing and administering those topical or oral pharmaceutical agents by passing examinations in those areas commensurate with doctoral candidates in colleges of optometry in the United States. The course of study shall teach and certify competence in the prescription and administration of topical or oral pharmaceutical agents pursuant to this chapter. The board shall adopt the course of study and completion requirements to reflect the current

course of study and demonstrated competence level of pharmacy programs in colleges of optometry in the United States. The board may offer a course and examination that otherwise meets the requirements of this subsection and that is limited to oral pharmaceuticals for licensees who hold a valid diagnostic and therapeutic topical pharmaceutical permit issued pursuant to subsection A of this section.

E. The board shall adopt a uniform prescription form for use by all licensees who have the privilege to prescribe, dispense and administer topical pharmaceuticals or oral pharmaceuticals. The prescription form shall indicate the prescribing authority of the licensees and whether the authority includes oral pharmaceuticals, topical pharmaceuticals or both oral pharmaceuticals and topical pharmaceuticals. The form shall include the name, address, telephone number, fax number and professional license number of the licensee.

F. Annually on or before January 1 the state board of optometry shall mail to the Arizona state board of pharmacy the list of all licensees who have been certified to prescribe, dispense and administer either oral pharmaceuticals or topical pharmaceuticals, or both. Within thirty days of any additional certification by the state board of optometry, the state board of optometry shall provide updated lists to the Arizona state board of pharmacy. At the same time the state board of optometry shall send the list to each licensed pharmacy in Arizona, excluding hospital pharmacies, long-term care pharmacies and infusion pharmacies.

§ 32-3213. Health professionals; disclosure; unprofessional conduct; definition

A. An advertisement for health care services that includes a health professional's name shall identify the title and type of license the health professional holds and under which the health professional is practicing.

B. A health professional who violates this section commits an act of unprofessional conduct.

C. For the purposes of this section, "advertisement" includes billboards, brochures, pamphlets, radio and television scripts, electronic media, printed telephone directories, telephone and direct mail solicitations and any other means of promotion intended to directly or indirectly induce any person to enter into an agreement for services with the health professional. Advertisement does not include materials that provide information about network providers and that are created by an entity regulated under title 20.

§ 41-1027. Expedited rulemaking

A. An agency may conduct expedited rulemaking pursuant to this section if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following:

1. Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority.

2. Amends or repeals rules for which the statute on which the rule is authorized has been declared unconstitutional by a court with jurisdiction, there is a final judgment and no statute has been enacted to replace the unconstitutional statute.

3. Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect.

4. Adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state.

5. Reduces or consolidates steps, procedures or processes in the rules.

6. Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

7. Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

8. Adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency.

B. An agency shall deliver a notice of proposed expedited rulemaking to the governor, the president of the senate, the speaker of the house of representatives, the committee and the council. The notice shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicate how the proposed expedited rulemaking achieves the purpose prescribed in subsection A of this section.

C. On delivery of the notice required in subsection B of this section, the agency shall file the notice of proposed expedited rulemaking with the secretary of state for publication in the next state administrative register.

The agency and the council shall post the notice of proposed expedited rulemaking on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice. The agency shall adequately respond in writing to the comments on the proposed expedited rulemaking.

D. An agency may not submit a final expedited rule to the council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking. However, an agency may terminate an expedited rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule. An agency shall use the criteria prescribed in section 41-1025, subsection B for determining whether a final expedited rule is substantially different from the proposed expedited rule.

E. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of final expedited rulemaking and the agency's responses to any written comments. The council may require a representative of an agency whose expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the expedited rulemaking within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.

F. Before an agency files a notice of final expedited rulemaking with the secretary of state, the council shall approve any expedited rulemaking. The council shall not approve the rule unless:

1. The rule satisfies the criteria for expedited rulemaking pursuant to subsection A of this section.

2. The rule is clear, concise and understandable.

3. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.

4. The agency, in writing, adequately addressed the comments on the proposed rule and any supplementary proposal.

5. If applicable, the permitting requirements comply with section 41-1037.

6. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplementary proposal.

7. The rule imposes the least burden and costs to persons regulated by the rule.

G. On receipt of council approval, the agency shall file a notice of final expedited rulemaking and the council's certificate of approval with the secretary of state.

H. The expedited rulemaking becomes effective immediately on the filing of the notice of final expedited rulemaking.

History:

Amended by L. 2017, ch. 185,s. 1, eff. 8/9/2017. Amended by L. 2016, ch. 198,s. 1, eff. 8/5/2016.

§ 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.

§ 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

§ 41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.

D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

History:

Amended by L. 2021, ch. 161,s. 6, eff. 9/29/2021.

§ 41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

§ 41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.

2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

§ 41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

§ 41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.

2. The applicable licensing time frames.

3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

§ 44-1481. Fraudulent advertising practices defined; violation; classification

A. A person is guilty of a class 3 misdemeanor who:

1. Knowingly and with the intent to sell to the public real or personal property or services, or to induce the public to acquire an interest therein, makes and publishes an advertisement, either printed or by public outcry or proclamation, or otherwise, containing any false, fraudulent, deceptive or misleading representations in respect to such property or services, or the manner of its sale or distribution.

2. Publishes, circulates or disseminates any statement or assertion of fact concerning real estate which is known by him to be untrue, and which is made or disseminated with the intention of misleading.

B. A merchant is guilty of a class 3 misdemeanor who advertises or displays any brand of goods known to the general public and quotes prices in connection therewith as an inducement to attract purchasers to the place of business so advertised, and makes false statements regarding the quality or merits of the goods advertised.

§ 41-1092.09. [Repealed Effective 1/1/2028] Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

History:

For repeal eff. 1/1/2028, see 41-3027.05.

BOXING AND MIXED MARTIAL ARTS COMMISSION
Title 19, Chapter 2, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: June 15, 2023

SUBJECT: **BOXING AND MIXED MARTIAL ARTS COMMISSION**
Title 19, Chapter 2, Article 6

Summary

This Five-Year Review Report (5YRR) from the Boxing and Mixed Martial Arts Commission (Commission) of the Arizona Department of Gaming relates to twenty-seven (27) in Title 19, Chapter 2, Article 6 related to the Administration of Unarmed Combat Sports. These rules are separated into three parts that cover General Administration, regulation of Events, and Unarmed Combat Rules respectively.

In the prior 5YRR for these rules, which were originally found in Title 4, Chapter 3, the Department indicated it intended to eliminate all the rules in Title 4, Chapter 3 and consolidate the Commission's rules into the current Article, Title 19, Chapter 2, Article 6, where other Commission rules currently reside. In addition to changing the location of the rules, the Department indicated that the rules would be amended to govern issues and unarmed combat disciplines that were not previously addressed by the Commission's rules. The Commission indicates this proposed course of action was completed.

Proposed Action

In the current report, the Commission is proposing to amend these rules, contingent on stakeholder willingness and approval from the Governor's Office, to become more aligned with

the Unified Rules of the Association of Boxing Commissions and to allow for additional combat sports/disciplines to bring their events to Arizona by providing a regulatory framework for such disciplines. The Commission anticipates submitting amendments to these rules to the Council in March 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

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 indicates that these rules are in line with an objective to maintain proper regulatory duties while also keeping stakeholder costs to a minimum. The Commission states that with the fees they charge as it relates to licensing, the Department is able to maintain enough of a revenue stream to cover the internal costs for processing these applications. The Commission states that in FY 2022, they collected $97,538.01 in licensing fees from 1,851 licenses, with the majority of said licenses priced at $25. In addition, the Commission states that they also maintain a low cost for sanctioning fees and tax levies for events. Stakeholders include the Commission and individuals and sanctioning bodies required to be licensed under the rules related to boxing and mixed martial arts (MMA).

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 believes that the benefits of these rules significantly outweigh the probable costs of these rules and that the rules impose the least burden and costs to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are mostly consistent with other rules and statutes. However, the Commission states rule R19-2-D602 (Boxing) differs slightly from the Unified Rules of Boxing and rule R12-2-D603 (Mixed Martial Arts) also differs slightly from the Unified Rules of MMA. The specific differences are outlined in more detail in Section 4 of the Commission's report.

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 indicates the rules are currently enforced as written.

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

The Commission indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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 a general permit is not required, as an exception applies pursuant to A.R.S. § 41-1037(A)(4); the issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant. The Commission states tiered license fee system corresponds with the time that is required to process each license (due to background checks, financial reviews, application reviews, and so forth) and the amount of responsibility involved for each applicant. The Commission states these variations in license costs reflect the Department's costs to administer and maintain appropriate regulatory safeguards while still maintaining the lowest possible fees for each category. The Commission indicates, requiring a general license would increase costs for several levels of participants unnecessarily and therefore be inequitable.

11. Conclusion

This 5YRR from the Commission relates to twenty-seven (27) in Title 19, Chapter 2, Article 6 related to the Administration of Unarmed Combat Sports. The Commission indicates the rules are clear, concise, understandable, effective, and enforced as written. However, the Commission indicates the rules, specifically R19-2-D602 (Boxing) and R12-2-D603 (Mixed Martial Arts), differ from the Unified Rules of Boxing and Unified Rules of MMA, respectively.

The Commission is proposing to amend these rules, contingent on stakeholder willingness and approval from the Governor's Office, to become more aligned with the Unified Rules of the Association of Boxing Commissions and to allow for additional combat

sports/disciplines to bring their events to Arizona by providing a regulatory framework for such disciplines. The Commission anticipates submitting amendments to these rules to the Council in March 2025.

Council staff recommends approval of this report.

May 08, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Gaming, 19 A.A.C., Chapter 2, Article 6
State Boxing and Mixed Martial Arts Commission: Administration of
Unarmed Combat Sports, Five Year Rule Report

Dear Nicole Sornsin:

Please find enclosed the Five Year Review Report of Arizona Department of Gaming for 19 A.A.C., Chapter 2, Article 6 which is due on June 28, 2023.

The Arizona Department of Gaming hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Danny Vella at dvella@azgaming.gov.

Sincerely,

Danny A. Vella

Danny A. Vella
Executive Director,
Boxing/MMA Commission

Arizona Department of Gaming

5 YEAR REVIEW REPORT

A.A.C. Title 19, Chapter 2,

Article 6

May 03, 2023

1. Authorization of the rule by existing statutes

A.R.S. § 5-224(C) provides that the Commission may adopt and issue rules pursuant to Title 41, Chapter 6.

2. The objective of each rule:

Rule	Objective
R19-2-A601	Definitions: The rule provides commonly used definitions to be used throughout the Article for ease of reference.
R19-2-A602	Delegation by and Reports to the Commission: The rule authorizes the Commission to delegate powers and duties to the Executive Director and emphasizes the E.D.'s responsibility to report back to the Commission on delegated matters.
R19-2-B601	Notice and Approval of Events: The rule provides expectations and requirements as it relates to event sanction requests, approval procedures, and deadlines.
R19-2-B602	State Championships: The rule provides requirements and qualifications related to State Championship contests.
R19-2-B603	Duty of Matchmakers: The rule provides an overview of expectations, requirements, and responsibilities of a licensed matchmaker.
R19-2-B604	Insurance for Contestant: The rule states that a promoter shall provide proof of insurance pursuant to A.R.S. § 5-233 for each contestant to the Commission.
R19-2-B605	Selection and Payment of Officials: The rule provides timelines of official selection as well as requirements for objections and violations of a promoter with regard to official selection.
R19-2-B606	Commission Seating at Events: The rule requires that a promoter provide tables for Commission representatives and officials and emphasizes that these seats take priority ringside.
R19-2-B607	Ticket Manifest, Collection, and Accounting: The rule provides guidelines and requirements for a promoter to follow regarding the tax levy due after a sanctioned event.
R19-2-B608	Annual Bond, Event Bond, Claims: The rule sets requirements and guidelines for annual/event surety bonds and claims relating to such bonds.
R19-2-B609	Payment of Contestants: The rule states that all contestants must be paid in full immediately after an event under the Commission's supervision, with the use of box office as collateral.
R19-2-C601	Licensing, General Requirements: The rule provides guidelines, requirements, and deadlines for all applicants seeking to become licensed by the Commission.
R19-2-C602	Licensing Time-Frames: The rule outlines timeframes for the Commission to review applications and provide a decision to the licensee.
R19-2-C603	License Fees: The rule outlines fees for license applications and sanctioned events.
R19-2-C604	Licensing Requirements Related to Ability and Fitness: The rule provides requirements specific to combatant applicants regarding fitness to compete and assessments of health.
R19-2-C605	Grounds for Disciplinary Action; Penalties: The rule provides guidelines on grounds for discipline and standard penalties.
R19-2-C606	Effect of Discipline: The rule describes the effects of violating penalties imposed by the Commission as a result of disciplinary action.
R19-2-C607	Civil Penalties: The rule describes how civil penalties of licensees shall be handled.
R19-2-C608	Appeal, Rehearing, or Review of Decision: The rule provides grounds for an appeal to the Commission for rulings made by the Executive Director and highlights review of decisions.

R19-2-C609	Registration of Sanctioning Organizations: The rule provides requirements for becoming an outside sanctioning body for amateur combat sports. The rule also details fees, discipline, and applications.
R19-2-D601	General Provisions for All Unarmed Combat Disciplines: The rule outlines universal requirements that affect all disciplines regulated by the Commission.
R19-2-D602	Boxing: The rule provides requirements and expectations specific to boxing.
R19-2-D603	Mixed Martial Arts: The rule provides requirements and expectations specific to MMA.
R19-2-D604	Kickboxing: The rule provides requirements and expectations specific to kickboxing.
R19-2-D605	Muay Thai: The rule provides requirements and expectations specific to muay thai.
R19-2-D606	Toughman: The rule provides requirements and expectations specific to toughman contests.
R19-2-D607	Exhibitions; Fee: The rule provides requirements for exhibition contests.

3. Are the rules effective in achieving their objectives? **Yes ✓** **No**

4. Are the rules consistent with other rules and statutes? **Yes** **No ✓**

Although most of the rules are consistent with other rules, R19-2-D602 (Boxing) does differ slightly from the Unified Rules of Boxing (amended August 3, 2016 and available at https://www.abcboxing.com/unified-rules-boxing/. R19-2-D603 (Mixed Martial Arts) also differs slightly from the Unified Rules of MMA (amended August 1, 2018 and available at https://www.dli.mn.gov/sites/default/files/pdf/official_unified_rules_MMA.pdf).

As it relates to R19-2-D602 and Boxing, these discrepancies include, but are not limited to, the following:

- The Unified Rules state in Rule 8 that there is no three knockdown rule, whereas, in R19-2-D602(H)(1)(f), a three knockdown rule applies where a bout is to be stopped if a contestant is knocked down three times in a round.
- The Unified Rules state in Rule 10 that a boxer cannot be saved by the bell in any round, whereas, R19-2-D602(H)(1)(d) states that a boxer can be saved by the bell in the last round.
- Unified Rules state in Rule 11 that a fight ending injury sustained from a fair blow will be deemed a TKO, whereas, R19-2-D602 does not provide guidelines for fight ending injuries resulting from a fair blow.
- The Unified Rules state in Rule 12(A)(2) that an injury sustained from an intentional foul will result in a two point deduction to the offending boxer, whereas, R19-2-D602(F)(1) provides the referee with discretion and does not mention a required penalty.
- The Unified Rules state in Rule 12 (A)(3) and (B)(1) and (2) that a premature ending to a bout as a result of a foul shall go to the judges' scorecards after four rounds have completed, whereas R19-2-D602(F)(2) does not provide a number of rounds to be completed for a stoppage due to a later aggravated intentional foul, and R19-2-D602(G)(1) and (2) state that a no contest should be declared if a foul is committed within the first three rounds and the fight cannot continue.
- The Unified Rules define in Rule 13 a timeframe for recovery after a low blow to be no more than five minutes. Whereas, R19-2-D602 does not provide details for such a scenario.

As it relates to R19-2-D603 and MMA, these discrepancies include, but are not limited to, the following:

- The weight classes documented in R19-2-D603(D) differ significantly from the Unified Rules, page 10, in particular in the weight classes of Flyweight (Arizona has no minimum while Unified Rules have 115lb minimum), Welterweight (AZ: 155-169lbs, UR: 165-170lbs), Middleweight (AZ: 170-184.9lbs, UR:175-185lbs), Light Heavyweight (AZ: 185-204.9lbs, UR: 195-205lbs), and Heavyweight (AZ: 204-264.9lbs, UR: 225-265lbs). This may be due to a difference in the number of weight classes, as the Unified Rules contain (15), which is greater than the number of weight classes contained in the Arizona rules (9).
- The Unified Rules specify in Rule 5 that five minutes shall be given to a combatant who is knocked out of a ring, whereas, R19-2-603 makes no mention of a timeframe.

- The Unified Rules state in Rule A(3) and B(2) that a bout stopped prematurely must have gone half of the rounds plus one second in order to go to the scorecards for both intentional and accidental fouls, whereas, R19-2-603(G)(2) states that, in the circumstances of accidental fouls, a majority of rounds must have lapsed.
- The Unified Rules specify in B(a)(iii) that a submission resulting in unconsciousness or broken bones shall be deemed a technical submission, whereas, R19-2-D603 does not specify a result for specific submissions.

Finally, as it relates to hand bandaging, R19-2-D601(V) provides guidelines for hand bandages but does not require specified sizes of materials, whereas Rule 8 of the Unified Rules of MMA provides specifications of the size of bandaging materials that may be used.

5. Are the rules enforced as written? **Yes ✓** **No**

6. Are the rules clear, concise, and understandable? **Yes ✓** **No**

7. Has the agency received written criticisms of the rules within the last five years? **Yes** **No ✓**

8. Economic, small business, and consumer impact comparison:

Economically, these rules are in line with an objective to maintain proper regulatory duties while also keeping stakeholder costs to a minimum. With the fees that the Department of Gaming (Department) charges as it relates to licensing, the Department is able to maintain enough of a revenue stream to cover the internal costs for processing these applications. For example, in Fiscal Year 2022, ADG collected $97,538.01 in licensing fees from 1,851 licensees, with a majority of said licenses priced at $25.

The cost of each type of license reflects safety, liability, responsibility, and background depth, and is broken down as follows:

- Pro-Fighter (Combatant), Cornerman, Trainer, and Cutman licenses cost each applicant $25
- Amateur Fighter (Combatant), Cornerman, Trainer, and Cutman licenses cost each applicant $10
- Inspector, Judge, Referee, Timekeeper, Announcer, and Physician licenses cost each applicant $30
- Manager licenses cost each applicant $100
- Matchmaker licenses cost each applicant $125
- Promoter licenses cost each applicant $400
- Outside sanctioning body licenses cost each applicant $1,000

The Department's cost of administering a license is broken down as follows:

- New Professional Fighter (Pro-Fighter) licenses include a sparring evaluation, which takes between one and two hours on average and costs the Department $38-$76 in employee wages to administer. In addition, processing a new Pro-Fighter license takes approximately one half of an hour to verify medicals, experience, and input fighter information into applicable databases. Overage Fighter Applicants (Fighters 36+ years of age) require a commission meeting to approve licensure, which necessitates a $30 per diem rate for each of the three commissioners plus $62 in wages for the two ADG employees who attend for an overall total of $144, in addition to aforementioned processing costs.
- Amateur Fighter licenses have the lowest cost to administer, averaging $12 for one half of an hour of wages for one employee, because sparring evaluations are not necessary for these fighters.
- Promoter licenses require staff review due to statutory and regulatory requirements that the Department conduct a background and financial investigation. This additional review requires approximately three hours of staff time, around $25-$75, plus the time to share this review at a Commission meeting, which adds in a $30 per diem cost for each of the three commissioners and $62 in wages for two ADG employees for a running total of around $144, and adding in the time for inputting the data in the appropriate databases, creating the appropriate files and documents, and sending the final license badge to the applicant amounting to a grand total of approximately $239 per license.

- Remaining license types include Officials, Cornermen, Managers, Matchmakers, and Announcers. Due to fewer statutory and regulatory background requirements, these licenses require a less stringent review and therefore require less labor to review and process. On average, these licenses cost the agency $12 for one half of an hour of wages for one employee to process. Officials, Managers, and Matchmakers are required to submit Fingerprints for processing; an additional $22 fingerprint processing fee applies as the Department must pay DPS to run the prints. For these license types, a physical identification badge is printed. Each badge costs the Department $0.30 to print, which includes ink at the cost of $0.20 per print and card costs of $0.10 per card.

In addition to keeping licensing fees as low as possible, the Department also maintains a low cost for sanctioning fees and tax levies for events. At a rate of 4%, tax levies in Arizona are much more favorable to business as compared to those assessed in many other jurisdictions. For example, Nevada uses a tax levy rate of 8% and California uses a tax levy rate of 5%. Both of those states have a high frequency of events, and are geographically close to Arizona, which provides a good evaluation basis for Arizona. Arizona's lower tax levy rate allows for more revenues to be retained by Promoter stakeholders, which can then be remitted back to the industry in order to hold more events and maintain a consistent volume within the industry. In Fiscal Year 2022, the Boxing and MMA Division of the Arizona Department of Gaming generated a combined $1,095,535 in tax revenue for Arizona via tax levies and sales tax. Of which, $297,155 was remitted to the Department following events (generated by our 4% tax levy) and $798,380 in sales tax was remitted to the Department of Revenue. In addition to these revenues, the events regulated by the Department generated revenues for local businesses and industries due to fighters, cornermen, promoters, managers, matchmakers, and spectators travelling into Arizona from other states, including through lodging, dining, transportation, and shopping. This helps provide consistent revenue streams for the hospitality and tourism industries, in addition to the transportation, general retail, and entertainment industries.

The Department has a positive impact on small business by establishing sanctioning fees relative to venue size. For smaller promotional events, sanctioning fees start at $750 for non-televised events taking place at venues seating less than 5,000 persons. These fees gradually increase as follows: (a) a $1,500 sanctioning fee applies to: (i) non-live televised events at a venue seating more than 5,000 persons, (ii) events streamed live for a charge on Facebook or other equivalent internet broadcast, and (iii) live televised events on cable or satellite television; (b) a $2,000 sanctioning fee applies to events televised live on cable or satellite television that include a recognized world title bout (e.g. WBA, WBC, IBF, WBO, UFC, IBO);(c) a $4,000 sanctioning fee applies to live pay-per-view events on cable or satellite television (e.g. HBO, Showtime). Contrary to other jurisdictions, pay-per-view revenues are not taxed in Arizona. The Department instead utilizes the aforementioned flat fee of $4,000. By maintaining lower financial costs for Promoters regarding event sanctioning, these Promoters retain access to a greater portion of their revenues and can pay higher purse amounts to fighters to encourage highly sought-after fights in Arizona. With higher incentives to compete, the fighters can compete more frequently, grow their careers, and continue to bring more fans into the stands of local stadiums to spend locally. This helps stimulate the industry while providing entertainment for the fans and more prosperous opportunities for the combatants. The Department's efforts to keep costs low for small business owners helps to incentivize the continued success and growth of this industry for these stakeholders in Arizona so that these smaller promotions may continue to grow.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ____** **No ✓____**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ✓____ **No____**

Yes, as proposed in the previous 5YRR, the rules were updated. This completes our previous 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:

The probable benefits of these rules significantly outweigh the probable costs of these rules and the rules impose the least burden and costs to regulated persons for the following reasons: These rules remain compliant with Federal Laws and Regulations while simultaneously providing licensing fees that are significantly less costly than many other jurisdictions (as mentioned above), as well as providing less stringent licensing requirements to minimize applicant licensing costs. The Department requires fewer medical tests than several other jurisdictions and requires them less frequently than several other jurisdictions. For example, the California State Athletic Commission requires the same annual medicals as our Commission, with the addition of a Neurological Exam, a Brain MRI, and a Cardiovascular Exam. These additional tests are very costly and place unnecessary burdens on licensed fighters. In the State of Pennsylvania, blood tests are only valid for six months, whereas in Arizona blood tests are valid for an entire calendar year. The Arizona Boxing and MMA commission prioritizes fighter safety while also balancing the costs and burdens of additional regulatory requirements. As such, the Department and Commission work to minimize routine costs while maintaining the discretion to require additional medical tests when necessary under the circumstances.

12. Are the rules more stringent than corresponding federal laws? **Yes** ___ **No** ✓

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

A general permit is not required, as an exception applies pursuant to A.R.S. § 41-1037(A)(4); the issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant. The tiered license fee system corresponds with the time that is required to process each license (due to background checks, financial reviews, application reviews, and so forth) and the amount of responsibility involved for each applicant. These variations in license costs reflect the Department's costs to administer and maintain appropriate regulatory safeguards while still maintaining the lowest possible fees for each category. Requiring a general license would increase costs for several levels of participants unnecessarily and therefore be inequitable.

14. Proposed course of action

Our proposed course of action is to amend these rules, contingent on stakeholder willingness and approval from the Governor's Office, to become more aligned with the Unified Rules of the Association of Boxing Commissions and to allow for additional combat sports/disciplines to bring their events to Arizona by providing a regulatory framework for such disciplines. The Agency anticipates submitting amendments to these rules in March 2025.

A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-608. Repealed

Historical Note
New Section recodified from Section R4-3-422 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-609. Renumbered

Historical Note
New Section recodified from Section R4-3-423 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section renumbered to R19-2-605 by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-610. Renumbered

Historical Note
New Section recodified from Section R4-3-424 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section renumbered to R19-2-606 by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

PART A. GENERAL ADMINISTRATION

R19-2-A601. Definitions and Interpretation Guidance

A. The following terms apply to this Article:

1. "Abdominal guard" means a protective device that is designed to protect the abdomen below the umbilicus, and the term includes a pelvic girdle for women designed to protect the pubic area, ovaries, coccyx, and sides of hips. Unless otherwise indicated herein, the term "abdominal guard" will include a "groin guard."
2. "Admission fee" means the charge paid to gain access to an unarmed combat event, as evidenced by a "ticket."
3. "Annual bond" means the cash or surety bond, required under A.R.S. § 5-228(E), to be deposited with the Department by a promoter as a prerequisite for a promoter's license.
4. "Business entity" means any corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity except an individual or sole proprietorship.
5. "Combatant" means any person who practices the sport of unarmed combat in this state.
6. "Commission" means the Arizona State Boxing and Mixed Martial Arts Commission, and staff delegated to provide support to the Commission. Unless otherwise stated, reference to the Commission includes the Executive Director.
7. "Contestant" means any combatant who is engaged in an unarmed combat contest or exhibition.
8. "Department" means the Arizona Department of Gaming.
9. "Division" means the Arizona Department of Gaming, Racing Division.
10. "Event" means any unarmed-combat contest or exhibition for which tickets are issued and sold.
11. "Event bond" means the cash or surety bond, authorized under A.R.S. § 5-229(B), which the Commission may require a promoter to deposit with the Department before each event.
12. "Executive Director" means the director appointed to execute the directions of the Commission.
13. "Exhibition" means any demonstration of technique or training in unarmed combat, which is attended by members of the public, including any such demonstration involving the sale of tickets or collection of admission fees.
14. "Groin guard" means a foul-proof athletic cup or other protection of the pubic area.
15. "Gross receipts" means all gross receipts as defined by A.R.S. § 5-104.02(E).
16. "Industry" means all matters or business related to regulated unarmed-combat events.
17. "License" means any permit, license, approval, sanction, authority, registration, or other permission received from the Commission under these rules or Title 5, Chapter 2, Article 2. For purposes of these rules, a permit is equivalent to a license.
18. "Majority of rounds" means a sufficient number of completed rounds to render a decision via the score cards. For example, two completed rounds in a three-round bout, or three completed rounds in a five-round bout.
19. "Mismatch" means a pairing of unarmed combatants for a contest who have unequal ability. Factors to be considered in matching combatants include, but are not limited to:
    a. Experience;
    b. Training;
    c. Fighting record;
    d. Age;
    e. Physical condition;
    f. Height;
    g. Weight;
    h. Skill sets;
    i. Arm or leg length; and
    j. Any other differences in the ability of combatants that would create a competitive imbalance between them or that would render a match unsafe.
20. "MMA" means mixed martial arts as defined by A.R.S. § 5-221(8).
21. "Official" means a licensed referee, judge, timekeeper, ringside physician, or inspector.
22. "Permit" means any approval or license to conduct an event.
23. "Prohibited list" means the prohibited substance list published by the World Anti-Doping Agency ("WADA").
24. "Prohibited substance" means any substance, or class of substances, identified as prohibited on the prohibited list. Alcohol shall also be considered a prohibited substance regardless of whether it appears on the prohibited list.
25. "Ticket" means the tangible proof of the right to purchase admission to an event.
26. "Ticket agent" means a person authorized by a promoter to print tickets.
27. "Ticket vendor" means a person authorized by a promoter to sell tickets.
28. "Tickets issued" means all tickets printed for an event.
29. "A.R.S. Title 5, Chapter 2, Article 2" means Arizona Revised Statutes ("A.R.S.") §§ 5-221 to 5-240, and any successor provisions.
30. "Unarmed combat" means any professional or amateur training, contest, or exhibition regulated by the Commission, whether or not conducted for profit, including boxing, kickboxing, MMA, Muay Thai fighting, or Toughman competition.

B. Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

C. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

D. The word "includes" and its derivatives means "includes, but is not limited to" and corresponding derivative expressions.

Historical Note
New Section R19-2-A601 renumbered from R19-2-601 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-A602. Delegation by and Reports to the Commission

A. The Commission may delegate execution of its statutory powers and duties to the Executive Director.

B. The Executive Director shall regularly keep the Commission informed regarding those matters which have been delegated to the Executive Director by the Commission.

Historical Note
New Section R19-2-A602 renumbered from R19-2-602 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

PART B. EVENTS

R19-2-B601. Notice and Approval of Events; Publicity

A. A promoter's request to the Commission for reservation of an event date shall be made as soon as possible and shall be deemed by the Commission to be a representation by the promoter of the promoter's good faith intention to actually hold the event on that date. A promoter is prohibited from requesting event dates solely for the purpose of preempting the organization of an event by others on or near the scheduled event date or for any other anti-competitive reason, which may be demonstrated by a pattern of requesting and cancelling dates.

B. The Commission's approval of an event shall constitute a license to conduct, hold or give an unarmed combat event. A promoter shall not hold an event of unarmed combat unless:
1. No less than 60 calendar days before the event is held, the promoter submits to the Commission a written request for permission to hold the event, and for approval of the date for the event; and
2. The Commission has approved the request and the date for the event.

C. The Commission shall not approve an event scheduled to take place within 72 hours before a previously approved event in the same county, unless the second promoter compensates the first promoter or the Commission has determined that special circumstances exist. A promoter is required to have a commitment for an arena, and have advanced funds with respect to his or her scheduled event, in order for a promoter to have a date protected by the Commission in accordance with this rule.

D. Contracts signed by the combatants for the main event shall be filed with the Commission at least 72 hours prior to the date of the event. Contracts signed by the combatants for preliminary events shall be filed with the Commission 48 hours prior to the date of the event. Copies of all fully-executed contracts, on a form approved by the Commission, shall be filed with the Commission prior to the weigh-in.

E. Publicity for a scheduled event shall be factual and not misleading to the public. An event may not be publicized prior to approval of the event by the Commission. Tickets shall be priced and available as represented to the public. All promotion materials, both prior to and during an event, shall clearly designate the professional, amateur, or mixed status of the event.

F. The Commission shall not approve a scheduled event until the promoter discloses in writing all persons having a financial interest in the event, as defined in A.R.S. § 5-228(B), and otherwise complies with these rules insofar as they apply to promoters.

G. A written request for permission to hold an event shall include, without limitation:
1. The proposed site for the event;
2. A listing and description of all fights, with designation of all title fights to be held in the event;
3. A listing of the number of rounds per each fight, and number of contestants; and
4. If the event will be televised, the date and network on which the program will be premiered, and the date and network of second showings, if known.

H. The event permit fee required by the Commission, pursuant to R19-2-C603(C), shall be submitted with the application. The Commission shall return the fee if the permit is not approved. The failure of the promoter to notify the Commission of a cancellation at least 30 calendar days before the date of the event shall result in the forfeiture of the permit fee and may subject the promoter to disciplinary action, provided that, if the promoter is able to schedule another date that is acceptable to the Commission, the permit fee shall apply to the rescheduled event.

I. In determining whether to approve a permit for an event of unarmed combat, the Commission may take into account any factors that affect the best interests of the combatants, the state, the industry, and the Commission.

J. A promoter who wishes to present an event of unarmed combat for charitable purposes shall file with the Commission an application for a permit to present the event.
1. The application shall contain the name of the charity, charitable fund, or organization which is to benefit from the event, with evidence satisfactory to the Commission that the benefitted organization is recognized as exempt from federal income tax pursuant to the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), and the amount or percentage of the receipts of the event which is to be paid to the charity.
2. Within 10 days after such an event is held, the promoter shall furnish to the Commission a certified itemized statement of the receipts and expenditures in connection with the event and the net amount paid to the charitable fund or organization. If the promoter fails to file the statement within the prescribed time, the Commission:
   a. May suspend or revoke the promoter's license, or impose a civil penalty; and
   b. May thereafter refuse to issue a permit to the promoter for the holding of any event of unarmed combat for charitable purposes.

K. The Commission may waive any deadline requirements if good cause is shown and the Commission can accommodate the request.

L. If approval of events has been generally delegated to the Executive Director, the Executive Director may defer the approval of a specific event to the Commission.

Historical Note
New Section R19-2-B601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B602. State Championships

A. The Commission may approve a contest as one for a state championship where:
1. One of the contestants is a bona fide resident of Arizona and the other is either:
   a. Also a bona fide resident of Arizona; or
   b. A resident of California, Nevada, Texas, Utah, Colorado, or New Mexico, who has fought in Arizona at

least two times within the 12-month period prior to the time the Commission's approval is requested.

2. The contestants are qualified to fight for a state championship by virtue of demonstrated ability and record, and
3. The contestants make the weight for the pertinent weight classification at the weigh-in.

B. The Commission shall determine how many rounds are appropriate for any state championship contests.

C. A contest may not be promoted as one for a state championship, or as a state championship elimination, without the prior consent of the Commission.

D. State championships shall be defended in Arizona.

E. The Commission may vacate a state championship title for violation of these rules.

Historical Note

New Section R19-2-B602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B603. Duty of Matchmakers

A. Matchmakers shall use due diligence to determine and report to the Commission in writing, on a form to be provided by the Commission, no later than 48 hours prior to a scheduled event, the following information:

1. The true identity of contestants;
2. The contestant's complete record, including the date and result of the last contest engaged in by the contestant and any fight or medical records obtained from commissions in other states (the Commission has the discretion to disregard non-sanctioned bouts, in the interests of the industry or the health and safety of combatants);
3. Whether contestants are under suspension from any unarmed combat regulatory commission; and
4. The ability of the contestants to compete.

B. Matchmakers shall be held responsible for the making of mismatches. For the protection of contestants and the public, repeated making of mismatches is grounds for discipline, up to and including civil penalties and suspension or revocation of a matchmaker's license. The Commission reserves the right to disapprove any matches that are deemed by the Commission to be mismatches.

C. The matchmaker's cost of obtaining any fight or medical records from regulatory bodies in other states shall be charged back to the promoter unless the promoter has supplied the Commission with the requisite information.

D. Matchmakers shall verify that all matched fighters, trainers, seconds, or other persons involved in a proposed match are licensed in accordance with these rules.

Historical Note

New Section R19-2-B603 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B604. Insurance for Contestant

For each contestant, a promoter shall provide to the Commission proof of insurance that complies with A.R.S. § 5-233.

Historical Note

New Section R19-2-B604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B605. Selection and Payment of Officials

A. Any referees, judges, timekeepers, ringside physicians, and inspectors shall be finally selected by the Commission and notice of the selections shall be provided to the promoter or matchmaker 36 to 48 hours prior to the scheduled event. The Executive Director shall ensure that all officials receive compensation from the promoter immediately after the last scheduled bout in accordance with the Commission's fee schedule. The fee schedule shall be made known to the promoter before the scheduled event when requested by the promoter.

B. A promoter or matchmaker may protest the assignment of officials only upon specific grounds submitted to the Commission in writing no less than 24 hours prior to the start of the scheduled event.

C. Referees shall be given a physical examination by the ringside physician before officiating a contest.

D. A promoter may be disciplined, up to and including license revocation, if rules of selection of officials and participants are not followed for an event.

1. Bouts may only be arranged by a promoter or a matchmaker licensed by the Commission.
2. Every combatant and announcer selected by the promoter shall be licensed by the Commission. The promoter's selection of announcer shall be approved by the Commission.

Historical Note

New Section R19-2-B605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B606. Commission Seating at Events

As designated by the Executive Director, the promoter shall provide a table and front row or contiguous ringside seating for Commission members, the Executive Director, and those officials assigned to work the event, including the judges, timekeepers, ringside physicians, or other staff. Commission representatives or officials who will be working the event have priority for ringside seating with a table.

Historical Note

New Section R19-2-B606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B607. Ticket Manifest, Collection, Accounting

A. General requirements.

1. Admission fees shall be charged for every unarmed-combat event. Tickets may also be sold for an exhibition if approved by the Commission.
   a. The right of admission to any event of unarmed combat shall not be sold to a person unless that person is provided with a ticket.
   b. Every ticket shall have the price, name and date of the event, and name of the promoter plainly stated on it. Every ticket stub shall state the price.
2. No admission fees shall be charged for any event until:
   a. The promoter achieves compliance with occupant load, fire apparatus and exits, aisle spacing, and other building and fire code permissions or approval required by the relevant regulatory authorities, and provides verification of such approval to the Commission upon request; and
   b. The Commission issues a permit for the event.
3. No later than five days after the completion of an event, a promoter shall provide the Commission with an electronic ticket manifest or an accounting from each ticket agent as follows:
   a. The manifest shall list the total number of tickets issued and the number of tickets in each price category. The manifest shall account for any tickets that are overprints, changes, or extras. The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete.
   b. If tickets issued are sold through a system that cannot produce an electronic manifest, an accounting from each ticket agent of the total number of tickets

in each price category shall be provided. The accounting shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the accounting is accurate and complete.

4. A promoter shall ensure that tickets are distributed only through ticket vendors specified by the promoter. Notwithstanding the above, a promoter may provide tickets to contestants for sale to friends or family.
5. The Commission shall, upon request, provide the Department with the names and contract information for all ticket agents and vendors.

B. Reduced-price tickets. A promoter shall ensure that the actual price of tickets sold for less than the printed price is plainly displayed by over-stamping or other mechanism on the printed face of the ticket and ticket stub, and the tickets are itemized correctly on the ticket manifest.

C. Complimentary tickets.

1. A promoter shall ensure that the total number of complimentary tickets does not exceed the maximum number of tickets specified under A.R.S. § 5-104.02(D). This maximum number shall be referred to as the "Cap."
2. Complimentary tickets in excess of the Cap are treated as non-complimentary and shall be subject to the levy on attendance under subsection (D).
3. If complimentary tickets are provided from different price categories, the amount of money that shall be exempt from the attendance levy (the "Total Exemption") shall be calculated in the order of highest to lowest priced tickets, as follows:
   a. The Cap under Subsection (C)(1) shall be computed;
   b. Highest-priced complimentary tickets are classified as Tier 1 tickets, and complimentary tickets in successively lower levels of price categories are classified as Tier 2 through Tier X, as needed;
   c. If the Cap is less than the number of Tier 1 tickets, then the Total Exemption shall be equal to the Cap multiplied by the price of the Tier 1 tickets, and no further calculation need be made;
   d. If the Cap is higher than the number of Tier 1 tickets, then the next highest Tier shall be applied, in whole or in part, to reach the Cap, and the calculation shall continue in that manner until the total Cap is met;
   e. The number of complimentary tickets in each Tier used to satisfy the Cap shall be multiplied by the price of the tickets in that Tier to determine the Tier Exemption;
   f. The Total Exemption for the event shall be the sum of Tier Exemptions.
4. The word "Complimentary" shall be plainly displayed on complimentary tickets and ticket stubs .

D. Ticket accounting and levy payment. Representatives of the promoter and Commission shall meet within 10 days after an event to account for all tickets sold and pay the required attendance levy.

1. The promoter shall provide the Commission with the following information on the Commission's attendance levy form:
   a. The number of tickets sold and unsold in each price category;
   b. The amount of the gross receipts calculated using the printed price on each ticket sold; and
   c. The signature of the promoter, certifying that the information is true and correct.
2. The Commission shall consider as sold any tickets listed as issued, but not reported as being unsold.
3. The promoter shall pay the Department an attendance levy of 4% of the gross receipts after the deduction of city, state, and federal taxes, of the event.

Historical Note
New Section R19-2-B607 renumbered from R19-2-603 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B608. Annual Bond, Event Bond, Claims

A. Annual bond under A.R.S. § 5-228(E).

1. The approval of a promoter's license is contingent upon deposit of the annual bond with the Department .
2. Upon written request of the promoter, the Commission may release the promoter from the annual bond requirement, if the Commission determines that the promoter has satisfied all past obligations and is not planning additional events for that year.

B. Event bond under A.R.S. § 5-229(B).

1. The Commission shall notify the promoter in writing of the imposition and amount of an event bond and the promoter shall deposit the bond with the Commission no later than 48 hours prior to the event. The Commission shall retain the event bond until the promoter has satisfied all obligations for the event, at which time the Commission shall return the bond to the promoter.
2. If an event is not held, the promoter shall notify the Commission, not later than 22 business days after the scheduled event, whether the promoter's obligations for the event have been satisfied, at which time the promoter's event bond can be returned.

C. Commission claim. If a promoter fails to comply with payment of the attendance levy on gross receipts under R19-2-B607(D), the Commission shall notify the promoter and the Department. Notification to the promoter shall be made by registered or certified mail, return receipt requested, and shall state that:

1. The unpaid levy on gross receipts shall be paid within 10 business days from receipt of the notice; and
2. If the payment is not received within the 10 business days, forfeiture proceedings against the bond may be initiated based on the Commission's determination of whether a promoter's obligations have been faithfully performed.

D. The Department and Commission shall not release any bond for which a claim is pending.

Historical Note
New Section R19-2-B608 renumbered from R19-2-604 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-B609. Payment of Contestants

A. All contestants shall be paid in full according to their contracts, and no part or percentage of their remuneration may be withheld except by order of the Commission, nor shall any part of their remuneration be returned through arrangement with the combatant or the combatant's manager to any matchmaker or promoter.

B. Payment shall be made immediately after the event under the supervision of a Commission representative.

C. In cases where the Commission does not require an event bond, the promoter shall execute an assignment in favor of the Commission of box office proceeds to the extent necessary to secure the payment of purses. Such assignment is a condition precedent to the approval of an event. When all contestants have been paid, the assignment shall be returned to the promoter and the promoter shall be released therefrom.

Historical Note
New Section R19-2-B609 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

PART C. LICENSING AND DISCIPLINE

R19-2-C601. Licensing, General Requirements

A. An application for a license for every industry combatant, promoter, matchmaker, inspector, manager, second, including trainers and cutmen, referee, judge, timekeeper, announcer, or physician, shall be made in writing on a form supplied by the Commission and signed by the applicant under penalty of perjury. The Commission shall accept electronic signatures on applications, which may include faxed signatures, electronic facsimiles of signatures, or any other electronic methods that comply with state policy and are designed to facilitate the application process for the public. The Commission, in its discretion, may act on an applicant's request for a license before the form is submitted, but a license shall not be issued to the applicant until the applicant complies with the licensing requirements pursuant to this Section. Issuance of a license is in the reasonable discretion of the Commission.

B. Every combatant shall be licensed prior to participating in any event, with the exception of those individuals excluded under A.R.S. § 5-222.

C. All licenses shall expire on December 31 at midnight on the year of their issuance and each licensee has the responsibility to apply for renewal prior to such expiration. A combatant may petition the Commission for waiver of medical licensing requirements upon renewal if the combatant fulfilled those requirements within 90 days prior to December 31.

D. Before issuing a license, the Commission or its staff may require an applicant to provide independent proof of the applicant's true identity, fingerprints, and other material information requested on the license application or otherwise required by the Commission.

E. An applicant for an official's license shall submit to the Commission a signed copy of the Commission's Code of Ethics and Conduct for the type of license being sought, acknowledging that the applicant has read and understands the Code, and agrees to comply with its terms.

F. Each license issued is subject to the conditions and agreements set forth in the application.

G. The applicant shall demonstrate to the satisfaction of the Commission an understanding of the Commission's drug testing program, including, without limitation, an understanding of anti-doping violations and the penalties for those violations.

H. The Commission may require an applicant to appear before the Commission to answer questions or provide documents in conjunction with an application for a license.

I. Expenses necessarily incurred by the Commission in the investigation of an applicant shall be charged back to the applicant.

J. The Commission may take disciplinary action or refuse to issue or renew a license for those reasons stated in A.R.S. § 5-235.01, or if the applicant:

1. Has violated any industry laws or regulations of any other state;
2. Does not possess a good reputation or moral character, or demonstrates a lack of honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render adverse action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder;
3. Has an industry license that has previously been suspended, revoked, or denied in this or other jurisdictions;
4. Does not, in the sole discretion of the Commission, possess the health, fitness or skills to safely participate in the industry;
5. Has committed any actions that would be grounds for discipline under R19-2-C605; or
6. Is not qualified to be granted a license or permit, based on the best interest of the safety, welfare, economy, health, and peace of the industry or the people of the state of Arizona.

K. A manager need not obtain a manager's license if the manager is not a resident of Arizona and comes into Arizona for the sole purpose of working the corner of the manager's combatant. A second's license is sufficient.

L. A licensed manager may act as a second.

M. A manager or promoter contract shall not be recognized by the Commission as valid unless the parties to the contract are licensed. Such contracts shall be in a format approved by the Commission.

N. Prior to licensing, a promoter or matchmaker shall provide to the Commission:

1. A copy of any agreement with a combatant that binds the applicant to pay a fixed fee or percentage of gate receipts to the combatant;
2. If a business entity, a list of all persons who control 25% or more of the entity;
3. If a corporation, a copy of the latest financial statement of the entity; and
4. A copy of the insurance contract required by A.R.S. Title 5, Chapter 2, Article 2.

Historical Note
New Section R19-2-C601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C602. Licensing Time-Frames

A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.
3. If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may submit a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. If the Commission makes a comprehensive written request for additional information, the applicant shall

submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to timely provide the information identified in the written request, the Commission shall consider the application withdrawn.

2. The Commission shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

New Section R19-2-C602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C603. License Fees

A. The following applicants shall complete an authorized fingerprint card and pay a fingerprint processing fee per A.R.S. § 41-1750(G)(2) and (J): inspectors, ringside physicians, judges, timekeepers, referees, managers, matchmakers, and promoters.

B. Fees for the issuance of annual licenses shall be as follows:
1. Promoters, $400;
2. Matchmakers, $125;
3. Managers, $100;
4. Inspectors, judges, referees, timekeepers, announcers, and ringside physicians, $30;
5. Cutmen, professional combatants, trainers, and seconds, $25; and
6. Amateur combatants, $10.

C. At the time an event permit request is submitted for Commission approval, the following fees for events shall be paid to the Commission:
1. $750 for non-live televised events at a venue seating 5000 persons or less;
2. $1500 for:
   a. Non-live televised events at a venue seating more than 5000 persons;
   b. Events streamed live for a charge on Facebook or other equivalent Internet broadcast; and
   c. Live televised events on cable or satellite television;
3. $2000 for live televised events on cable or satellite television that include a recognized world title bout (e.g., WBA, WBC, IBF, WBO, UFC, IBO); and
4. $4000 for live pay-per-view events on cable or satellite television (e.g., HBO, Showtime).
5. If an event has been previously approved by the Commission, any time an event date change request is submitted for Commission approval, an additional fee of $250 shall be paid to the Commission.
6. The Commission may establish a fee not to exceed $2000 for an event that is not within the categories set forth in subsections (C)(1) through (4). If a fee is initially paid for a type of event and that event type later changes to a higher fee category, the promoter shall pay the difference in fees prior to the event date.

D. The Commission shall forward license fees to, or deposit them in the account of, the Department within five business days of receipt with the following information:
1. The type of license issued;
2. The name and date of birth of the licensee;
3. The license number; and
4. The date and amount of payment received and/or deposited.

E. The Commission shall retain a current list of the licenses issued and the additional applicable licensing information and make the information available to the Department.

F. Licensing fees shall be waived for those persons who qualify for exemption under A.R.S. § 41-1080.01. For purposes of waiving licensing fees under A.R.S. § 41-1080.01:
1. The costs for background checks and fingerprint processing shall not be waived;
2. Any fees that are waived shall be fully reimbursed to the Division or Department if investigation indicates the applicant does not qualify for waiver;
3. Licensing fees may only be waived if the applicant complies with the process established by the Commission to determine eligibility and the request for waiver is submitted at the same time that the application is submitted;
4. A first-time application shall mean the first application for any license and not the first application for each separate category of license.

Historical Note

New Section R19-2-C603 renumbered from R19-2-605 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C604. Licensing Requirements Related to Ability and Fitness

A. Age and physical condition of combatant applying for license.
1. Prior to issuance or renewal of a license, an applicant for a license to engage in unarmed combat shall be examined by a physician approved by the Commission, and satisfy the Commission that the applicant has the ability to compete, if the applicant:
   a. Reached 36 years of age or will reach 36 years of age during the licensing year;
   b. Has not competed in unarmed combat for at least 36 consecutive months; or
   c. Has any medical, physical or mental unfitness that could affect the applicant's safety or welfare if the applicant were licensed.
2. The Commission may revoke, suspend, or refuse to issue or renew the license of any combatant because of injury or unfitness that could affect the safety or welfare of the licensee or other industry participants. The combatant's license shall be reinstated when and if the Commission, in its sole discretion, determines that the injury or unfitness has been resolved. The Commission may consult with a physician selected by the Commission in making this determination.
3. The Commission shall not issue or renew a license to engage in unarmed combat to an applicant or combatant who is found to be blind in one eye or whose vision in one eye is so poor that a physician recommends that the license not be granted or renewed. This rule applies regardless of how good the vision of the applicant or combatant may be in the other eye.
4. Together with the medical exams required by A.R.S. § 5-228(F)(1) - (5), an applicant shall submit to testing as follows:
   a. Before the Commission issues a license, the applicant shall undergo a base-line concussion examination conducted or supervised by a physician who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17. The base-line concussion examination shall consist of any neurological testing protocol approved by the American Academy of Neurology, that includes

the following tests, or the reasonable and recognized equivalent to the following tests:

i. A Post-Concussion Symptom Scale (PCSS), to determine if the applicant is exhibiting any current symptoms that may be related to concussion;

ii. A recognized quantitative test of cognition, such as the Cogstate Computerized Cognitive Assessment Tool (CCAT), ImPACT, or the Standardized Assessment of Concussion (SAC);

iii. A recognized quantitative test of oculomotor function, such as the King-Devick Test;

iv. A recognized quantitative test of balance, such as the Balance Error Scoring System (BESS), the Rhomberg test, pronator drift, or the timed tandem gait test.

b. Every ringside physician, trainer, second, or cutman present at an event, and every trainer present at a practice session, has the responsibility of acting as a "spotter" and notifying the Commission if the spotter reasonably suspects that a combatant has suffered a head injury or concussion. A spotter's knowing failure to notify the Commission of a suspected head injury or concussion of a combatant shall result in discipline, up to and including revocation. A spotter who, in good faith, reports a suspected head injury or concussion shall be immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this subsection, except in cases of gross negligence, intentional misconduct, or wanton or willful neglect. A referee or a ringside physician shall be responsible for stopping a bout if he or she suspects that a combatant has a head injury or concussion.

c. The license of every combatant who is suspected of having a head injury or concussion shall be suspended until he or she undergoes a post-injury concussion assessment, and is able to provide to the Commission clearance from his or her treating neurologist that the combatant is cleared to resume participation in the sport of unarmed combat. The post-injury concussion assessment shall consist of the same testing used to perform the base-line concussion examination required above, and shall be compared to the base-line test to determine the concussion status of the combatant.

5. The Commission may hold a hearing to determine whether the license should be denied, granted or renewed, or granted or renewed on a conditional basis, in view of the applicant's ability and fitness.

6. All combatants shall have attained their 18th birthday before being licensed.

B. Drug testing and anti-doping.

1. It is the duty of each combatant to ensure that no prohibited substance enters the combatant's body, and a combatant is strictly liable for the presence of any prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen. To establish a violation of this Section, it is not necessary to establish that the combatant intentionally, knowingly or negligently used a prohibited substance or that the combatant is otherwise at fault for the presence of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen.

2. At any time upon request by the Commission or its representative, whether in or out of competition, a combatant shall submit to a drug test.

a. A test of any sample or specimen of a combatant may be performed by a laboratory approved by the Commission or a laboratory approved and accredited by the World Anti-Doping Agency. Approval by the Commission will be based, in part, on whether the laboratory has implemented the *International Standard for Laboratories* and the *Decision Limits for the Confirmatory Quantification of Threshold Substances*.

b. The sample or specimen taken for testing will be referred to as the primary sample. The combatant may request that another sample be collected and preserved, which shall be referred to as the secondary sample.

3. A combatant who utilizes, applies, ingests, injects, or consumes by any means, or attempts to utilize, apply, ingest, inject, or consume by any means, a prohibited substance or prohibited method, whether successful or not, commits an anti-doping violation and is subject to disciplinary action by the Commission. An anti-doping violation is established when:

a. Analysis of either the primary or secondary sample indicates that one or both of the samples contains any quantity of a prohibited substance or its metabolites or markers, even if the results of testing on both samples is not identical regarding the amount.

b. A combatant, without compelling justification, refuses or fails to submit to the collection of a sample or specimen upon the request of the Commission or its representative or who otherwise evades the collection of a sample or specimen.

c. An in-competition combatant possesses any prohibited substance or prohibited method, or an out-of-competition combatant who possesses any prohibited substance or prohibited method which is prohibited out of competition.

4. A combatant does not violate the provisions of this Section if:

a. The quantity of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen does not exceed the threshold established in the prohibited list for the prohibited substance or its metabolites or markers.

b. The special criteria in the prohibited list for the evaluation of a prohibited substance that can be produced endogenously indicate that the presence of the prohibited substance or its metabolites or markers found to be present in the sample or specimen of the combatant is not the result of the combatant's use of a prohibited substance.

c. If one sample is conclusively positive and one is conclusively negative, and there is no reasonable explanation for the variance.

5. A combatant commits an anti-doping violation and is subject to discipline by possessing any prohibited substance or prohibited method in or out of competition. Any other licensee who possesses a prohibited substance or prohibited method and who is in direct contact with a combatant at the time of possession, has also committed an anti-doping violation.

6. For the purposes of this Section, "possession" means actual physical or constructive possession of the prohibited substance or prohibited method. "Constructive pos-

session" means exclusive control or the intent to exercise exclusive control over a prohibited substance or prohibited method or the premises on or in which a prohibited substance or prohibited method is located.

7. The following are anti-doping violations if committed by any means, and will subject a licensee to discipline:
   a. Supervise, facilitate, or participate in the use of a prohibited substance or prohibited method by another person;
   b. Sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person; or
   c. Possess with the intent to sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person.
8. A physician or other bona fide medical personnel who provides or supplies a prohibited substance or prohibited method to a combatant, or who supervises, facilitates or otherwise participates in the use or attempted use of a prohibited substance or prohibited method by a combatant, for genuine and legal therapeutic purposes or any other purposes deemed appropriate by the Commission, is not in violation of this Section.
9. The Commission will report any violation of this Section that also violates any other law or regulation of this state to the appropriate law enforcement, administrative, professional or judicial authority.
10. A combatant may obtain a therapeutic use exemption from an anti-doping violation by submitting to the Commission an application and any medical information the Commission deems necessary to determine whether to grant the therapeutic use exemption. The Commission may grant a therapeutic use exemption if the medical information provided demonstrates that the therapeutic use will not confer an unfair advantage or disadvantage on the combatant, in the sole discretion of the Commission.
    a. The Commission will not grant:
        i. A therapeutic use exemption that applies to a contest or exhibition in which the applicant has already participated; or
        ii. A therapeutic use exemption for testosterone replacement therapy or any similar therapy designed to induce or stimulate testosterone replacement.
    b. A therapeutic use exemption granted by the Commission pursuant to this Section is valid until the end of the calendar year in which it was granted, and may be renewed at the time that a combatant applies for the issuance or renewal of his or her license or at such time as the Commission determines.
11. If the Commission grants a therapeutic use exemption to a combatant, the combatant, a person who is licensed, approved, registered or sanctioned by the Commission, and any other person associated with unarmed combat in this state who acts consistently with the therapeutic use exemption, does not commit an anti-doping violation set forth under this rule.

Historical Note

New Section R19-2-C604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C605. Grounds for Disciplinary Action; Penalties

A. Disciplinary action against a person licensed by the Commission, or otherwise associated with unarmed combat in this state, may include denial, revocation, or suspension of license; ban on participation; imposition of a civil penalty; forfeiture of all or part of a purse; altering the result of a bout; or any combination of such actions as may be appropriate under the aggravating or mitigating circumstances.

B. A licensee shall be held responsible for knowing these rules and the provisions of A.R.S. Title 5, Chapter 2, Article 2 related to unarmed combat.

C. In addition to those grounds listed in A.R.S. § 5-235.01(B), grounds for disciplinary action are:
1. Violation of an order of the Commission;
2. Breach of an industry contract;
3. Where the licensee's conduct is lacking in honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render disciplinary action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2 and these rules;
4. Where the licensee has been disciplined in another jurisdiction, if the disciplinary action is ordered for conduct which relates to safety, would be a violation in this state, or tends to reflect negatively on the reputation of this state or the industry;
5. Where the licensee had knowledge or, in the judgment of the Commission, should have had knowledge that a combatant suffered a concussion or serious injury during training or an event and the licensee failed or refused to inform the Commission of that knowledge; or
6. Where the licensee has committed any actions that would be grounds for denial of license under R19-2-C601.

Historical Note

New Section R19-2-C605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C606. Effect of Discipline

A. Every promoter and matchmaker shall take notice of the suspensions or revocations listed on registries recognized by the Commission and shall not permit any person under suspension or revocation to participate in, arrange, or conduct events during the period of suspension or revocation.

B. A person whose license has been denied, suspended or revoked by the Commission is prohibited from participating in, matchmaking, or holding events during the period of denial, suspension or revocation.

C. A person whose license has been suspended or revoked is barred from:
1. The dressing rooms at the premises where any event of unarmed combat is being held;
2. Occupying any seat within six rows of the ring platform or cage; and
3. Communicating in the arena or near the dressing rooms with any of the event principals, their managers, their seconds, or the referee, whether directly or by a messenger, during any event.

D. A person who violates a provision of this subsection may be ejected from the arena or building where the event is being held, and the price paid for his or her ticket shall be forfeited. Thereafter, the person is barred entirely from all premises used for events during the contest or exhibition.

E. A manager who is revoked or under temporary suspension is considered to have forfeited all rights in this state under the terms of any contract with a combatant licensed by the Commission. Any attempt by a suspended manager to exercise those contract rights in this state shall result in a revocation of the manager's license. The Commission may also revoke a license of any combatant, matchmaker, or promoter who continues to engage in any contractual relations with a revoked or suspended manager within the state of Arizona.

F. A combatant whose manager has been suspended or revoked may continue competing independently during the term of that suspension or revocation, by personally negotiating and signing the combatant's event contracts or entering into contracts with other managers. Payment of the earnings of a combatant may not be made by any promoter to a manager who is under suspension, or to the manager's agent. Instead the purse must be paid in full to the combatant.

G. Unless otherwise specified in these rules, any applicant who has been denied a license or whose license has been suspended or revoked by the Commission shall not file a new application or application for reinstatement until one year after the date of the denial, revocation, or suspension (unless the suspension has been lifted by the Commission prior to expiration of the license) and the applicant has paid in full all fees and fines imposed on the applicant by the Commission. The Commission may require a person who has had his or her license suspended for any period because of an anti-doping violation to submit to the Commission documentation satisfactory to the Commission that indicates that a test performed on a sample or specimen obtained from the person did not indicate the presence of a prohibited substance or the use of a prohibited method. Documentation would be unsatisfactory if the documentation creates articulable suspicion that the test may not be valid. Examples of unsatisfactory documentation include:

1. Documentation from a laboratory that does not meet the standards of R19-2-C604(B)(2)(a); and
2. Documentation that does not establish sufficient controls to eliminate the potential of tampering with samples or specimens.

H. The expiration of, or failure to obtain, a license from the Commission does not deprive the Commission of jurisdiction to:

1. Proceed with an investigation of any person associated with unarmed combat in this state;
2. Proceed with an action or disciplinary proceeding against any person associated with unarmed combat in this state;
3. Render a decision to suspend or revoke the license, approval, registration or sanctioning, or the privilege to obtain such license, approval, registration or sanctioning, as applicable; or
4. Otherwise discipline any licensee, person approved, registered or sanctioned by the Commission, or any person otherwise associated with unarmed combat in this state, including, without limitation, banning such a person from participation in unarmed combat in this state for any period of time, including, without limitation, a lifetime ban from participation in unarmed combat in this state.

Historical Note

New Section R19-2-C606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C607. Civil Penalties

A. The Commission shall notify the Department in writing if a licensee is issued a civil penalty under A.R.S. § 5-235.01(A)(3) or (C).

B. Upon receipt, the Commission shall immediately forward the civil penalty to the Department for deposit.

C. Failure to pay a civil penalty of any kind shall result in a suspension of a license until the penalty is paid.

Historical Note

New Section R19-2-C607 renumbered from R19-2-606 and amended by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C608. Appeal, Rehearing, or Review of Decision

A. Except as provided in subsection (I), any party in a contested case before the Commission who is aggrieved by a decision rendered in such case by the Executive Director may file with the Commission, not later than 10 days after service of the decision, a written motion for appeal of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business; or by electronic mail if the party has agreed to receive electronic notifications.

B. An appeal, or a motion for rehearing or review under this rule may be amended at any time before it is ruled upon. A party shall provide a copy of any pleading on all opposing parties or parties who may be directly affected by the issues presented, and the pleading shall contain a certification of delivery to listed recipients. A response may be filed by any other party within 10 days after delivery of such pleading on the other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. The Commission may affirm or modify the decision, or grant a rehearing to all or any of the parties, on all or part of the issues for any of the following reasons materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings that causes the moving party to be deprived of a fair hearing;
2. Misconduct of the Commission or its hearing officer or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; or
7. The decision is not justified by the evidence or is contrary to law.

D. If a rehearing is granted, the Commission may hear the case or may refer the case to the Office of Administrative Hearings. The decision of the administrative law judge becomes the decision of the Commission unless rejected or modified by the Commission in accordance with A.R.S. Title 41, Chapter 6, Article 10. A decision of the Commission at this level of review is a final decision.

E. Except for a decision under subsection (I), a rehearing or review of the final Commission decision shall be requested in order for the aggrieved party to have the right to appeal under A.R.S. Title 12, Chapter 7, Article 6. The Commission shall rule on the motion for rehearing or review within 15 days after the response to the motion is filed or at the Commission's next meeting after the motion is received, whichever is later.

F. Not later than 10 days after a decision is rendered, and after giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party.

G. Any order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits,

which period may be extended by the Commission for an additional period not exceeding 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

I. If, in a particular decision, the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commission's final decisions under A.R.S. Title 12, Chapter 7, Article 6.

J. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

K. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission, such statutory provisions shall govern.

L. The Commission may deny a petition or application that is not filed in accordance with this Section without a hearing.

M. The final result of an unarmed combat bout, even if based upon errors of judgment of the referee or the judges, shall not be overturned or modified by the Commission unless there is substantial evidence that the following have occurred:

1. The compilation of the scorecards of the judges shows an error if such error would result in the win being given to the wrong contestant; or
2. There has been fraud or collusion affecting the result.

Historical Note

New Section R19-2-C608 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions

A. All sanctioning organizations that are required to be approved under A.R.S. § 5-222(A)(4) shall be registered with the Commission. A sanctioning organization that is required to be registered shall submit to the Commission:

1. A completed application for registration on a form provided by the Commission;
2. A complete set of rules adopted by the sanctioning organization to govern the particular discipline, which must be substantially equivalent to the rules of this Article 6 with regard to safety of the combatants; and
3. An application or renewal fee of $1,000.

B. A sanctioning organization that is required to be registered may have its registration denied, revoked, suspended, or conditioned by the Commission for:

1. Failing to provide information as requested by the Commission or the Executive Director;
2. Failing to establish or follow its own complete set of rules;
3. Failure to dismantle and remove all equipment, ring, cage, and seating upon conclusion of an event; or
4. Any other cause for the revocation, suspension or conditioning of a license set forth in A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder.

C. A sanctioning body that is required to be registered shall not participate, directly or indirectly, in any amateur event of unarmed combat if registration is not obtained.

D. The Commission may approve one amateur sanctioning organization for each Muay Thai discipline. The Commission may limit, deny, suspend, or revoke registration of a separate organization, if the Commission, in its sole discretion, determines registration of the organization is not in the best interest of the industry.

E. The Commission may waive the requirements of subsections (A), (B), (C), and (D).

F. The provisions of this Section do not apply to professional Muay Thai events, which shall be sanctioned by the Commission, or to a professional Muay Thai promoter whose license is issued by the Commission and who is in good standing.

Historical Note

New Section R19-2-C609 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

PART D. UNARMED COMBAT RULES

R19-2-D601. General Provisions for All Unarmed Combat Disciplines

A. Applicability of requirements/alteration. This Section shall apply to all regulated unarmed combat disciplines, unless otherwise noted herein. In case of a conflict between this general Section and a provision relating to a specific discipline, the specific provision shall control. The Commission may approve the alteration of requirements of Part D if it is determined that the alteration is dictated by the event venue or by nationally-accepted rules and that the alteration will not compromise the safety of the combatants. If the rules regarding a specific unarmed combat discipline do not adequately cover an issue pertinent to that discipline, the Commission may refer to and use rules applicable to a different unarmed combat discipline as guidance.

B. Time between bouts. Unless special approval is obtained from the Commission, a contestant shall not be allowed to compete until the following time periods have elapsed:

1. Five days, if the contestant has competed anywhere in a bout of six rounds or less; or
2. Ten days, if the contestant has competed anywhere in a bout of more than six rounds.

C. Dressing rooms. The promoter shall provide contestants with dressing rooms or areas which shall be equipped with showers, be sanitary, safe, ventilated, and have sufficient seating. Separate dressing rooms shall be provided for contestants of separate genders.

D. Mouthpiece.

1. During competition, each contestant is required to wear a mouthpiece that has been fitted to the contestant's mouth. The mouthpiece shall be subject to examination by and approval of the referee. A round cannot begin without the mouthpiece in place.
2. If the mouthpiece is dislodged or spit out during the course of a round, the referee shall call time at the first opportune moment without interfering with the immediate action or the advantage the aggressor may have. As soon as it can be properly replaced, the referee shall direct a second to wash the mouthpiece and the referee shall then replace it with all deliberate speed. For professional kickboxing contests, a round will not be stopped by the loss of a mouthpiece.
3. A contestant who intentionally spits out a mouthpiece in an apparent attempt to cause the progress of a round to be interrupted is subject to penalty to be determined by the referee.

E. Stools. The promoter shall provide an appropriate number of stools or chairs for each combatant's corner. The stools or chairs shall be of a type approved by the Commission. All

stools and chairs shall be thoroughly cleaned or replaced after each bout.

F. Bell. The term "bell" shall refer to a bell, horn, gong, or other sound device approved by the Commission, which shall be positioned at a location approved by the Commission, and shall carry a clear tone so that the contestants may easily hear its sound.

G. Injured Combatants.

1. The ringside physician shall enter the fighting enclosure and examine and tend to a contestant who has been knocked out or is otherwise injured. The physician may enter at the conclusion of a bout, when called in by the referee, or when it is deemed medically necessary by the physician. The seconds of the injured contestant shall not interfere with the physician.
2. Contestants who have been knocked down and out shall be kept in a stable position until they have recovered.
3. A contestant who has been knocked out shall not be permitted to compete until the Executive Director and a physician approved by the Executive Director jointly clear the contestant's return to competition. In making this decision, the consideration of the Executive Director and the physician shall include, but shall not be limited to, the requirements under R19-2-C604(A)(3).
4. A combatant who has been knocked out three times within a 12-month period shall be suspended from competition for six months from the date of the last knockout, and must satisfy the Commission that he or she is capable of returning to competition, including, but not limited to, documenting clearance under R19-2-C604(A)(3).
5. The term "knockout" as used in this subsection includes a technical knockout that is injury-based.

H. Female Combatant. A female combatant shall not be matched or engage in a bout with a male combatant, unless approved by the Commission.

I. Weigh-in; when contestants are required to appear.

1. The weigh-in shall be held at a time and place approved by the Commission in conformance with A.R.S. § 5-225(E). It shall be supervised by a Commission representative. Promoters are required to contact the Commission at least 48 hours in advance of the weigh-in to make appropriate arrangements therefor. Contestants shall appear at the weigh-in and the failure to do so may subject the contestant to discipline, up to and including disqualification from competing.
2. Contestants shall appear at the event location at least one hour before the scheduled bout in which they will compete.
3. Contestants who are already licensed and scheduled to fight shall be present in the city of the scheduled event at least 24 hours before the event and make their presence known to the Commission.

J. Physical examination, appearance and weight.

1. Each contestant shall be required to complete a pre-fight physical examination by an appointed physician as directed by the Commission. The examining physician shall be satisfied that a contestant is in good physical condition and able to compete in the scheduled event. Each contestant shall be re-examined within one hour after the bout in which he or she has competed.
2. Facial and head hair shall not create a hazard to safety or interfere with the supervision or conduct of the event. The Commission may require alteration to facial and head hair in the sole discretion of the Commission representative at the weigh-in. Hair stays must be approved by the Commission. Jewelry and piercing accessories are prohibited during competition.
3. A contestant who exceeds his or her contractual weight by more than one pound at the weigh-in is in breach of his or her contract. At the discretion of the Commission, the contestant may be permitted a second opportunity to make the weight within two hours. In the alternative, the Commission may impose a penalty consisting of a forfeiture of no more than 20% of the gross purse. Penalty amounts may be added to the purse of the contestant's opponent.
4. There shall be allowed variations in weight allowances and weight classes in non-championship fights, if both contestants and the Commission approve the variation.

K. Illness and absence.

1. Whenever a contestant, because of injuries or illness, is unable to take part in an event for which the contestant is under contract, that contestant or the contestant's designated representative shall immediately report that fact to the Commission. The Commission may then require the contestant to submit to an examination by a physician. The examination fee of the physician shall be paid by the contestant, or by the promoter, if the latter requests the examination.
2. Any contestant who fails to appear for an event in which the contestant is under contract shall be subject to disciplinary action, unless the contestant has submitted to the Commission a written valid excuse or physician's certification of illness or injury in advance of the event.

L. Substances.

1. It is prohibited for drugs, injections, intravenous fluids, or stimulants to be administered to, possessed by, or used by, a contestant during, or within 24 hours preceding an event. This includes smelling salts, ammonia capsules, or similar irritants. Caffeine or caffeinated beverages cannot be consumed during or within two hours before a fight.
2. The Commission may order anti-doping examinations immediately before and/or after the event. A sample (blood, breath, or urine) shall be provided, using sterile containers, in the presence of the Commission representative, the physician appointed by the Commission, or his or her appointee; and a representative of the combatant.
3. During an event, administering to a contestant any substance other than plain water or Commission-approved electrolyte drinks is absolutely prohibited.
4. Coagulants such as adrenalin 1/1000, and others expressly approved by the ringside physician, may be used between rounds to stop bleeding of cuts. "Iron type" coagulants, such as Monsel's solution, are absolutely prohibited and shall be grounds for disqualification.
5. In the discretion of the referee, a small amount of petroleum jelly may be used around the eyes. The use of lubricants, grease, or any other foreign substance on the arms, legs, or body is prohibited. The referee of a Commission representative has the right to require the removal of excessive lubricants or other foreign substances.

M. Inspectors.

1. The Commission shall appoint a minimum of one chief inspector for each event for the purpose of overseeing and coordinating the activities occurring in the dressing rooms with the activities occurring at ringside and the television coordinator.
2. Chief Inspectors shall:
   a. Enforce the rules regarding hand wraps, glove weights and types, approved substances, and equipment and supplies that must be in the corner during a

match, conduct of the seconds in the corner during the match, how a fight may be stopped by the chief second, and drug test administration;

b. Have drug testing kits, tape, pens, gloves, and other equipment available and in good working condition, for use by the Commission; and

c. Ensure that the promoter has provided the required emergency medical personnel and their equipment.

3. The Commission shall appoint additional inspectors as necessary for each event for the purpose of overseeing, directing, and controlling the activities occurring in the dressing room and at ringside.

4. Inspectors shall know and follow these rules and the Inspector's Training Guidelines provided by the Commission.

N. Presence of medical assistance.

1. At least one licensed physician shall be assigned to cover every contest, and shall sit at the immediate ringside of all bouts, unless the Commission determines that more than one assigned physician is necessary to protect the safety of fighters or promote the success of the event. No bout shall be allowed to proceed until at least one assigned physician is seated ringside. No assigned ringside physician shall leave the fighting venue until the dressing rooms are cleared after the final bout. Every assigned ringside physician shall be prepared to assist if any serious emergency arises and shall render temporary or emergency treatments for cuts and minor injuries sustained by the contestants.

2. No manager or second shall attempt to render aid to a contestant during the course of a round before the assigned ringside physician has had an opportunity to examine the contestant who may have been injured.

3. No event shall take place, whether amateur, professional, or both, without a team of fully equipped, qualified paramedics and a paramedic ambulance (collectively, a "paramedic unit") present at the event venue for each bout at all times.

a. If a paramedic unit leaves the site of the event to transport an unarmed combatant to a medical facility, the unarmed combat event must not continue until another paramedic unit is present and available. If the event cannot be stopped, as in the case of a televised event, the promoter shall make prior arrangements to ensure that there will be a paramedic unit present at all times, including arranging for the presence of additional paramedic units at the event start.

b. If a paramedic unit is not available because of the location of the site, the highest level of paramedic assistance and transportation in that location shall be present, able, and available to treat and transport an unarmed combatant to a medical facility.

c. The medical personnel described in this subsection shall be designated to render service only to the unarmed combatants in the event, and shall be positioned in a location that is deemed appropriate by the ringside physician.

d. Each promoter shall give notice of the event to:

i. The paramedic-unit companies that are located nearest to the site of the event and ascertain from the service the length of time required for one of its ambulances to reach the site; and

ii. The nearest hospital emergency room.

e. For purposes of this subsection, an event of unarmed combat begins with the commencement of the first bout and ends when the last unarmed combatant leaves the site.

f. The Commission may waive all or part of the paramedic unit requirement, in its discretion, if the person requesting the waiver demonstrates that adequate alternative medical facilities are readily accessible.

O. Conduct of seconds.

1. A contestant may have up to three seconds and shall designate to the referee which of them is the chief second. The chief second is responsible for the conduct of the assistant seconds. Only one second can be inside the ring during a period of rest, unless a greater number is approved by the Commission, except that there may be two seconds in the ring during a Muay Thai rest. The Commission, in its sole discretion, may approve an increase in the number of seconds to four in a championship contest or in a special event.

2. A second shall remain seated outside of, and shall not enter, the fighting area or stand on the apron during the progress of a round. A second shall not administer aid to a contestant during a round. During an officially interrupted round, a second may stand on the apron only with the express permission of the referee.

3. Seconds shall not interfere with the progress of a round, for example, by banging on the apron or excessive coaching. The referee has the discretion to disqualify a second whose conduct is interfering with a bout.

4. Any excessive or undue spraying or throwing of water on a combatant by a second during a period of rest is prohibited.

5. A chief second may signal a referee to stop the fight in the manner approved by the Commission.

P. Referee.

1. The referee shall have direction and control over contestants and their seconds during a bout subject to the governing laws and rules. The referee shall have final authority to decide if an injury is produced by a fair or foul blow and if an act is intentional or accidental. The referee shall have final authority to stop a bout when in the referee's opinion a contestant is unfit to continue or otherwise cannot compete. When instant replay is available, the referee, in the referee's sole discretion, may utilize the instant replay to determine the actual result of the fight-ending sequence in the case where a fight has been officially stopped and the result may have been caused by any type of foul, under the following rules:

a. A fight-ending sequence shall mean the final exchange of strikes or maneuvers that results in the ending of a bout.

b. The referee, and only the referee, may use the instant replay if the referee indicates to the Commission the need to do so ("Call for Replay Review") within three minutes from the stoppage of the fight.

c. The referee may have no more than five minutes to review the fight-ending sequence once the instant replay is made available and shall make a final decision within that period of time.

d. The information obtained from the replay shall not be used to restart the fight as the fight is officially over and cannot be resumed.

e. If there is technical difficulty in accessing the instant replay that cannot be resolved within 10 minutes of the Call for Replay Review, the referee's initial determination shall be final.

f. Instant replay shall not to be used by any party to challenge the decisions of the referee.

2. In the case of a cut or other injury which the referee believes may be incapacitating, the referee may consult with the ringside physician before making a decision and may interrupt a round and have the clock stopped for this purpose. The Referee shall notify Commission representatives of any cuts or injury observed, regardless of the severity of the injury.
3. When a contestant is incapacitated because of a foul, the referee has the discretion to interrupt a round and have the clock stopped for up to five minutes to enable the contestant to recover.
4. If the referee reasonably suspects that the contestants are not honestly competing, the referee shall stop the bout and declare a "no contest." Purses of both contestants shall be held pending investigation and disposition by the Commission, in its sole discretion.
5. Prior to giving a warning for rule infringement, the referee shall stop the fight, use the correct warning signal to ensure the contestant's understanding and then indicate the offending contestant to the judges. Any contestant, who is warned three times or more, may be disqualified.
6. The referee shall pick up the count for knock downs from the timekeeper by the fourth second.
7. The referee shall provide a 10-second warning to the seconds to leave the fighting area. The seconds must be out of the fighting area when the bell rings.
8. Should the contestant causing a knockdown fail to stay in the farthest neutral corner during the count, the referee shall cease counting until the contestant has returned to that corner. The referee shall then go on with the count from the point at which it was interrupted.
9. The referee shall wave both arms to indicate that a contestant has been counted out or cannot otherwise continue.
10. The referee shall raise the hand of the winner at the end of the bout.

Q. Judges.

1. The judges shall be independent and free to score according to the rules and normal practice.
2. Each judge shall sit separately from each other and from the audience.
3. The judges shall remain neutral during the match. However, a Muay Thai judge may notify the referee of a rule violation during the round interval.
4. At the end of each round, the judges shall complete the score card for that round.
5. The judges are not allowed to leave their seat until the match ends and result has been announced.

R. Type of results. Unless otherwise indicated in these rules, the following result types apply to every unarmed combat discipline regulated by the Commission:

1. A knockout occurs by failure of a combatant to rise from the canvas. The failure to resume fighting after a rest period shall be considered as if a knockout or technical knockout occurred in the next round.
2. A technical knockout occurs when:
   a. The referee stops a bout;
   b. The ringside physician stops a bout; or
   c. An injury as a result of a legal maneuver is severe enough to terminate a bout.
3. A decision via score cards occurs when there is no knockout or technical knockout. A score card decision is of three types:
   a. Unanimous – when all three judges score the bout for the same contestant;
   b. Split Decision – when two judges score the bout for one contestant and one judge scores for the opponent; or
   c. Majority Decision – when two judges score the bout for the same contestant and one judge scores a draw.
4. A draw is of three types:
   a. Unanimous – when all three judges score the bout a draw;
   b. Majority – when two judges score the bout a draw; or
   c. Split – Where one of the three judges scores the contest in favor of one fighter, another judge scores the contest in favor of the other fighter, and the third judge scores the contest as a draw.
5. Disqualification of a contestant who has committed fouls may occur when the referee determines that a foul was intentional, severe, or flagrant, there is a combination of fouls of any type, or the bout is terminated as a result of an injury resulting from an intentional foul. A disqualification shall result in a win for the opponent of the disqualified contestant.
6. Forfeiture may occur when a contestant fails to begin competition or prematurely ends the bout for reasons other than those listed in these rules.
7. A technical draw may occur when an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage. A technical draw will also occur when both fighters are simultaneously knocked out ("double knockout"), both contestants are in such condition that a continuance may subject them to serious injury, or, in kickboxing, an accidental foul terminates a bout during the first round.
8. A technical decision may occur when the bout is prematurely stopped due to injury and a contestant is leading on the score cards.
9. No contest may occur when a bout is prematurely stopped due to accidental injury and a majority of rounds has not been completed to render a decision via the score cards. A no contest shall render the contest a nullity, with no winner or loser.
10. In a discipline using a 10-point must system of scoring, an even 10-10 score is allowed, but shall be a relatively rare result.

S. Timekeeper.

1. The timekeeper shall keep precise timing of each round and the breaks, following the referee's instructions to start or stop, according to the rules and normal practice. A timekeeper is responsible for keeping the official time of each bout and shall:
   a. Start and end the round by striking the bell or other sound device approved for the bout.
   b. Warn contestants when there is only 10 seconds remaining in a round by the method approved for the unarmed combat discipline.
   c. Signal the end of each rest period by use of a distinctive whistle or other approved sound.
   d. Correctly regulate all periods of time and counts by a stop watch or clock, but shall only stop the clock when instructed by the referee with the command "time," then resuming timekeeping when the referee gives the command "time in."

e. Use two stop watches or clocks for regulating rounds and rehabilitation periods.
f. For all disciplines other than MMA, start the knock down count by standing and signaling to the referee, audibly and by hand gestures, the correct count in one-second intervals.

2. There is no saving by the bell during a count, except during the last round.

T. Announcer. The announcer has the responsibility to:
1. Announce the combatants' names, corner, and weight or weight class prior to the fight and again as they arrive in the ring;
2. Hold the microphone for the referee to announce the rules or guidelines;
3. Announce the round number at the start of each round;
4. Announce the correct winner's name and corner, when the referee raises the combatant's hand; and
5. Announce any other information required by the unarmed combat discipline or the Commission.

U. Gloves. The Commission may require that promoters provide, for approval, a deconstructed sample of non-certified gloves to be used in any match, together with a list of materials used to construct the gloves.

V. Bandaging.
1. As a general rule, soft surgical bandage ("gauze") and surgeon's adhesive tape ("tape") may be used to protect the hands or feet of combatants, depending on the discipline.
2. With regard to hand bandaging, tape shall be placed directly on the skin of the hand nearest to the wrist to protect that part of the hand. Said tape may cross the back of the hand twice, but shall not exceed one winding's width (for example two inches for boxing hand wraps). Bandages shall be evenly distributed across the hand.
3. Contestants shall not wet wraps or apply a substance to the wrapping.
4. Bandages and tape shall be applied in the dressing room in the presence of the inspector. Gloves shall not be placed on the hands of a contestant until the bandages are approved by the inspector. If approved by the Commission, a contestant has the right to have a second or manager witness the bandaging of an opponent's hands.
5. Variations specific to each discipline are listed in Table 2.
6. All other wraps or bandages that are not specifically allowed in these rules must be approved by the Commission.

W. Fouls. The following actions are fouls in every unarmed combat discipline:
1. Striking or abusing an official;
2. Hitting on a break, after the round has ended, or after the referee has stopped the bout;
3. Butting with the head;
4. Groin attacks of any kind;
5. Refusal to obey the commands of the referee;
6. Timidity (avoiding contact, intentionally falling down, faking an injury, intentional stalling, refusing to engage, intentionally dropping the mouthpiece, or using passive tactics);
7. Spitting or biting;
8. Use of swearing or abusive language during the event by a contestant or the contestant's representatives;
9. Eye gouging;
10. Hair pulling;
11. Strikes to the spine, back of the head, or base of the skull ("rabbit blows");
12. Interference by seconds;
13. Intentionally throwing an opponent out of fighting area;
14. Holding the ropes or onto the cage for any reason; and
15. Any unsportsmanlike conduct that, in the opinion of the referee, does, or is likely to, cause an injury to an opponent or interference with the contest.

X. Rounds.
1. A round of unarmed combat includes a period of unarmed combat immediately followed by a period of rest, with the exception that there is no period of rest after the final round.
2. The Commission may approve a variation on the standard number and duration of rounds during a bout.
3. A round only begins upon the sounding of the bell. Any stoppage during the match for any reason, will not be counted as part of the round time.

Historical Note

New Section R19-2-D601 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D602. Boxing

A. The ring. The promoter is responsible for providing a safe ring in accordance with the following:
1. The ring shall be four sided, between 16 and 20 feet per side, with two feet outside the ropes, and securely assembled.
2. The floor shall be covered with shock-absorbent padding, such as Ensolite or the equivalent.
3. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than one inch in diameter, and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.

B. Gloves. The promoter is responsible for providing boxing gloves for contestants in accordance with the following:
1. Gloves shall be 8 ounces in weight for all divisions under 135 pounds; and 10 ounces in weight for all divisions over 135 pounds, except that fighters of weight between 135 to 147 pounds may mutually agree in writing to use 8-ounce gloves. The promoter shall have two extra sets of 8-ounce and 10-ounce gloves available during an event.
2. All gloves shall be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition.
3. Gloves for title bouts shall be new and delivered to the Commission representative with the packaging unbroken.

C. Contestant's equipment and apparel. Each contestant has the duty to provide personal hand bandaging, uniforms, robe, boxing or combat shoes, abdominal guard, mouthpiece, water bottle, bucket, and towel for use during a bout, unless certain items are provided under the promoter/fighter contract. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of all contestants:
1. The contestants may not wear the same colors in the ring, without the approval of the Commission's representative. Each contestant shall have two uniforms in contrasting colors, with each uniform consisting of trunks for male contestants and a top and shorts for female contestants.
2. The belt of the trunks or shorts shall not extend above the waistline.
3. Facial cosmetics shall be prohibited.
4. Each contestant shall wear an abdominal guard that will protect him or her against injury from a foul blow. The

abdominal guard shall not cover or extend above the umbilicus.

D. Weight classes. The following traditional weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Flyweight	Less than 118
Bantamweight	118-125.9
Featherweight	126-134.9
Lightweight	135-146.9
Welterweight	147-159.9
Middleweight	160-174.9
Light Heavyweight	175-199.9
Heavyweight	200+

E. Fair blows and fouls.
1. Fair blows are delivered by a combatant with the padded knuckle part of the glove to the front or sides of the head, shoulders, arms, and front torso above the belt line of an opponent.
2. All blows that are not fair as described in subsection (E)(1) above are fouls. In addition to the foul blows listed in R19-2-D601(W), the following practices are also classified as fouls in boxing:
   a. Hitting an opponent who is down or in the process of getting up after being down;
   b. Holding an opponent with one hand and hitting with the other, or duck so low that the contestant's head is below an opponent's belt line;
   c. Holding or maintaining a clinch after directed by the referee to break, or failure to take a full step back when the referee breaks a clinch;
   d. Pushing, tripping, kicking, or wrestling;
   e. Hitting with elbows, shoulder, or forearm;
   f. Hitting with an open glove, the inside of the glove, the wrist, the backhand, or the side of the hand; and
   g. Punching an opponent's back or the kidneys (kidney punch).

F. Intentional foul.
1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of points, and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if the injured contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.

G. Accidental foul.
1. If a contestant is accidentally fouled so that the contestant cannot continue, the referee shall stop the bout and a technical decision shall be rendered in favor of the contestant ahead on points. If the points are even, or if the foul occurs in the first three rounds, a no contest shall be declared.
2. If a contestant is injured by an accidental foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, the bout will be stopped and a technical win will be rendered in favor of the contestant ahead on points. If the points are even, or if the injury occurs in the first three rounds, a no contest shall be declared.

H. Results specific to boxing.
1. In addition to the type of results listed in R19-2-D601(R), the following results are specific to boxing:
   a. When contestant is considered knocked down. A contestant is considered to be knocked down when any part of the contestant's body, other than the soles of the feet are on the canvas, or the contestant hangs helplessly on the ropes, unable to stand, or the contestant is knocked out of the ring.
   b. Counting. When the contestant is knocked down the referee shall order the opponent to the farthest neutral corner of the ring, pointing to the corner. The count shall begin by the timekeeper immediately upon the knockdown. The timekeeper, by audible counting and hand signaling, shall give the referee the correct one-second interval for the count. The referee shall pick up and audibly announce the passing of the seconds, accompanying the count with appropriate hand motions. The referee's count is the official count.
   c. Length of Count. A contestant who is knocked down shall not be allowed to resume boxing until the referee has finished counting 8 ("mandatory 8 count"). A contestant may take the count either on the floor or standing. If the contestant taking the count is not standing in a complete upright position when the referee calls the count of 10, the referee shall wave both arms indicating that the contestant has been knocked out.
   d. No saving by bell. Except in the last round, there is no saving by the bell. If a contestant is knocked down during the last 10 seconds of a round, the count shall continue after the end of the round as if the round was not ended. The one-minute rest period will begin from the time the contestant rises after the knockdown. If a contestant is knocked down during a round, and counted out after the end of a round, the knockout shall be considered as having taken place during the round which was last finished.
   e. Wiping gloves. Before a contestant resumes boxing after having been knocked down, or having slipped, to the floor, the referee shall wipe any foreign substance from the contestant's gloves before allowing the bout to resume.
   f. Three knockdowns. When a contestant is knocked down for the third time in a round, the referee shall stop the bout. The opponent shall be declared the winner. This rule shall not apply to championship contests, unless both contestants and the Commission agree that it should apply.
   g. Knocked out of ring. A contestant who is knocked or fallen out of the ring, may be helped back onto the ring apron by anyone except the contestant's manager or seconds. The contestant has a total of 20 seconds to get into the ring and rise.

I. Method of judging.
1. Three judges shall score all bouts. Under special circumstances two judges and the referee may score. The method of judging shall be the 10-point must system. In this system the better contestant receives 10 points and the opponent proportionately less, but not less than 7 points. If the round is even, each contestant receives 10 points. A fraction of points may not be given. Points for each round shall be awarded immediately after the termination of the round and not subsequently changed. Judges shall sign their scorecards.
2. After each round, the referee shall pick up the scorecards of the judges and then deliver the cards to the Commission representative assigned to check them for mathematical accuracy. When the Commission representative has completed checking the final scorecards, the representative shall advise the announcer of the decision, and the announcer shall then inform the audience of the decision over the speaker system. The Commission representative shall be present at the ring apron when checking the scorecards.

J. Rounds.
1. The number of rounds in a boxing bout shall not exceed a maximum of 12.
2. The duration of each round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

Historical Note

New Section R19-2-D602 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D603. Mixed Martial Arts

A. The fighting area.
1. Regardless of the shape of the fighting area, the fighting area canvas shall be no smaller than 518 square feet and no larger than 746 square feet. The fighting area canvas shall be padded in a manner as approved by the Commission, with at least a 1-inch layer of foam padding. Padding shall extend beyond the fighting area and over the edge of the platform. Vinyl or other plastic rubberized covering shall not be permitted unless approved by the Commission.
2. The fighting area canvas shall not be more than 4 feet above the surface upon which the fighting area is constructed and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than 6 inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting area canvas and shall be properly padded in a manner approved by the Commission.
3. The fighting area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded in a manner approved by the Commission and shall not be abrasive to the contestants.
4. The fence may provide two separate entries onto the fighting area canvas, but one entrance is acceptable.

B. Gloves. The promoter is responsible for providing gloves for contestants in accordance with the following:
1. The gloves shall be new for all main events and in good condition, or they must be replaced.
2. All contestants shall wear gloves of 4, 5, or 6 ounces in weight, approved by the Commission. No contestant shall supply their own gloves for participation, unless approved by the Commission and mutually agreed upon by the contestants.

C. Contestant's equipment and apparel.
1. For each bout, the promoter shall provide at least one clean water bucket and clean plastic water bottle in each corner.
2. Male contestants shall wear a groin guard of their own selection, of a type approved by the Commission.
3. Female contestants are prohibited from wearing groin guards, but may be required to wear a chest protector during competition, of a type approved by the Commission.
4. Gis, shirts, socks, and shoes are prohibited during competition. Each contestant shall wear MMA shorts, biking shorts, or kickboxing shorts, and women contestants shall also wear approved tops.

D. Weight classes. The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Flyweight	Less than 126
Bantamweight	126-134.9
Featherweight	135-144.9
Lightweight	145-154.9
Welterweight	155-169.9
Middleweight	170-184.9
Light Heavyweight	185-204.9
Heavyweight	204-264.9
Super-Heavyweight	265+

E. Fouls.

In addition to the foul blows listed in R19-2-D601(W), the practices addressed in subsections (E)(1) and (2) below are classified as fouls in MMA.
1. The following infractions shall receive a warning for the first instance, and thereafter shall result in a penalty:
   a. Holding or grabbing the fence;
   b. Holding an opponent's shorts or gloves; and
   c. The presence of more than one second in the fighting area during a period of rest or the presence of a second on the apron without permission from the referee.
2. The following infractions shall receive a penalty if committed at any time:
   a. Fish hooking;
   b. Intentionally placing a finger in any orifice of an opponent;
   c. Downward pointing of elbow strikes (i.e. a "12-to-6" downward elbow strike);
   d. Small joint manipulation;
   e. Heel kicks to the kidney;
   f. Throat strikes of any kind;
   g. Clawing, pinching, twisting the flesh or grabbing the clavicle;
   h. Kicking or kneeing the head of a grounded contestant;
   i. Stomping a grounded contestant, or kneeing or kicking the head of a grounded contestant;
   j. Spiking an opponent to the canvas on the opponent's head or neck; and
   k. For amateurs only:
      i. Elbow strikes to the head of a grounded opponent;
      ii. Twisting leg submissions;
      iii. Linear kicks to the knees; or

iv. Foot stomps.

3. Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
4. If a foul is committed, the referee shall:
   a. Call time;
   b. Check the condition and safety of the fouled contestant; and
   c. Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges, and the official scorekeeper of that decision.
5. There shall be no scoring of an incomplete round. If the referee penalizes either contestant, the appropriate deduction of points will occur when the final score is calculated.
6. For purposes of MMA, a "grounded" contestant occurs when any part of the contestant's body, aside from a single hand and soles of the feet, are touching the fighting-area floor. To be grounded, both hands palm/fist down, and/or other body part, will be touching the fighting-area floor. If a single knee or arm is touching the fighting-area floor, the combatant or contestant is grounded without having to have another body part touching the fighting area floor.

F. Intentional fouls. For intentional fouls, the following rules shall apply:
1. An intentional foul that does not result in an injury shall result in a deduction of one point from the offending combatant's score. If an injury results from an intentional foul, the referee shall inform the scorekeeper to deduct two points from the score of the offending contestant.
2. The offending contestant loses by disqualification if the referee determines that any of the offenses were intentional, severe, or flagrant, there is a combination of three of the fouls listed in subsection (E)(2) above, or the bout is terminated as a result of an injury resulting from an intentional foul.
3. If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the bout:
   a. The injured contestant will win by a technical decision, if the injured contestant was ahead on the score cards; or
   b. The outcome will be declared a technical draw, if the injured contestant was behind on the score cards.
4. If a contestant incurs injury while attempting to foul an opponent, the referee shall not take any action in the contestant's favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
5. If, during grappling, the contestant on the bottom commits a foul, the bout will continue to protect the superior position of the topmost contestant, unless the contestant on the top is too injured to continue.

G. Accidental fouls.
1. Accidental fouls will result in one point being deducted by the official scorekeeper from the offending combatant's score if directed by the referee.
2. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no contest, if stopped before a majority of rounds have been completed.
3. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after a majority of rounds have been completed.

H. Results specific to MMA. In addition to the type of results listed in R19-2-D601(R), bout results can include submission by:
1. Tap out, which occurs when a contestant physically uses his or her hand to indicate that he or she no longer wishes to continue; or
2. Verbal tap out, which occurs when a contestant verbally announces to the referee that he or she does not wish to continue.

I. Method of judging.
1. All bouts will be evaluated and scored by three judges.
2. The 10-point must system will be the standard system of scoring a bout. Under the 10-point must scoring system, 10 points must be awarded to the winner of the round and 9 points or less must be awarded to the loser, except for an even (10-10) round.
3. Judges shall evaluate the following MMA techniques in the following order of importance: effective striking, grappling, control of the fighting area, aggressiveness, and defense.
   a. Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
   b. Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversals. Examples of factors to consider are takedowns from standing position to mount position, passing the guard to mount position, and bottom position contestant using an active, threatening guard.
   c. Effective fighting area control is judged by determining who is dictating the pace, location, and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking, taking down an opponent to force a ground fight, creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
   d. Effective aggressiveness means moving forward and landing a legal strike.
   e. Effective defense means avoiding being struck, taken down, or reversed while countering with offensive attacks.
4. The following objective scoring criteria shall be utilized by the judges when scoring a round:
   a. A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round;
   b. A round is to be scored as a 10-9 round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;
   c. A round is to be scored as a 10-8 round when a contestant overwhelmingly dominates by striking or grappling in a round; and
   d. A round is to be scored as a 10-7 round when a contestant totally dominates by striking or grappling in a round.
5. Judges shall use a sliding scale and recognize the length of time the contestants are either standing or on the ground, as follows:
   a. If the contestants were on the canvas most of the round, then:

i. Effective grappling is weighed first; and
ii. Effective striking is then weighed.

b. If the contestants were standing most of the round, then:
i. Effective striking is weighed first; and
ii. Effective grappling is then weighed.

c. If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

J. Rounds.

1. The number of rounds in a professional MMA bout shall not exceed a maximum of five rounds.
2. The duration of each professional round shall be a maximum of five minutes, followed by a one-minute rest period after each non-final round.
3. The number of rounds in an amateur MMA bout shall not exceed a maximum of three rounds.
4. The duration of each amateur round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

Historical Note

New Section R19-2-D603 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D604. Kickboxing

A. The ring. The promoter is responsible for providing a safe ring in accordance with the following:

1. The ring shall be four-sided, not less than 17 feet nor more than 20 feet per side measured within the ropes.
2. The ring platform shall not be more than 4 feet above the surface upon which the ring is constructed and shall be provided with suitable steps for use of the contestants. Ring posts shall be of metal, not more than 4 inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor and shall be properly padded.
3. The floor shall be covered with shock-absorbent padding, as approved by the Commission, which shall extend beyond the ring ropes and over the edge of the platform.
4. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
5. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.

B. Gloves and footpads.

1. World title bouts for men shall be fought with 8-ounce regulation gloves. All other male professional bouts may be fought with 8-ounce or 10-ounce gloves by agreement between the promoter and the contestants. All women's professional bouts, including world title bouts, and all amateur competitions shall be held with 10-ounce regulation gloves. Those contestants matched at a weight heavier than super welterweight may be required to wear gloves with more extensive padding than those contestants matched at a lighter weight.
2. All gloves must be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition. Matched contestants shall wear padded protective equipment on the hands and feet of an identical size, shape, style and manufacture as provided by the promoter.
3. Gloves for title fights shall be new and delivered to the Commission representative with the packaging unbroken.
4. If footpads or shin guards are used, they shall be new and unbroken and shall be approved by the Commission.

C. Contestant's equipment and apparel.

1. For each bout, the promoter shall provide at least one clean water bucket in each corner, and shall provide the gloves for each contestant to ensure that matched contestants wear equipment of the same size, shape, style and manufacture.
2. Each contestant has the duty to provide the contestant's own hand bandaging, at least one light-colored and one dark-colored uniform, padded protective equipment to be worn on the feet, abdominal guard, breast protector (for women), mouthpiece, water bottle, and towel for use during an event. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of contestants:
   a. The combatants may not wear the same colors in the ring, without the approval of the Commission's representative. In bouts involving a champion currently recognized by the Commission, the champion shall choose which color uniform to wear. In all other bouts, the referee or the Commission representative in charge will designate which contestant will wear the light-colored uniform and which contestant will wear the dark-colored uniform.
   b. All contestants must follow the World Kickboxing Association Dress Code approved for the discipline their bout is fought under.
   c. Facial cosmetics shall be prohibited.
   d. Male contestants must wear a foul-proof groin guard or abdominal guard. A plastic or aluminum cup with an athletic supporter is adequate.
   e. Female contestants must wear foul-proof breast guards. Plastic breast covers are adequate. Female contestants may also wear an abdominal guard.

D. Weight classes. No bout shall be scheduled when the weight difference between combatants exceeds an allowance of three and one-half percent of the division weight.

1. The following weight classes shall be used as a general guide for men:

Weights	Weight Range in Pounds
Strawweight	Less than 108
Atomweight	108-111.9
Flyweight	112-116.9
Bantamweight	117-121.9
Featherweight	122-126.9
Lightweight	127-131.9
Super Lightweight	132-136.9
Light Welterweight	137-141.9
Welterweight	142-146.9
Super Welterweight	147-152.9
Light Middleweight	153-158.9
Middleweight	159-164.9
Super Middleweight	165-171.9
Light Heavyweight	172-178.9
Light Cruiserweight	179-185.9
Cruiserweight	186-194.9
Super Cruiserweight	195-214.9
Heavyweight	215-234.9

Super Heavyweight	235+

2. The following weight classes shall be used as a general guide for women:

Weights	Weight Range in Pounds
Strawweight	Less than 108
Atomweight	108-111.9
Flyweight	112-116.9
Bantamweight	117-121.9
Featherweight	122-126.9
Lightweight	127-131.9
Super Lightweight	132-136.9
Light Welterweight	137-141.9
Welterweight	142-146.9
Super Welterweight	147-152.9
Light Middleweight	153-158.9
Middleweight	159-164.9
Super Middleweight	165-174.9
Cruiserweight	175-184.9
Super Cruiserweight	185-214.9
Heavyweight	215-234.9
Super Heavyweight	235+

E. Fair blows and fouls.

1. All punches must land with the knuckle part of the glove, and no other part of the glove or forearm can be used. All kicks must connect with the ball of the foot, the instep, the heel, side of the foot, or the shin from below the knee to the instep.
2. In professional kickboxing competition there is a minimum kick expectation of eight kicks per round, although kick counters will not be used. If the referee feels that a contestant is not kicking enough he or she may give a verbal warning. If the contestant continues without using enough kicks, the referee may deduct a point, and judges shall implement that deduction.
3. Contestants may kick or sweep to the inside or outside region of the leg. Any deliberate kick to the knee, groin, or hip joint shall be prohibited and shall constitute a foul. The referee may issue a warning, order point deductions from the judges scoring, or may disqualify the offending contestant for repeated violations.
4. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in kickboxing:
   a. Knee strikes, elbow strikes, palm-heel strikes, slapping, or clubbing blows with the hands.
   b. Striking the throat, collarbone, the kidneys, or a female contestant's breasts.
   c. Hitting with the open glove, or with the wrist.
   d. Kicking into the knee, or striking below the belt in any unauthorized manner.
   e. Anti-joint techniques (i.e. striking or applying leverage against any joint).
   f. Holding an opponent with one hand and hitting with the other.
   g. Grabbing or holding onto an opponent's leg or foot.
   h. Leg checking the opponent's leg (act of extending the leg or foot to stop the kick of an opponent) or stepping on the opponent's foot to prevent the opponent from moving or kicking.
   i. Holding any part of the body or deliberately maintaining a clinch for any purpose.
   j. Throwing or taking an opponent to the floor in any unauthorized manner.
   k. Striking a downed opponent, or an opponent who is getting up after being down. A contestant is "downed" when any part of the contestant's body other than the soles of the feet touches the floor.

F. Intentional foul.

1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of one to two points and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if that contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.

G. Accidental foul.

1. If a bout is stopped because of an accidental foul, the referee shall determine whether or not the contestant who has been fouled can continue. The referee may consult with the attending physician. If the contestant's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout continued after a reasonable interval.
2. On the other hand, if by reason of accidental foul a contestant shall be rendered unfit to continue the bout, it shall be terminated. The scorekeeper shall tally all scores, subtracting all penalties. If the injured contestant is behind on points in the majority opinion of the judges, then the referee shall declare the bout to be a technical draw. But if the injured contestant has a lead in points, then the referee shall declare the injured contestant to be the winner by technical decision.
3. Should an accidental foul terminate a bout during the first round, the referee shall declare the bout to be a technical draw.

H. Results specific to kickboxing.

1. When contestant is considered knocked down. A contestant shall be declared knocked down if any portion of the contestant's body, other than the feet touch the floor, or if the contestant hangs helplessly over the ropes. A contestant shall not be declared knocked down if he or she is pushed, thrown, or accidentally slips to the floor. The determination as to whether a contestant is pushed, thrown or slips to the floor, rather than being knocked down, shall be made by the referee.
2. Counting. Whenever a contestant is knocked down, the referee shall order the contestant's opponent to retire to the farthest neutral corner of the ring, pointing to the corner and immediately begin the count over the knocked down contestant. The timekeeper, through effective signaling, shall give the referee the correct one-second intervals for the count. The referee will audibly announce the

passing of each one-second interval, indicating its passage with a downward motion of the arm. The referee's count is the only official count.

3. Length of Count.
   a. Any time a contestant is knocked down, the referee shall automatically begin a mandatory 8 count and then, if the contestant appears able to continue, will allow the bout to resume.
      i. The referee may, at his or her discretion, administer an 8 count to a contestant who has been stunned, but who remains standing. He or she shall direct the contestant's opponent to a neutral corner, then begin counting from 1 to 8, examining the stunned contestant as during the counts.
      ii. If, after completing the standing 8 count, the referee determines that the contestant is able to continue, the referee shall order the bout to resume. But if the referee determines that the contestant is not able to continue, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.
   b. If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that the contestant has been knocked out and will signal that the contestant's opponent is the winner. A round's ending before the referee reached the count of 10 will have no bearing on the count. The contestant must still rise before the count of 10 to avoid a knockout.
   c. Should a downed contestant rise before the count of 10 is reached and then go down again before being struck, the referee shall resume the count where he or she stopped counting.
   d. Should both contestants go down at the same time, the referee shall continue to count as long as one of the contestants is down. If both contestants remain down until the count of 10, the bout will be stopped and the referee shall declare the bout to be a technical draw. But if one contestant rises before the count of 10 and the other contestant remains down, the first contestant to rise shall be declared the winner by knockout. Should both contestants rise before the count of 10, the round will continue.
4. Should a contestant be knocked down three times in one round from blows to the head, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.
5. Whenever a contestant is knocked out primarily as a result of a kick, whether or not the kick occurred in combination with punches, the referee shall declare the contestant's opponent to be the winner by either kick knockout or technical kick knockout whichever is appropriate and shall be entered into the contestant's official record as a KKO.
6. A contestant who has been wrestled, pushed, or who has fallen through the ropes during the bout, may be helped back by anyone except the contestant's own seconds or manager. The referee shall allow reasonable time for the return. When on the ring platform outside the ropes, the contestant must enter the ring immediately. Should the contestant stall for time outside the ropes, the referee shall start the count without waiting for the contestant to re-enter the ring.
   a. Once a fallen contestant re-enters the ring, the referee shall start the round from the moment that the contestant is back in the ring.
   b. Whenever contestant falls through the ropes, the contestant's opponent must retire to the farthest neutral corner, as directed by the referee, and remain there until ordered to resume the bout.
   c. A contestant who deliberately wrestles or throws an opponent from the ring, or who hits an opponent who is partly out of the ring and thus prevented by the ropes from assuming a position of defense, may be penalized.
7. Wiping gloves. Before a fallen contestant resumes competition, after having been knocked to, slipped to, or fallen to the floor, the referee shall wipe the contestant's gloves free of any foreign substance.
8. If after consulting with the physician, the referee decides that further contact below the belt, whether from fair or foul blow, will result in injury to a contestant's knee, the referee shall prohibit striking below the belt for the remainder of the bout.

I. Method of judging.

1. The judges shall score all bouts and determine the winner through the use of the 10-point must system. In this system the winner of each round receives 10 points and the opponent receives a proportionately smaller number. But in no circumstances shall a judge award the loser of each round with fewer than 7 points. If a round is judged even, each contestant shall receive 10 points. No fraction of points may be given.
2. Judges should base their scores on the relative effectiveness of each contestant in a given round. An official knockdown always demonstrates superior effectiveness. However, a contestant who is knocked down more from instability than from an opponent's blow, may be able to return from the knockdown and dominate the round by a large enough margin to be judged the winner. Also, the weight given to an official knockdown scored by one contestant must be equal to the weight given to an official knockdown scored by the contestant's opponent.
3. Generally, sweeps should not be given the same weight as an official knockdown. Judges should watch for the technique's effectiveness in slowing down an opponent.
4. A contestant who wins the round and does so with exceptional above-the-belt kicking technique, should be given a more favorable point advantage than the contestant who wins a round with a predominance of punching technique. Below-the-belt kicking technique should be given the same weight as punching techniques. A round should be awarded to the overall most effective above-the-waist kicker.
5. Further, a contestant who aggressively presses an opponent throughout a round, but cannot land a threatening kick or punch, should not be judged as favorably as the contestant who back pedals throughout the round but counter attacks with visible impact.
6. Judges shall award points to contestants on the basis of round by round outcomes and in accordance with the following scores:
   a. 10 points to 10 points whenever neither contestant dominates the other with a superiority in effectiveness.
   b. 10 points to 9 points whenever the winning contestant dominates the losing contestant with a marginal superiority in effectiveness.

c. 10 points to 8 points whenever the winning contestant dominates the losing contestant with exceptional above-the-waist kicking technique, or whenever the winning contestant dominates the losing contestant with a significant superiority in effectiveness as might be indicated by one knockdown.
d. 10 points to 7 points whenever the winning contestant dominates the losing contestant with an overwhelming superiority in effectiveness as must be indicated by more than one knockdown.

7. In the case of a professional or Pro Am title bout that ends in a draw, there shall be a tie-breaking extra round, that shall be decided by the referee.

J. Rounds.
1. The number of rounds in a kickboxing bout shall not exceed a maximum of 12 rounds.
2. The duration of each round shall be a maximum of two minutes, followed by a one-minute rest period after each non-final round.

Historical Note
New Section R19-2-D604 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D605. Muay Thai

A. The ring. The promoter is responsible for providing a safe ring in accordance with the following:
1. The ring shall be four-sided, not less than 16 feet nor more than 24 feet per side, measured within the ropes.
2. The floor and corner shall be well constructed with no obstructions and with a minimum extension outside the ring of at least 3 feet. The minimum floor height should be 4 to 5 feet from the surface upon which the ring is constructed. The corner posts shall have a diameter of between 4 to 5 inches with a height of 58 inches from the ring floor. All four posts must be properly cushioned.
3. The ring floor must be padded by either cushioning, rubber, soft cloth, rubber mat, or similar material with a thickness of 1 to 1 1/2 inches. The padding shall be completely covered by a canvas cloth.
4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.
5. The ring shall have suitable steps for use of the contestants.

B. Gloves.
1. Promoters are responsible for providing gloves for contestants in accordance with the following:
a. Mini Flyweight - Junior Featherweight shall use 6-ounce gloves.
b. Featherweight - Welterweight shall use 8-ounce gloves.
c. Junior Middleweight and heavier classes shall use no less than 10-ounce gloves; and higher weights may use gloves of 12, 14, 16, or 18 ounces in weight, as approved by the Commission.
d. The promoter shall have one extra set of gloves for each glove weight, corresponding with the contestants' weight classes participating in the event.
2. All gloves will be inspected by a Commission inspector prior to the fight.
3. In the case of any problem with the boxing gloves themselves, the referee may temporarily halt the match until the problem is corrected.

C. Contestant's equipment and apparel.
1. Only boxing shorts may be worn by all contestants, and women shall also wear approved tops. Contestants shall have one extra set of apparel for an event.
2. To ensure the combatant's safety, a groin guard must be worn and shall be checked by an inspector.
3. Long hair may be worn, but hair shall be tied back, and facial hair shall be trimmed.
4. The Mongkol may be worn when performing the Wai Kru (paying respect to one's teacher) prior to the match start.
5. Arm bands may be worn.
6. Single elastic bandages are allowed to be worn on the arms or legs to prevent sprains, however insertion of a shin guard, or similar object, is not allowed.
7. No decoration, jewelry, or material with sharp or metal components is allowed to be worn during the bout.
8. The use of liniment is allowed as long as both contestants and Commission agree. Contestants shall not use liniment on the face.
9. Contestants may wear elastic ankle socks to protect their feet.
10. Any infringement to the dress code may result in the contestant's disqualification.

D. Weight classes. The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Mini Flyweight	Less than 105
Junior Flyweight	105-107.9
Flyweight	108-111.9
Junior Bantamweight	112-114.9
Bantamweight	115-117.9
Junior Featherweight	118-121.9
Featherweight	122-125.9
Junior Lightweight	126-129.9
Lightweight	130-134.9
Junior Welterweight	135-139.9
Welterweight	140-146.9
Junior Middleweight	147-153.9
Middleweight	154-159.9
Super Middleweight	160-167.9
Light Heavyweight	168-174.9
Cruiserweight	175-189.9
Heavyweight	190-208.9
Super Heavyweight	209+

E. Fair blows and fouls.
1. A fair strike may be made by a punch, kick, knee, or elbow. Contestants may strike with punches above the waist, kicks above the waist and to the inside and outside of an opponent's legs, but not to the groin or leg joints. Direct kicks (side-kick style) to the front of an opponent's legs are not allowed. Fighters, promoters, trainers, and the Commission may agree prior to the event to use modified rules, which agreement shall be documented in the promoter/fighter contract.
2. Clinching is allowed if one contestant is active within the clinch.
3. Contestants are allowed to catch their opponent's leg and take one step forward. After one step, the contestant holding the leg must strike before taking further steps.

4. A contestant may kick his or her opponent's supporting leg with the top of the contestant's foot or shin, but may not use the instep as in a karate-style sweep.
5. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in Muay Thai:
   a. Slapping with the lace side of the gloves;
   b. Holding an opponent's head or arm and hitting;
   c. Strikes to leg joints or other joint attacks;
   d. Palm heel strikes;
   e. Wrestling, back or arm locks or any similar judo or wrestling hold, takedowns or grappling;
   f. Spinning sweeps;
   g. Karate-style chopping strikes;
   h. Striking opponent when the opponent has slipped or fallen down (an opponent is down or downed when any part of his or her body other than the soles of his or her feet touches the floor of the ring);
   i. Spinning forearm or elbow strike. A spinning backhand strike is allowed if the hit is made with the portion of the glove that is above the wrist line (from the tape line at the wrist to the end of the glove);
   j. Deliberately falling on an opponent;
   k. Hip throws.

F. Intentional foul. If a contestant commits an intentional foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
1. Deduct one point from the fouling contestant per foul;
2. Disqualify the contestant who has fouled; or
3. If there is a disqualification, the purse may be withheld and the contestant may be automatically suspended.

G. Accidental foul.
1. If a contestant commits an accidental foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
   a. Give the contestant who has fouled a caution or a warning (only one warning may be given per bout, and a caution may not follow a warning given for the same type of foul);
   b. Deduct one point from the fouling contestant per foul; or
   c. Disqualify the contestant who has fouled, if it is a serious accidental foul or if multiple accidental fouls have been committed.
2. When a self-inflicted injury or an accidental foul causes the bout to be stopped, the result would be a no contest or a disqualification if the bout is stopped before a majority of rounds have been completed. If the injury occurs after a majority of rounds have been completed, then the judge's scorecards will be totaled and the decision of the bout will be announced.

H. Results specific to Muay Thai.
1. In addition to the type of results listed in R19-2-D601(R), the following are the types of bout results:
   a. A draw will be declared if both contestants are injured and cannot continue the bout, when the stoppage occurs before a majority of rounds have been completed.
   b. Individual scores will decide a match if both contestants are injured and cannot continue the bout after the majority of rounds have been completed.
2. Counting. The count interval will be at one-second intervals, from 1 to 10. During the count, the referee will signal with his or her hand, to ensure that the contestant receiving the count understands.
   a. A contestant, upon receiving a count, cannot continue the match prior to a count of 8 and loses immediately on receiving a count of 10.
   b. If both contestants fall down, the referee will direct the count to the last contestant that fell. If both contestants receive a 10 count, a draw will be declared. Should the contestants lean against each other while sitting up, the referee shall stop counting at that time.
   c. The referee shall continue the count from the count of 8 when a contestant is "down" as a result of a hit, the contestant rises at or before the complete count of 8, and the bout is continued after the count of 8 is completed, but the contestant falls again without receiving a fresh hit.
   d. A contestant not ready to fight again when the bell rings after a break, shall receive a count, unless the failure to fight is caused by an equipment problem. The referee will determine the length of time that will be allowed to fix an equipment problem. If the problem cannot be fixed, the result will be a forfeiture under R19-2-601(R)(6).
3. Knocked out of ring.
   a. If a contestant falls partially or completely through the ring ropes onto the apron, the referee shall order the opponent to stand in the farthest neutral corner and if the contestant remains partially outside the ropes, the referee shall start to count to 10. If a contestant falls completely out of the ring, the referee shall count to 20. A contestant must re-enter the ring on his own without assistance from another person.
      i. If the contestant returns to the ring before the count ends, the contestant will not be penalized.
      ii. If anyone prevents the fallen contestant from returning to the ring, the referee shall stop the count and warn such person or stop the fight until such interference ceases.
      iii. If both contestants fall out of the ring and one tries to prevent his or her opponent from returning to the ring before the count ends, the interfering contestant will be warned or disqualified.
      iv. If both contestants fall out of the ring, the one that returns to the ring before the count ends will be considered the winner. If neither contestant can return to the ring, the result will be considered a technical draw.
4. "Flash knockdowns," where the downed contestant rises up immediately, are usually not counted as knockdowns with a standing 8 count. However, if the contestant is stunned by the knockdown, the referee may decide to perform an 8 count if he or she deems it necessary, no matter how fast the contestant rises after the fall.

I. Method of judging.
1. The following are the scoring rules:
   a. The maximum score for each round is 10 points, the loser scoring either 9, 8, or 7;
   b. A round that is a draw is scored as 10 points for both contestants;
   c. The winner and loser in an indecisive round score 10 to 9 respectively;
   d. The winner and loser in a decisive round score 10 to 8 respectively;
   e. The winner and loser in an indecisive round with a single count score 10 to 8 respectively;

f. The winner and loser in a decisive round with a single count score 10 to 7 respectively; and
g. The contestant scoring two counts against his or her opponent will score 10 to 7.

2. Strikes are scored as follows:
a. Points are awarded for a correct Thai boxing style, combined with hard and accurate strikes;
b. Points are awarded for aggressive and dominating Muay Thai skill;
c. Points are awarded for a contestant actively dominating an opponent; and
d. Points are awarded for the use of a traditional Thai style of defense and counter-attack.

3. The following strikes will not receive points:
a. A strike which is against the rules;
b. A strike in defense against the leg or arm of an opponent; or
c. A weak strike.

4. Fouls will be scored as follows:
a. Any contestant who commits a foul will have one point deducted from his or her score for each foul committed;
b. The judges will deduct points for fouls as directed by the referee; and
c. Any foul observed by the judges but not by the referee, will be penalized accordingly.

J. Rounds.

1. Prior to the start of the first round, both contestants may perform the Wai Kru (paying respect to the teacher), accompanied by the appropriate Thai traditional music.
2. The number of rounds in a Muay Thai bout shall not exceed a maximum of five rounds.
3. The duration of each round shall be a maximum of three minutes, followed by a two-minute rest period after each non-final round.

Historical Note

New Section R19-2-D605 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D606. Toughman

Unless otherwise specified herein, R19-2-D602 shall apply to Toughman events, with the following exceptions:

1. Toughman contestants shall wear headgear, padded kidney belt, and abdominal guards, as approved by the Commission.
2. A bout shall consist of three one-minute rounds, with a one-minute rest period between each round, and may involve two or more contestants.
3. No kicking is permitted.
4. The following weight classes shall be used as a general guide:

Weights	Weight Range in Pounds
Lightweight	Less than 140
Middleweight	140 to 159.9
Light Heavyweight	160 to 184.9
Heavyweight	185+

5. The Commission reserves the right to disallow Toughman events or licenses for Toughman participants, if, in the Commission's discretion, the event or licensing would not be in the best interests of the combatants, the state, the industry, and the Commission.

Historical Note

New Section R19-2-D606 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-D607. Exhibitions; Fee

A. Exhibitions may only be allowed if approved by both the Commission and the Executive Director, and shall be subject to all requirements of A.R.S. Title 5, Chapter 2, Article 2 and these rules adopted thereunder.

B. The fee for an Exhibition shall be $1000, to be paid by the promoter.

Historical Note

New Section R19-2-D607 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

Table 1. Time-frames

License	Statutory Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Promoter, Matchmaker, Manager, Judge, Inspector, Referee, Physician, Timekeeper, Combatants over the age of 36 years	A.R.S. § 5-228 R19-2-C602	30	10	15	10	45
Combatant, Second, Cutman, Trainer, Ring Announcer	A.R.S. § 5-228 R19-2-C602	10	10	10	10	20

Historical Note
New Table 1 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

Table 2. Bandages (Gauze and Tape)

	Maximum Gauze Dimensions	Maximum Tape Dimensions	Method of Wrapping
Boxing, per hand	2" wide 60' long	2" wide 10' long	• Tape shall not extend higher on the hand beyond three-fourths of an inch from the knuckles, when the hand is clenched to make a fist.
MMA, per hand	2" wide 39' long	1" wide 10' long	• Tape may extend to cover and protect the knuckles when the hand is clenched to make a fist.
Kickboxing, per hand	2" wide 30' long	1.5" wide 6' long	• Tape shall not extend higher on the hand beyond one inch from the knuckles, when the hand is clenched into a fist. • It is acceptable to place 1 strip of tape between the fingers not to exceed ¼” in width and 4" in length to hold bandages in place.
Kickboxing, per foot	None	1.5" wide 12' long	• Tape may be used to protect the ankles. • Gauze shall not be used on the feet. • A single elastic or neoprene style supportive sleeve may be worn on each foot and around each knee as long as it has no padding, braces, hinges, or anything that could injure the wearer or his opponent or create an advantage of any kind.
Muay Thai, per hand	2" wide 30' long	1.5" wide 6' long	• Tape shall not extend higher on the hand beyond one inch of the knuckles when the hand is clenched to make a fist.

Historical Note
New Table 2 made by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

5-221. Definitions

In this article, unless the context otherwise requires:

1. "Boxing" means the act of attack and defense with the fists, using padded gloves, that is practiced as a sport. Where applicable, boxing includes kickboxing.

2. "Commission" means the Arizona state boxing and mixed martial arts commission.

3. "Contest" means any boxing or mixed martial arts bout, event, contest, match or exhibition between two persons.

4. "Department" means the department of gaming.

5. "Director" means the director of the department of gaming.

6. "Executive director" means the executive director of the commission.

7. "Kickboxing" means a form of boxing, including muay thai pursuant to rules and regulations of the United States muay thai association or another muay thai sanctioning body that is approved by the commission, in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.

8. "Mixed martial arts" means any form of competition or contest, other than boxing or kickboxing, in which blows are delivered and in which the competitors use any combination of tactics including boxing, wrestling, striking, kicking, martial arts and submission techniques.

9. "Professional" means any person who competes for any money prize or a prize that exceeds the value of thirty-five dollars or teaches or pursues or assists in the practice of boxing or mixed martial arts as a means of obtaining a livelihood or pecuniary gain.

10. "Tough man contest" means any boxing match consisting of one minute rounds, between two or more persons who use their hands, wearing padded gloves that weigh at least twelve ounces, or their feet, or both, in any manner. Tough man contest does not include kickboxing or any recognized martial arts competition.

5-222. Application of this chapter

A. This chapter does not apply to any amateur boxing or mixed martial arts contest conducted by the following:

1. Any school, community college, college or university or an association or organization composed exclusively of schools, community colleges, colleges or universities when each contestant is a student enrolled in a school, community college, college or university. As used in this section, "school, community college, college or university" means every school, community college, college or university and every other school, community college, college or university determined by the state board of education, community college districts as defined in section 15-1401 or the Arizona board of regents to be maintained primarily for the giving of general academic education.

2. A government unit or agency of the United States, this state or a subdivision of this state or a unit of the United States armed forces or the national guard if all contestants are members of that unit of the armed forces or the national guard.

3. An amateur athletic program that is authorized by and sanctioned under the rules, regulations and policies of a national governing body that is recognized by the United States olympic committee in which all contestants are amateur contestants.

4. Kickboxing events that are sanctioned by and conducted under the direct supervision of the United States muay thai association or another muay thai sanctioning body that is approved by the commission if all contestants are amateur contestants.

5. Any bona fide private school whose primary purpose is instruction and training in the martial arts, if:

(a) The contests held in conjunction with the instruction and training are amateur.

(b) The contests are of a sparring nature with no official decisions awarded.

(c) At least one contestant in each contest has been a member in good standing of the sponsoring private school for at least sixty continuous days before the contest.

(d) An admission fee or a mandatory donation or other form of payment is not charged for attendance.

6. Any bona fide private school whose primary purpose is instruction in karate, if the contests held in conjunction with the instruction are amateur.

B. An amateur mixed martial arts competitor shall not be licensed as a professional mixed martial arts competitor until the person has completed five or more verified amateur contests that are regulated by the commission or by a sanctioning body that is approved by the commission. The five-contest requirement prescribed by this subsection may be waived by the commission or by the executive director.

5-223. Arizona state boxing and mixed martial arts commission; appointment; terms; compensation; conflict of interest; emergency ringside meetings

A. The Arizona state boxing and mixed martial arts commission shall consist of three members appointed by the governor pursuant to section 38-211. The term of office of commissioners is three years. The term of one member shall expire on the third Monday in January each year.

B. Two members of the commission constitute a quorum for conducting business. A concurrence of two members is necessary to render a decision by the commission. Emergency ringside meetings held immediately prior and subsequent to a scheduled contest for the purpose of determining whether or not there has been a violation of the rules and regulations of the commission or the provisions of this chapter shall be exempt from the provisions of title 38, chapter 3, article 3.1.

C. The commissioners shall receive compensation as determined pursuant to section 38-611 for each day they act in their official capacity, not to exceed one hundred days each year.

D. A commissioner shall not during his term of office promote, sponsor or have any financial interest in a boxer, a boxing contest or in the premises leased for a boxing contest.

5-224. Division of boxing and mixed martial arts regulation; powers and duties

A. A division of boxing and mixed martial arts regulation is established in the department to provide staff support for the Arizona state boxing and mixed martial arts commission. Subject to title 41, chapter 4, article 4, the director of the department shall appoint an executive director to perform the duties prescribed in this article. The resources for the Arizona state boxing and mixed martial arts commission shall come from monies appropriated to the department from the racing regulation fund established by section 5-113.01 or from other sources prescribed in section 5-225, subsection D.

B. The commission shall obtain from a physician licensed to practice in this state rules and standards for the physical examination of boxers and referees. A schedule of fees to be paid physicians by the promoter or matchmaker for the examination shall be set by the commission.

C. The commission may adopt and issue rules pursuant to title 41, chapter 6 to carry out the purposes of this chapter.

D. The commission shall hold regular meetings at least quarterly and in addition may hold special meetings. Except as provided in section 5-223, subsection B, all meetings of the commission shall be open to the public and reasonable notice of the meetings shall be given pursuant to title 38, chapter 3, article 3.1.

E. The commission shall:

1. Make and maintain a record of the acts of the division, including the issuance, denial, renewal, suspension or revocation of licenses.

2. Keep records of the commission open to public inspection at all reasonable times.

F. The commission may enter into intergovernmental agreements with Indian tribes, tribal councils or tribal organizations to provide for the regulation of boxing and mixed martial arts contests on Indian reservations. This chapter does not diminish the authority of the department.

5-225. Regulation of boxing contests, tough man contests and mixed martial arts

A. All boxing contests are subject to the provisions of this chapter and to rules adopted pursuant to this chapter. The commission shall for every contest that is subject to regulation by the commission:

1. Direct a person authorized by the commission or by the executive director to be present.

2. Direct the person authorized to report results, including suspensions, to a national registry.

B. All tough man contests, including amateur tough man contests, are subject to the provisions of this chapter. Every contestant in a tough man contest shall wear headgear approved by the commission.

C. Mixed martial arts, including amateur mixed martial arts, are subject to the provisions of this chapter and to rules adopted pursuant to this chapter, including rules adopted for boxing that are not inconsistent with specific mixed martial arts contest provisions and rules. Contestants in mixed martial arts shall not strike other contestants in the spinal column or in the back of the head. The commission shall use rules for mixed martial arts that are consistent with the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, except that a cage may have one entry door and have a vinyl or rubberized floor covering if approved by a representative of the commission. Nothing in this subsection prevents a promoter of a mixed martial arts event in this state from adopting more restrictive rules for that particular event than would otherwise be allowed. In addition to the applicable provisions of the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, amateur mixed martial arts bouts shall consist of three rounds of three minutes per round and the amateur contestants shall not strike with elbows to the head of a grounded opponent, use twisting leg submissions, use linear kicks to the knee joint or use foot stomps. Amateur mixed martial arts bouts shall be clearly designated as such in all promotional materials and at the event.

D. The commission may establish a uniform nonrefundable fee for mixed martial arts and boxing events in an amount determined by the commission that shall be paid to the commission by a promoter when submitting an event application. In determining the amount of the fee, the executive director may consider factors including whether the event is televised, whether the event will be transmitted on pay-per-view, the amount of time likely to be expended in processing the event application and the complexity of the application. The commission may establish a nonrefundable fee that shall be paid to the commission by a promoter if the promoter submits a request to change a previously approved event date. Monies that are derived from the fees charged pursuant to this subsection and monies derived from intergovernmental tribal agreements shall be available to the commission for the administration and regulation of mixed martial arts and boxing, and those monies are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. Weigh-ins for all contests shall not be more than twenty-four hours before the scheduled time of the event or less than three hours before the scheduled time of the event. A representative of the commission shall attend and supervise all weigh-ins. The weigh-in period shall be one hour.

5-226. Levy of tax on gross receipts; disposition; verification and financial audit; definition

A. Any person who promotes a boxing contest in this state pursuant to this article shall comply with rules adopted pursuant to this article and shall within ten days after the contest pay to the department four percent of the gross receipts, after the deduction of city, state and federal taxes, of the match or exhibition.

B. The department shall verify the gross receipts of a contest. The director may require a person licensed under this article to supply a certified financial audit to the department. The director shall adopt rules that require each person licensed under this article to select a certified public accountant to conduct the financial audit. The financial statements prepared pursuant to this section shall be prepared in accordance with generally accepted accounting principles and shall include any additional schedules the director requires. A person subject to a financial audit under this section shall afford reasonable and needed facilities and make returns and exhibits to the department in the form and at the time prescribed by the director.

C. The department shall establish an unarmed combat subaccount within the racing regulation fund established by section 5-113.01. At the end of each month the director shall report to the department of administration the total amount received under this chapter from all sources, including license fees, and shall deposit that amount, excluding license fees, pursuant to sections 35-146 and 35-147, in the unarmed combat subaccount of the racing regulation fund.

D. A promoter may issue complimentary tickets that are exempt from taxation pursuant to this title. If a promoter issues complimentary tickets, the exemption from taxation applies to two percent of the total number of tickets issued for the event or seventy-five tickets, whichever is greater.

E. The department shall collect and account for revenues for the commission, including license fees required by section 5-230, the levy of the tax on gross receipts imposed by this section and the cash bond or surety bond deposited pursuant to section 5-229. The director shall report and deposit all revenues collected pursuant to this subsection, from whatever source, pursuant to subsection C of this section, except that license fees required by section 5-230 shall be deposited in the racing regulation fund established by section 5-113.01. The director shall adopt rules as necessary to accomplish the purposes of this section.

F. For the purposes of this section, "gross receipts" means all receipts from the face value of tickets sold.

5-227. Jurisdiction of commission

A. The commission shall:

1. Except for the financial and accounting functions delegated to the director pursuant to section 5-226, have sole direction, management, control and jurisdiction over all boxing and mixed martial arts contests held within this state unless exempt from the application of this chapter by section 5-222.

2. Have sole control, authority and jurisdiction over all licenses required by this chapter.

B. The commission shall grant a license to an applicant if in the judgment of the commission the financial responsibility, experience, character and general fitness of the applicant are such that the applicant's participation is consistent with the public interest, convenience or necessity and the best interests of boxing and in conformity with the purposes of this chapter. The commission may delegate the commission's licensing authority to the commission's executive director.

5-228. Persons required to procure licenses; requirements; background information; fee; bond

A. All referees, judges, matchmakers, promoters, trainers, ring announcers, timekeepers, ringside physicians, inspectors, mixed martial arts contestants, boxers, managers and seconds are required to be licensed by the commission. The commission shall not permit any of these persons to participate in the holding of any contest unless the person has first procured a license.

B. Before participating in the holding of any boxing or mixed martial arts contest, a corporation, its officers and directors and any person holding twenty-five per cent or more of the ownership of the corporation shall obtain a license from the commission. Such a corporation must be authorized to do business under the laws of this state.

C. The commission shall require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before licensure. The commission shall charge a fee for fingerprints and background information in an amount determined by the commission. The commission may require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before license renewal if the commission determines the fingerprints and background information are necessary. The fee may include a reasonable charge for expenses incurred by the commission or the department of public safety. For such purpose the commission and the department of public safety may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3. The fee shall be credited pursuant to sections 35-148 and 41-1750.

D. Before the commission issues a license to a promoter, matchmaker or corporation, the applicant shall:

1. Provide the commission with a copy of any agreement between any contestant and the applicant that binds the applicant to pay the contestant a certain fixed fee or percentage of the gate receipts.

2. Show on the application the owner or owners of the applicant entity and the per cent interest if they hold twenty-five per cent or more interest in the applicant.

3. Provide the commission with a copy of the latest financial statement of the entity.

4. Provide the commission with a copy of the insurance contract required by this chapter.

E. Before the commission issues a license to a promoter, the applicant shall deposit with the department a cash bond or surety bond in an amount set by the commission. The bond shall be executed in favor of this state and shall be conditioned on the faithful performance by the promoter of the promoter's obligations pursuant to this chapter and the rules adopted pursuant to this chapter.

F. Before the commission issues a license to a boxer or a mixed martial arts contestant, the applicant shall submit to the commission the results of a current medical examination performed by a physician licensed pursuant to title 32, chapter 13 or 17 on forms furnished or approved by the commission. In addition to the medical examination, the following information must be submitted:

1. The results of an ophthalmological examination that is recorded on forms furnished or approved by the commission.

2. Negative test results for the human immunodeficiency virus, the hepatitis B surface antigen and the hepatitis C antibody.

3. For persons over the age of thirty-six years, the results of a stress test that is administered by a physician licensed pursuant to title

32, chapter 13 or 17 accompanied by a clearance letter and the results of an electrocardiogram that demonstrates normal cardiovascular function. These results shall be completed within twenty-four months before the person submits the license application.

4. For persons over forty years of age, if recommended by an examining physician, the results of a brain magnetic resonance imaging scan.

5. For female contestants, a pregnancy test that demonstrates a negative result. A pregnancy test that demonstrates a negative result shall also be submitted to the commission by a female contestant before each weigh-in.

6. Any other examination or testing ordered by the commission.

G. Unless otherwise prescribed in subsection F of this section, the medical examinations and tests prescribed in subsection F of this section must be completed after December 15 of the year before the year that the license is issued or before December 15 of the same year that the license is issued. All medical examinations and tests, license applications, national identification card applications, photographs and any other required documents must be completed and received by the commission staff no later than 4:30 p.m. on the day that begins forty-eight hours before the scheduled event. An exception to the forty-eight hour requirement prescribed in this subsection may be granted by the executive director if a person is a late substitute or is traveling from outside this state and demonstrates good cause for not meeting the forty-eight hour requirement.

5-229. Promoters; licenses; bond; proof of financial responsibility

A. The commission may in its discretion withhold the granting of a license to a promoter until the applicant furnishes proof of his financial responsibility to promote contests in accordance with section 5-226, subsection B and the rules adopted by the director. The commission may issue a license to conduct, hold or give boxing contests to any qualified person or to a corporation duly authorized to do business under the laws of this state.

B. In addition to the cash bond or surety bond required pursuant to section 5-228, subsection E, the commission may require a promoter to deposit with the department prior to each contest a cash bond or surety bond in an amount set by the commission as a guarantee for the fulfillment of the promoter's contract obligations for that contest, the payment of licenses and taxes on gross receipts of that contest and reimbursement to ticket purchasers if the contest is not held as advertised.

5-230. License fees; expiration; renewal

A. The commission may establish and issue annual licenses and may establish and collect fees for those licenses.

B. A license expires December 31 at midnight in the year of its issuance and may be renewed on filing an application for renewal of a license with the commission and payment of the license fee prescribed in subsection A. The application for renewal of a license shall be on a form provided by the commission. There is a thirty day grace period during which a license may be renewed if a late filing penalty fee equal to the license fee is submitted with the regular license fee. A licensee that files late shall not conduct any activity regulated by this chapter until the commission has renewed the license. If the licensee fails to apply to the commission within the thirty day grace period the licensee must apply for a new license pursuant to subsection A.

5-231. Financial interest in boxer prohibited

A person shall not have, either directly or indirectly, any financial ownership interest in a boxer competing on premises owned or leased by the person, or in which the person is otherwise interested.

5-232. Age of participants

A person who is under eighteen years of age shall not participate in any boxing or mixed martial arts contest.

5-233. Contestants and referees; physical examination; attendance of physician; payment of fees; insurance

A. All boxers, mixed martial arts contestants and referees shall be examined by a physician licensed pursuant to title 32, chapter 13 or 17 before entering the ring, and the examining physician shall immediately file with the commission a written report of the examination. The physician's report of the examination shall include specific mention as to the condition of the boxer's or mixed martial arts contestant's heart and general physical condition. The physician's report may include specific mention as to the condition of the boxer's or mixed martial arts contestant's nerves and brain as required by the commission. The cost of the examination is payable by the person conducting the contest or exhibition. All boxers and mixed martial arts contestants shall receive a post-bout physical examination from a physician licensed pursuant to title 32, chapter 13 or 17 and may be suspended from participation in additional contests for a period of time based on the evaluation by the examining physician.

B. Every person holding or sponsoring any contest shall have in attendance at every contest regulated by the commission at least one physician who is licensed pursuant to title 32, chapter 13 or 17 and who is assigned by the commission or the executive director. The commission may establish a schedule of fees to be paid to each physician by the person or by the promoter.

C. The commission shall:

1. Require insurance coverage for a boxer to provide for medical, surgical and hospital care for injuries sustained in the ring in an amount of twenty thousand dollars with twenty-five dollars deductible and payable to the boxer as beneficiary.

2. Require life insurance for a boxer in the amount of fifty thousand dollars payable in case of accidental death resulting from injuries sustained in the ring.

D. The cost of the insurance required by this section and any deductible amount that exceeds twenty-five dollars is payable by the promoter.

5-234. Attendance by peace officers; duty of chief of police or sheriff

If a boxing contest is held within the corporate limits of a city or town, the chief of police shall assign not less than one officer to attend the contest, and if a boxing contest is held outside the corporate limits of a city or town, the county sheriff shall assign not less than one of his deputies to attend. The officer or deputy shall be charged with the duty of preventing disturbances amounting to breach of the peace by spectators. The cost of providing such officer or deputy shall be paid by the promoter.

5-235.01. Disciplinary action; grounds; civil penalty; emergency suspension; injunction

A. The commission may take any one or a combination of the following disciplinary actions:

1. Revoke a license.

2. Suspend a license.

3. Impose a civil penalty in an amount of not to exceed one thousand dollars per violation of this chapter.

B. The commission may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Committing an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

2. Advertising by means of known false, misleading, deceptive or fraudulent statements through any communication medium.

3. Violating this chapter or any rule adopted pursuant to this chapter.

4. Making oral or written false statements to the commission.

5. Failing to complete the license application as prescribed by the commission.

C. The commission may conduct tests for the use of alcohol and drugs determined by the commission to impair contestants. Notwithstanding any other provision of this article, the commission may immediately suspend the license, immediately revoke the license or immediately impose a civil penalty not to exceed five hundred dollars, or any combination of these actions, against a contestant who tests positive for alcohol and drugs, who refuses or fails to take a test for alcohol and drugs under rules adopted by the commission or who refuses or fails to take a test for alcohol and drugs after a test is requested by the commission or the executive director. All civil penalties assessed pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The rules adopted pursuant to this subsection may include appropriate definitions for drugs determined by the commission to impair contestants.

D. In case of emergency, a member of the commission, on his own motion or on the verified complaint of any person charging a violation of this chapter or of the rules promulgated by the commission, may suspend for a period of not to exceed ten days any license until final determination by the commission, if in his opinion the action is necessary to protect the public welfare and the best interests of boxing.

E. The commission, the attorney general or a county attorney may apply to the superior court in the county in which acts or practices of any person that constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

5-236. Violation; classification

A person is guilty of a class 2 misdemeanor and may be subject to license revocation, denial or suspension if the person:

1. Conducts, holds, sponsors, sanctions or gives boxing or other contests that are subject to regulation by the commission or participates in any contest that is subject to regulation by the commission without first having procured an appropriate license or approval as prescribed in this article.

2. Violates any provision of this chapter or any rule or regulation adopted pursuant to this chapter.

5-237. Selection of referees

The commission shall select and assign referees. The matchmaker may protest the assignment of a referee and in such event the commission shall furnish a list of all licensed referees within the state to the protesting matchmaker. The protesting matchmaker shall have the right to select another referee from such list.

5-238. Sham boxing; withholding a purse

A. The commission may withhold all or part of a purse or other monies payable to any contestant, manager or second if in the judgment of the commission a boxing contestant is participating in a sham or fake boxing contest or is otherwise not competing honestly or to the best of the contestant's ability.

B. If the commission withholds a purse or part of a purse or other monies the commission shall give notice to all interested parties and hold a hearing upon the matter within ten days.

C. If the commission determines that a contestant, manager or second is not entitled to a purse, part of a purse or other monies the promoter shall turn such monies over to the director to be applied pursuant to section 5-226, subsection C.

5-239. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the commission are subject to judicial review pursuant to title 12, chapter 7, article 6.

5-240. Reciprocity

Notwithstanding section 5-228, a person is entitled to receive a license under this chapter if he complies with the requirements of each of the following:

1. Submits to the commission under oath an application for a license on a form supplied by the commission.

2. Is licensed in another state in which the licensing requirements are at least substantially equivalent to those of this state and which grants similar reciprocal privileges to persons licensed under this chapter.

3. Pays the prescribed fees.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 14, 2023**

SUBJECT: **Arizona Department of Health Services**
Title 9, Chapter 7

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 7, Article 3 regarding Radioactive Material Licensing.

In the last 5YRR of these rules the Department proposed to amend its rules in order to be compliant with the Agreement. The Department completed a rulemaking effective July 2018.

Proposed Action

The Department is planning to extensively revise the rules and reorganize Chapter 3. The Department indicates that the rules need to comply with the Agreement and proposed changes, in some cases, must be approved by the NRC. The Department indicates given the complex and technical nature of content of the Chapter, and the need to coordinate with the NRC in drafting the revisions, the Department expects to submit a Notice of Final Rulemaking to the Council by December 2025.

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:

According to the Department, most of the rules under review either did not have an economic impact statement (EIS) available to review, were not expected to have any economic impact, or were otherwise believed to have the actual economic impact as originally estimated.

The Department identifies Exhibit E as outdated and believes that the rule may impose a greater economic burden on regulated persons than that estimated when the rule was last revised. The Department plans to address this by updating and clarifying the rule.

Stakeholders are identified as the Department and its licensees, owners and transferers of radioactive material, 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?

According to the Department, the rules in Article 3 provide notice to regulated entities of requirements related to the ownership, control, or transfer of radioactive material. These requirements not only comply with terms of the agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967 ("Agreement"), but also protect the health and safety of employees of persons with these radioactive materials, patients or clients of these persons, and the general public. Without these requirements that are compatible with federal regulations, Arizona cannot remain an Agreement State. If Arizona lost primacy for the regulation of radioactive materials in Arizona, regulated entities would still need to comply with the federal requirements but would need to pay the much higher fees to the U.S. Nuclear Regulatory Commission (NRC) rather than the fees under the rules in 9 A.A.C. 7. Thus, the Department believes that the rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department indicates they did not receive any written criticisms to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules need to be amended in order to be more clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates the rules need to be amended in order to be consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are overall effective, but need to be amended in order to improve their overall effectiveness.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal laws; 10 CFR 30; 10 CFR 30.3; 10 CFR 30.32(j); 10 CFR 30.35; 10 CFR 30.36(g)(1), (i), and (j); 10 CFR 31.5(b), (c), and (d); 10 CFR 31.5(c)(13)(i); 10 CFR 32; 10 CFR 32.11; 10 CFR 32.18; 10 CFR 32.21; 10 CFR 32.22; 10 CFR 32.26; 10 CFR 32.52; 10 CFR 32.53; 10 CFR 32.54; 10 CFR 32.55; 10 CFR 32.56; 10 CFR 32.57; 10 CFR 32.58; 10 CFR 32.59; 10 CFR 32.61; 10 CFR 32.62; 10 CFR 32.72; 10 CFR 32.74; 10 CFR 32.201; 10 CFR 32.210; 10 CFR 32.211; 10 CFR 35.3204; 10 CFR 40.3; 10 CFR 40.25; 10 CFR 40.36 10; CFR 40.42(g)(1); 10 CFR 40.42(i); 10 CFR 40.42(j); 10 CFR 40.54; 10 CFR 70.25; 10 CFR 70.38(g)(1), (i), and (j); 10 CFR 70.39; and 10 CFR 110.

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 all but 14 of the rules were adopted after July 29, 2010. , A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit, issued under the rules in 9 A.A.C. 7, applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

11. Conclusion

As mentioned above, the Department is planning to extensively revise the rules and reorganize the Chapter. The Department needs to collaborate and coordinate with the NRC in drafting the proposed amendments. The Department indicates they have requested approval to begin the rulemaking process, but has not received approval yet. The Department plans to submit a Notice of Final Rulemaking to the Council by December 2025. Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

April 26, 2023

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. 7, Article 3, 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. 7, Article 3, which is due on or before April 28, 2023.

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,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 7. Department of Health Services

Radiation Control

Article 3. Radioactive Material Licensing

April 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, 30-673, 30-681, 30-688, 30-689

2. The objective of each rule:

Rule	Objective
R9-7-301	To describe the requirements related to ownership, control, or transfer of radioactive material.
R9-7-302	To specify the conditions under which a person in possession of source material is exempt from the Article.
R9-7-303	To specify the conditions under which a person in possession of radioactive material, other than source material, is exempt from the Article.
R9-7-304	To describe the two types of radioactive material licenses.
R9-7-305	To describe a general license for source material (uranium and/or thorium) and list the amounts that an entity may possess under the license. To specify restrictions on the use of a general license by amount and use.
R9-7-306	To specify general license restrictions for materials that are not source material, setting the restrictions for the use of a general material license by type and use of the non-source material.
R9-7-308	To specify the method of applying for a specific license to use or possess radioactive material for a specific purpose.
R9-7-309	To list the general requirements that must be met by an applicant of a specific license before being issued a license by the Department.
R9-7-310	To specify the three classes of a specific broad scope license (Class A, Class, B, and Class C) and describe the specific requirements of each broad scope license class.
R9-7-311	To specify the license requirements for a specific license to create, form, or manufacture a product or device that contains radioactive material.
R9-7-312	To describe the situations where additional requirements or conditions may be added to a specific license. To specify that the Department may conduct inspections to any locations that the radioactive material may be stored or that it passed through.
R9-7-313	To describe specific terms and conditions of a license to protect health and safety.

R9-7-314	To specify when a specific license expires.
R9-7-315	To describe the conditions for renewing a specific license.
R9-7-316	To specify the process for amending a specific license.
R9-7-317	To describe the Department's process for reviewing an application for renewing or amending a specific license.
R9-7-318	To specify the process for transferring radioactive material, including the conditions of transfer; specific verification steps; and requirements for providing information to the transferee, packaging and transporting the radioactive material, and reporting to the Department.
R9-7-319	To specify conditions under which a radioactive material license may be modified, revoked, or terminated.
R9-7-320	To specify a process that allows for the temporary use of radioactive material in Arizona for 180 days or less, based upon the qualifications, intended use, and license issued to an entity by another Agreement Sate or the NRC.
R9-7-322	To require an application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of specific quantities to include: a. An evaluation, containing specific factors, showing that a minimal dose might be received by an individual due to a release of radioactive materials; or b. An emergency plan for responding to a release of radioactive material, containing specific information and requiring a comment period for potential response organizations.
R9-7-323	To describe the requirements and conditions for financial assurance as a guarantee for clean up or decontamination after use or accidental release of radioactive material. To specify the decommissioning procedures to be used upon terminating or vacating a site or facility that used or possessed radioactive material.
R9-7-324	To specify the methods by which the Department will notify and solicit comments from persons who may be affected by the decommissioning of a site.
R9-7-325	To specify process and the expected time limits for decommissioning a site contaminated by radioactive material.
Exhibit A	To list the exempt concentrations of nuclides by elemental state of gas or liquid/solid and describe how to account for a combination of isotopes.
Exhibit B	To list the exempt amounts of activity of nuclides in microrcuries.
Exhibit C	To list the limits for Class B and C, broad scope licenses, in microrcuries of activity.
Exhibit D	To list the amount by activity of a nuclide that requires an emergency plan.
Exhibit E	To specify the minimum amount of information needed on an application for a license to possess or use radioactive material.

3. <u>Are the rules effective in achieving their objectives?</u> **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
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules. However, much of the current wording must be word-for-word with requirements of the U.S. Nuclear Regulatory Commission (NRC) to comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967.

4. Are the rules consistent with other rules and statutes? **Yes _X_ No __**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
Multiple	In the following rules, the stated date for the federal regulation, incorporated by reference, is incorrect. The correct dates are shown below: R9-7-304(A) - 10 CFR 30.3 (October 1, 2007) R9-7-306(A)(1) - 10 CFR 31.5(b), (c), and (d) (December 19, 2014) R9-7-306(A)(4)(g) – 10 CFR 110 (November 30, 2021) R9-7-306(C)(1) - 10 CFR 32.57 (July 25, 2012) and 10 CFR 70.39 (February 17, 1978) R9-7-306(D)(3) - 10 CFR 32.21 (December 14, 2001) R9-7-306(H)(3) - 10 CFR 110 (November 30, 2021) R9-7-308(G) - 10 CFR 32.210 (December 19, 2014) R9-7-308(H) - 10 CFR 32.211 (December 19, 2014) R9-7-311(A)(1)(f) - 10 CFR 31.5(c)(13)(i) (December 19, 2014) R9-7-311(A)(4)(b)(i) – 10 CFR 32.52 (December 19, 2014) R9-7-311(B)(2) - 10 CFR 32.53 through 32.56 (July 25, 2012 for all) R9-7-311(C)(2) - 10 CFR 32.57, 32.58, and 32.59 (July 25, 2012 for all three), and 70.39 (February 17, 1978) R9-7-311(D)(2) - 10 CFR 32.57, 32.58, and 32.59 (July 25, 2012 for all three), and 70.39 (February 17, 1978) R9-7-311(F)(2) - 10 CFR 32.61 and 32.62 (July 25, 2012 for both) R9-7-311(G) - 10 CFR 30.32(j) and 32.72 (September 30, 2014 for both) R9-7-311(I) - 10 CFR 32.74 (July 25, 2012) R9-7-311(K)(1) - 10 CFR 32.201 (November 8, 2006) R9-7-319(E)(5) - 10 CFR 30.35(g) (December 19, 2014) R9-7-323(C) - 10 CFR 30.35, 40.36, and 70.25 (December 19, 2014 for all thee) R9-7-323(E)(1) - 10 CFR 30.36(g)(1) and 40.42(g)(1) (December 2, 2016 for both), and 70.38(g)(1) (December 12, 2018) R9-7-323(E)(5) - 10 CFR 30.36(i) and 40.42(i) (December 2, 2016 for both), and 70.38(i) (December 12, 2018) R9-7-323(E)(6) - 10 CFR 30.36(j) and 40.42(j) (December 2, 2016 for both), and 70.38(j) (December 12, 2018)
R9-7-306	Subsection (A)(6) is inconsistent with statutes in that it references A.R.S § 30-685, which was repealed by Laws 2018, Ch. 234, § 7.
R9-7-311	The citation to R9-7-313(E) is incorrect and should be to R9-7-313(G).
R9-7-323	Subsection (B) is inconsistent with statutes in that it references A.R.S § 30-672(H), which was renumbered to A.R.S § 30-672(K) by Laws 2018, Ch. 274, § 4, with the addition of new subsections (D), (E), and (F).

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 ___** **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
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. To comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967 (Agreement), all of the requirements in this Article must be consistent with requirements of the NRC. Therefore, although some wording could be clearer or more concise, the Department cannot make these changes without approval by the NRC.
Multiple	In R9-7-306(A)(4)(d), R9-7-311(A)(4)(b)(iii) and (9), R9-7-311(J)(4)(f)(vi), and R9-7-313(H), the time period for maintaining records should be "for at least three years" rather than "for three years." Similarly, R9-7-310(B)(1)(b) should specify "at least five years of experience," and R9-7-323(F)(3) should specify updating "at least every two years."
Multiple	In multiple locations throughout the Article, with the exception of R9-7 306(C)(2)(b)(i) and (E)(4)(b)(i) and R9-7-311(A)(1)(c)(iii) and (E)(4)(a), which specify wording on a label, the rule could be clearer and more concise if the defined term "NRC" were used instead of "U.S. Nuclear Regulatory Commission.
Multiple	In multiple locations throughout the Article, the rule could be clearer and more concise if the phrase "Licensing State" were removed, since the phrase would refer to the Department, and requirements in the Department's rules are already stated or referenced.
R9-7-301	Subsection (A) would be clearer if it included "in this Chapter, rather than "9 A.A.C. 7" when referring to Articles in the Chapter and also included a reference to Article 19, since some specific licensees with large quantities of radioactive material would be subject to requirements in Article 19.
R9-7-302	It is unclear why "delivers" is used in subsection (A) but not in subsection (B) or (C). Subsection (A) would be clearer if the end of the subsection read "less than 1/20th of 1 percent (0.0005) of the chemical mixture, compound, solution, or alloy" to match the list earlier in the subsection. Subsection (C)(4) would be clearer and more concise if reworded to include further subsections and the removal of extraneous verbiage. Subsection (C)(5)(c) and (d) would be clearer and more concise if reworded to match the lead-in verbiage in subsection (C)(5). It is also unclear why "mirrors" are not included in the lead-in wording in subsection (C)(7) after "finished optical lenses" when they are included in the subsections under it. In addition, subsection (C)(7) should read "the exemption contained in this subsection does not authorize." In subsection (D) it is unclear which person has to be authorized by a license underR9-7- 318, the transferor or transferee. In subsection (E), it is unclear why the subsection is placed as it is, since it does not refer to exempted activities. In addition, subsection (E) includes the word "manufacture," but subsection (F), which cites subsection (E), says that manufacturing is not authorized.
R9-7-303	The rule would be clearer if subsections (A)(1) and (2) were combined into one rule, with subsections under it, and "subsection (A)(3) and (A)(4)" were changed to "subsections (A)(3) and (A)(4)." Subsection (A) would also be clearer if the phrase "radioactive material or products containing radioactive material" were consistently used. Subsection (B) would be clearer if

	reformatted to match the lead-in verbiage in subsection (B)(1) and reworded to eliminate the need for parenthetical phrases. In addition, the rule should be made consistent to correct that units of the quantity of radioactivity are abbreviated in subsection (B)(1)(b)(i), but spelled out in subsections (B)(1)(c) and (d), while in subsection (B)(1)(f) some units are abbreviated and others not. It is unclear in subsection (B)(1)(c) whether full balances or just parts and, in subsection (B)(1)(d), whether both compasses and "other marine navigational instruments" had to be manufactured before December 17, 2007. Because subsection (B)(1)(f)(vii) does not fit with the structure of the rest of the subsection, the subsection would be clearer if reformatted. Subsection (B)(1)(g)(ii) would be improved if formatted into a single sentence. Subsection (B)(1)(g)(iii) contains requirements more pertinent to subsection (B)(1)(h) and does not belong in subsection (B)(1)(g). Subsection (B)(1)(h) should not be in subsection (B), since it specifies who needs to apply for a specific license. Subsection (B)(1)(h) also does not make sense, since it references products exempted under (B)(1)(a) [timepieces], but then refers to persons exempt under (A)(1), which includes much more than timepieces. It is unclear why subsection (B)(2)(b) is placed as it is, since it does not refer to exempted activities, but specifies a person needing a license, and what requirements of the NRC the detectors in subsection (B)(3)(b) need to meet. Similarly, subsections (B)(3)(c) and (4)(b) should be in a different subsection, since they specify applying for a license. The same rationale applies to subsections (C)(2), (3), and (7), which should be a separate subsection rather than under "Exempt quantities." It is also unclear why subsection (B)(3)(c) cites to federal regulations, rather than to requirements included in Article 3. Subsection (C)(4)(a) would be clearer if reworded into subsections, rather than being one very long paragraph. Since subsection (C)(6) essentially grandfathers in persons who possess "radioactive material received or acquired before September 25, 1971" under a general license from needing to get a specific license to possess these radioactive materials, the exception from needing to obtain a specific license under R9-7-311 might be better placed at the beginning of R9-7-311.
R9-7-304	Subsection (A) is unclear, but the subsection would be clearer if it contained subsections to better delineate the three exception pathways. Subsection (B) would be clearer if there were a better explanation of the difference between a general license and a specific license, especially with respect to what "certain activities" means and what requires "registration with the Department." The subsections under subsection (B) should also be reworded to eliminate inconsistent formatting.
R9-7-305	Subsection (A)(2)(a) through (c) would be clearer and more concise if reworded. In subsection (C)(1), it is unclear what constitutes a "small volume." In subsection (C)(3), the rules should cite to a location specifying the content of the application, not to a form. In subsection (D)(2), it is unclear what "abandon" means. Subsection (D)(3) should specify "if transferring," because the requirement should not apply to a person that doesn't want to need to transfer the depleted uranium. The subsection would also be clearer if broken into subsections. It is also unclear why "depleted uranium" is used in subsection (D)(4) but "depleted source material" is used in subsection (D)(5). In subsection (E), it is unclear why general licensees are not subject to the waste disposal requirements in Article 4 or notice to employee requirements in Article 10. Subsection (F) contains many requirements about contamination, which appear to also be covered under other rules. It is unclear why there is not just a cross-reference to the other Sections/subsections, rather than restating the requirements.
R9-7-306	Subsection (A)(2) would be clearer if it contained a cross-reference to R9-7-310. In subsection (A)(3), the misplaced "or" should be corrected. It is unclear whether subsection (A)(4) pertains to a person that is licensed or the device, since subsection (A)(1) specifies that a person, not a device, is licensed. The wording in subsection (A)(4)(d) is unclear and needs to be revised to be consistent with federal requirements in 10 CFR 31.5. In subsection (A)(4)(e)(iii), it is unclear to whom the report should be furnished. It is unclear why the citation in subsection (A)(4)(g) to 10 CFR 110 is worded differently from that in subsection R9-7-305(D)(5), which specifies the export of depleted source material, while subsection (A)(4)(g) could specify byproduct material. Subsection (A)(4)(k)(ii) would be clearer if reworded to better describe the circumstances that

	would allow such a transfer. Subsections (A)(4)(h) and (m) would be clearer if reworded to include subsections. Subsection (A)(4)(q) would be clearer if the information specified in the subsection as being required for registering a device included a signature and date. Subsection (A)(5) would be clearer and more concise if reworded to more clearly state that a device that would be required to be registered under subsection (A)(4)(o) is exempted from these requirements if the device is used in Arizona for a period less than 180 days in any calendar year. The rule would be clearer if the provisions in subsection (A)(7) were included earlier in the Section. Subsections (B)(1) and (C)(1) would be clearer if broken into subsections. Subsection (B)(2)(a) and (e) should use "of this Chapter," rather than "9 A.A.C. 7." Subsection (C) should be reworded to eliminate multiple sentences. It is unclear why the ownership of plutonium is separately specified in subsection (C). Because of the wording in subsection (C)(2), it is unclear whether subsections (C) and (C)(1) refer to two different types of general licenses. If so, they should be in different subsections. In subsection (C)(2)(b), there should be an "or" between the labels. It is also unclear why the labeling requirements are included in multiple areas of the rules, instead of being in one location, to which there are cross-references as needed. Subsection (C)(2)(d) specify that radiation from the specified isotopes may escape during storage, rather than the radioactive material itself. It is unclear why subsections (C)(3) and (4) cannot be combined to read "does not authorize the manufacture, import, or export of calibration or reference sources." Subsection (D) would be clearer if it stated that the carbon-14 capsules may "contain up to one microcurie of carbon-14 urea." Subsections (E)(1)(a) through (g) contain repetitive language, which could be eliminated by rewording the subsections. It is unclear that "by this subsection" in subsection (E)(2) refers to subsection (E) as a whole rather than just to subsection (E)(2). In addition, the rules should include an application (some information for which is now in Exhibit (E)), to which there could be cross-references, and that the information specified in subsections (E)(2)(a) and (b) should be part of the information included in the application/Exhibit E. It is unclear that "by this subsection" in subsection (E)(3) refers to subsection (E) as a whole rather than just subsection (E)(3). The rule would be clearer and more concise if the information in subsection (E)(3)(a) for total amounts of the specified isotopes were added to the content of subsection (E)(1), and if subsection (E)(3)(f) cross-referenced to the amounts in subsection (E)(1). In addition, it is unclear why the units for mock iodine are 50 nanocuries in subsection (E)(3)(f), but 0.05 microcuries in subsection (E)(1)(g). The same unit nomenclature should be used. Subsection (E)(4)(a) would be clearer if "equivalent federal law" were replaced with the correct citation(s). Subsections (F), (F)(1), and (H)(2) would be clearer if reworded to include subsections. The last sentence in subsection (F) does not make sense where it is and should be made into a separate subsection, with subsection (F)(1) through (F)(5) under the new subsection. Subsections (F)(3) and (5) and (H) should use "of this Chapter," rather than "9 A.A.C. 7."
R9-7-308	Subsection (A) should be revised to cite to where a "Department application" is specified, as well as to allow for online applications. Subsections (C), (D), and (E) should be included as part of the application, as well as relevant parts of subsections (G) and (G)(1). In subsection (F), it is unclear on what basis a judgement may be made that disclosure is "not required in the public interest and would adversely affect the interest of a person concerned." The wording in subsection (G) is unclear and seems to be missing something. It should be reworded to make better sense. The meaning of subsection (G)(1) would be clearer if an application listed what information is needed from 10 CFR 32-210(c). Since the Department does not issue certificates, subsection (H) would be clearer if only "license" and "registration" were used.
R9-7-309	The lead-in should be revised to eliminate passive language. Subsection (4) should use "of this Chapter," rather than "9 A.A.C. 7."
R9-7-310	The term "broad scope" is not used in Article 13, and the terminology in subsections (A) and (B) and in R9-7-1302 should be made more consistent. The rule would be improved if subsection (A)(1) more clearly specified that it refers to class A licenses, similar to how subsections (A)(2) and (3) are worded. In addition to the language specified according to subsection (A)(1)(a) and (b), which are included to ensure consistency throughout all states, the

	license should state the actual class (as specified in Article 13). It is unclear why subsection(A)(3) doesn't include "acquisition" or "transfer" or why subsections (A)(1) and (2) do include the terms. Subsections (A)(2) and (3) should use "Exhibit C of this Article" or rename the Exhibit as "Exhibit 3C" rather than use "9 A.A.C. 7, Article 3." Subsection (B)(1)(c)(i) should specify requirements for a radiation safety committee, as are specified in R9-7-705(B) and R9-7-904(B). Subsections (B)(1)(c)(ii) and (2)(b)(i) should include requirements for a radiation safety officer. The rule would be clearer if the phrase "with this subsection" in (B)(1)(c)(iii)(3) were replaced with a cross-reference to subsection (B)(1)(c)(iii)(2). The cross-reference in subsection (B)(2)(b)(ii)(3) should be to subsection (B)(2)(b)(ii)(2). The subsection (C) lead-in would be clearer if it stated "a person with a license approved under subsection (B)(1), (2), or (3)" rather than "Broad scope licensees." Subsection (C)(3) should use "of this Chapter," rather than "9 A.A.C. 7."
R9-7-311	Subsection (A)(1)(c)(i) should be reworded to eliminate the parenthetical phrase. The distinctions between the devices and the requirements for the devices in subsections (A)(1)(e) and (f) is confusing and should be clarified. Subsection (A)(2) would be clearer if there were citations to where the requirements for mandatory testing are located. In addition, the request for a longer interval should be in an application, along with the information in subsections (A)(2)(a) through (j), and the criteria for approving or denying could be separate specified in this rule. The requests in subsection (A)(3) should also be in the application, and the subsection needs to be reworded to improve clarity. It is unclear in subsection (A)(4) what information comes to the Department and what goes to the intended user. It is also unclear whether "listed information" refers to the content of subsection (A)(4)(a). In addition, in subsection (A)(4)(a), it is unclear why the licensee would need to provide a "copy of the general license" to the intended user. Subsection (A)(4)(b)(i) would be clearer if the rule specified that the report needs to be sent to the state where the device is being sent or to the NRC. The rule would be more concise if subsections (A)(4)(b)(ii) and (iii) were combined. Since R9-7-304(B) includes both general licenses and specific licenses, subsection (A)(5) would be improved if reworded to clarify that the subsection refers to specific licensees. Subsections (A)(5) and (5)(a) would be clearer and more concise if reworded. It is unclear why the requirements in subsection (A)(7) are included in the rule since they duplicate the broader/more inclusive requirements in R9-7-313(G) and R9-7-319. Subsection (A)(8)(a) would be clearer if reworded to include subsections. Subsection (A)(8)(f) should be revised to read "include the license number of the licensee." Subsection (B)(2) should cite to Sections in the Article, rather than to federal regulations. Subsection (D) would be clearer if reworded to include "if the applicant satisfies" like in subsections (B) and (C). Subsection (E)(3)(a) would be clearer and more concise if it included a cross-reference to "the amounts in subsection (E)(2)" rather than repeating the isotopes and amounts. Subsections (E)(3)(b) and (4)(a) and (b) could also be improved by being reformatted. It is unclear why subsections (G)(1) through (4) all refer to PET radioactive drugs, while the lead-in in subsection (G) refers to the more generic radioactive drugs. Since the requirements in R9-7-712 are for nuclear pharmacists, who may work in a pharmacy, not to a pharmacy itself, subsection (G)(4) would be improved if reworded to clarify that such a pharmacy should ensure that an individual allowed to work as an authorized nuclear pharmacist needs to meet the requirements of R9-7-712. Subsection (H)(3) would be clearer if broken into subsections, and subsection (H)(5) could be reworded to avoid multiple sentences. Subsection (J)(3) would be clearer by citing to subsection (J)(1), rather than using the phrase "this subsection." Subsections (J)(4)(d) and (e) would be improved by being reformatted as subsections under a subsection of "either" the content of the current (J)(4)(d) or the current (J)(4)(e). Subsection (J) would be improved if restructured, with subsections (J)(4)(f)(i) and (ii) equivalent to subsection (J)(4)(f), but with the report just going to a different entity. This is especially apparent since subsections (J)(4)(f)(iii), (iv), and (v) seem to repeat the requirements at the end of the very long subsection (J)(4)(f). Subsection (K) would be clearer if it cited to R9-7-403, rather than to the entire Article 4.
R9-7-312	The rule could be improved by changing the requirements in (B)(1) - (3) to be applicable just for when a license is issued, rather than "at the time of issuance, or thereafter," so there is a better

	distinction of the difference from those requirements in R9-7-313(E)(1) – (4), which would cover other issues requiring conditions and limitations upon issuance and subsequently.
R9-7-313	In subsection (A), it is unclear why "and all the rules …" are included, since not all rules would pertain to every person or every situation. The rule could be improved by including the phrase "applicable laws…". The rules in the Chapter could be improved if the content of subsection (D) were in Article 1, since the requirement applies to multiple Articles, and if it included a citation to Article 17. The rule would be improved if all but the first sentence in subsection (F) were in R9-7-322, rather than in this rule. No licenses are issued "under this Section"; so subsection (G) would be clearer if it cited to one or more Sections for specific licenses, just as it does for general licensees "required to register under R9-7-306(A)(4)(o)." In addition, the last sentence in the subsection (and the subsections under it) should be a separate subsection, not under subsection (G), and the rule should clarify that "general licensee" in that sentence refers to only those under R9-7-306(A)(4)(o), rather than to all general licensees. Since it seems like subsection (H) is out of place in this Section, the rule would be more concise if the subsection were located elsewhere. In subsection (I)(1), the phrase "pursuant to the regulations in this part" should read "pursuant to the regulations in this Article." Subsection (I)(2)(a) should read "The identity and the technical and financial qualifications of the proposed transferee."
R9-7-315	Since not the same information/documentation is required for both initial and renewal applications, subsection (A) would be improved by better clarifying the differences. Subsection (B) could be improved by clarifying the meaning of the phrase "in proper form."
R9-7-316	As with R9-7-315(A), not all the same information/documentation is required for an amendment as for an initial application. Therefore, the rule would be improved by better clarifying that an applicant would need to submit information/documentation relevant to the change.
R9-7-318	Subsection (B)(2) could be improved by clarifying that "Department of Energy" refers to the U.S. Department of Energy. Subsection (C) would also be clearer if the phrase "radioactive material" were consistently used, rather than "the licensee transferring the material shall." Subsection (D) would be clearer if it stated "A licensee transferring radioactive material shall…" rather than using the term "transferor." Similarly, the subsections under subsection (D) would be clearer if the phrase "person to who radioactive material is transferred" rather than "transferee." Subsection (D)(3) could be improved by stating that the transferee either email or fax the applicable documentation to the transferor, confirming authorization, rather than just providing oral certification, even for an emergency shipment. Subsection (D)(4) should be revised to read "subsections (D)(1) to (3)." It is unclear in subsection (D)(5) how a transferor would "obtain and record confirmation from the Department … that the transferee is licensed to receive the radioactive material." The wording in subsection (F) is unclear because a person is not under this rule. Similarly, subsections (G), (H), and (I) do not make sense, in that a person is not "licensed under this Section." A person could be licensed under the Article, or under specific Sections in the Article. The rule would be more concise of subsections (G), (H), and (I) were combined into one subsection. Subsection (I) would be improved if reformatted to eliminate multiple sentences. Since the wording in both R9-7-305 and this rule, as well as "equivalent regulations of … another Agreement State," must be the same as "equivalent regulations of the NRC," subsection (I)(1) would be clearer and more concise, as well as less burdensome, if it required a copy of R9-7-305 and "this Section" be provided, rather than also requiring the person transferring the source material to find and provide "relevant equivalent regulations of the NRC or another Agreement State." Subsection (J)(2) would be clearer if broken into subsections, and subsection (J)(3) referenced to subsection (J)(2) instead of using "such." Since the only reports required in the rule appear to be those in subsection (J), subsection (K) would be clearer by citing to subsection (J), rather than stating "the reports required by this Section," and by requiring that a report be maintained for "a period of at least one year after the date the report is filed with the Department." In addition, no person seems to be licensed under this rule, but are licensed under other Sections in the Article, so subsection (K) should state "Each person licensed or registered under this Article."

R9-7-320	Subsection (A) would be clearer if it were broken into subsections and included the requirement in subsection (A)(1). Subsections (A)(2) through (5) would be clearer if included in a separate subsection specifying the requirements for a reciprocal licensee. Subsection (A)(5) could then reference to the general license under subsection (A). Subsection (B) could be clearer if the phrase "Notwithstanding the provisions of subsection (A)(1)" were replaced with a description of what the phrase means and if the phrase "subject to the jurisdiction of the licensing body" better explained that the phrase means the NRC or Agreement State that issued the specific license. Subsection (B)(1) would be improved if reworded to eliminate multiple sentences. Subsection (B)(4) could be clearer if the phrase "to whom the licensee transfers the device" were revised to read "to whom the specific licensee transfers the device." It is unclear why subsection (E) is in this rule, since the Department would not have jurisdiction over the federal site. The rule would be improved if the subsection were moved to another location. Subsection (F) does not belong in this Section, since it appears that the subsection applies to a person with a specific license issued by the Department working in another state. Therefore, the requirement would be better included in R9-7-311.
R9-7-322	Subsection (C)(2) would be clearer if the phrase "the radioactive material" were used instead of the pronoun "it." Subsection (D)(1) would be improved if "specified" were used instead of "expressed." Subsections ((D)(8), (10), and (12) would be clearer if broken into subsections to eliminate multiple sentences in a subsection. Subsection (E) would be clearer if the phrase "the emergency plan" were used instead of the pronoun "it." In addition, as stated above, provisions to change an emergency plan should be in this Section rather than in R9-7-313(F).
R9-7-323	Subsection (A)(1) may not be needed because "decommissioning" is also used in Article 4 and defined in R9-403. Therefore, the term should be defined in R9-7-102. Subsection (A)(2) may not be needed because the term is already defined in R9-7-102. The term "facility" in subsection (A)(3) is used in multiple Articles in the Chapter, without definition. If defined, the definition should be in R9-7-102. Definition (A)(4) is not needed because the defined term is not used in the Chapter. It is unclear why the amount required for financial security in subsection (A)(5) so low; the amount may need to be greatly increased if it is meant to cover the costs of decommissioning. It is not clear what date is meant by the phrase "issued before the effective date of this Section" in subsections (B) and (C), since the Section was originally adopted in May 1999, amended in February 2006 and August 2009, recodified in March 2018, and further amended in July 2018. Subsections (C)(2) would be improved by rewording to state "The cost of meeting the criteria for unrestricted use in R9-7-452(B), provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R9-7-452(C), the cost estimate may be based on meeting the criteria in R9-7-452(C)." Subsection (C)(4) is unclear as to what "provision of this Section" the rule refers. The subsection should specify the pertinent subsections. In subsection (C)(5), the phrase "decommissioning cost estimate" should be used instead of the undefined abbreviation "DCE." It is unclear to what the phrase "records of information important to the safe and effective decommissioning of the facility" in subsection (D) pertains. Examples would be helpful. In addition, subsection (D) would be improved if reformatted to eliminate multiple sentences, and if subsections (D)(1) and (2) were reformatted into subsections. It is unclear why the term "principal activities" is defined in R9-7-325, since the term is also used in subsection (E). The rule would be clearer if subsection (E)(1) referred to subsections (E)(3) and (5) as exceptions to the 60-day requirement. Since a licensee would not know when the Department received notice, subsection (E)(1) would also be improved if it required the 60-day period to start when the notice is sent to the Department. Subsection (E)(1) would be clearer if reformatted into subsections and if multiple sentences were eliminated. The rule would be clearer if the cross-reference in subsection (E)(2) to subsection (E)(1) were changed to subsection (C) for cost estimates for decommissioning. Subsections (E)(3) and (5) would be clearer if formatted into a new subsection specific to exceptions from the time-period requirements in (E)(1). Subsection (E)(4) would be improved if broken into subsections. It is unclear how subsection (F) differs from subsection (D). Subsection (F)(1) is like subsection (D)(1), subsection (F)(2) is like subsection (D)(2), subsection (F)(4) is like subsection (D)(3).

	The only part of subsection (F) not in subsection (D) appears to be subsection (F)(3). In addition, subsection (F) references R9-7-318, and specifies "Before licensed activities are transferred or assigned." However, R9-7-318 is about the transfer of radioactive material, not of activities, so the meaning of the requirement is unclear. In subsection (F), the rule would be clearer if the phrase "transfer all records described in subsections (F)(1) through (F)(4) to the new licensee. In this case, the new licensee will be responsible" were changed to read "transfer the following records to the new licensee, who will be responsible." The content of subsection (H) provides a lot of information that is important in understanding the requirements that comes before it. Therefore, it should be located earlier in the Section. Subsection (H)(2) would be clearer of broken into subsections. It is unclear why the guarantee "may be used if the guarantee and test are approved by the Department" when there is no "financial test" mentioned for commercial companies that do not issue bonds or for nonprofits.
R9-7-324	In the lead-in, it is not clear why there is a need to abbreviate license termination plan as "LTP" if the full term is only used once and the abbreviation is not used elsewhere in the Article.
R9-7-325	The term "principal activities" defined in subsection (A) is also used in R9-7-323(E), so the term should be defined elsewhere. Subsection (C) would be improved if reformatted to eliminate multiple sentences and if subsection (C)(2) specified that "they" refers to "the restricted areas" and clarified what is meant by "in accordance with NRC requirements." In subsection (D), it is unclear whether there is a difference between "site" and "facility." In addition, subsection (D) uses "with Department requirements" without specifying which requirements but specifies NRC requirements in (C)(2). The rule should refer to Department requirements in both locations.
Exhibit E	The rule would be clearer if the requirements were part of an applications specified in rule, including what information needs to be provided in a Department-provided format and what documents, as applicable, need to be submitted along with the information. In addition, it is unclear what a "letter of intent" is in the list in subsection (1). The wording in subsection (2) would be clearer if it read "the following information on an application for registration of a device" rather than "the following information on a registration certificate."

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:

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 3 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though six of the rulemakings were in 12 A.A.C. 1. No economic impact statements (EISs) are available to the Department for these rulemakings, so the economic impact of the Sections made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, if available, including review of the changes made. If a rule included in one of these rulemakings was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. Since the recodification, two

additional rulemakings were made through expedited rulemaking, for which no economic impact statements were required.

Seven of the rules in the Article (R9-7-314, R9-7-316, R9-7-317, R9-7-322, Exhibit A, Exhibit C, and Exhibit E) were last revised effective May 12, 1999. No NFR is available for this rulemaking. However, three of these rules are essentially informational (R9-7-314, R9-7-316, and R9-7-317), and the Department believes they have no economic impact in and of themselves. Three others (R9-7-322, Exhibit A, and Exhibit C) restate requirement of the NRC, which regulated persons would have to follow, regardless of what is in the rule. Therefore, the Department believes they have no economic impact beyond what is already required of a regulated person by the NRC. The remaining rule, Exhibit E, contains information needed on an application for a license to possess or use radioactive material. Because the rule is outdated, and it is unclear what needs to be submitted as part of an application without the use of a guide, the Department believes that the rule may impose a greater economic burden on regulated persons than that estimated when the rule was last revised. The Department plans to include the requirements in Exhibit E as part of applications specified in rule, including what information needs to be provided in a Department-provided format and what documents, as applicable, need to be submitted along with the information.

Six other rules (R9-7-301, R9-7-309, R9-7-312, R9-7-315, R9-7-319, R9-7-325) were last revised in a rulemaking at 12 A.A.R. 75, effective February 7, 2006. In this rulemaking, clarifying changes were made in R9-7-301, R9-7-309, R9-7-312, R9-7-315, and R9-7-319 pursuant to a five-year-review report approved on October 7, 2003. Although no economic effect was identified in the NFR, the Department believes that these changes may have reduced a regulatory burden. In addition, R9-7-325 was added as part of the rulemaking to comply with requirements of the Agreement that these rules are consistent with the requirements of the NRC. Since a person regulated under these rules would need to comply with NRC requirements regardless of what is in the rule, the Department believes that this additional Section would have no economic impact beyond what is already required of a regulated person by the NRC, although no economic effect associated with the Section was identified in the NFR.

One rule, R9-7-324, was last revised in a rulemaking at 15 A.A.R. 1023, effective August 1, 2009. Another, R9-7-310, was last revised in a rulemaking at 18 A.A.R. 1895, effective September 10, 2012. In both cases, the changes to these rules were clarifying, with a cross-reference corrected in R9-7-324, and the placement of a requirement moved in R9-7-310. The change to R9-7-324 was likely the result of a five-year-review report, and, although no economic effect was identified in the NFR, the Department believes that the change may have reduced a regulatory burden. The NFR for the 2018 rulemaking stated that "[t]here is little or minimal economic impact from any of the proposed rules in this rulemaking." The Department believes the actual economic effect is as estimated.

A rulemaking at 20 A.A.R. 324, effective March 8, 2014, last made changes to Exhibit B and Exhibit D. Germanium and indium were added to Exhibit B, and radium was added to Exhibit D, each with its appropriate values. These changes were made to keep the rules compliant with NRC requirements, as required by the

Agreement, with which a person regulated under these rules would need to comply regardless of what is in the rule. Thus, the NFR stated that little or no economic impact was anticipated based on the changes. The Department believes the actual economic effect is as estimated.

Two rules, R9-7-308 and R9-7-320, were last revised in a rulemaking effective February 2, 2016, at 22 A.A.R. 603. In R9-7-308, the date of an incorporation by reference was updated and a provision for requesting inactivation of a registration or license was added. In R9-7-320, a cross-reference was updated. These changes were made to keep the rules compliant with requirements of the Agreement and not believed to have an economic effect on regulated entities. The Department believes the actual economic effect is as estimated.

The remaining rules in the Article were last revised through expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018, and at 26 A.A.R. 1067, effective May 6, 2020, to comply with requirements of the Agreement. No economic effect was anticipated based on either rulemaking. The Department believes the actual economic effect is as estimated.

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.

The previous five-year-review report stated the intention of revising the rules to bring the Department into compliance with the Agreement and make other changes to address issues described in the five-year-review report. The Department addressed the issues identified in the rulemaking effective July 2018.

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 3 provide notice to regulated entities of requirements related to the ownership, control, or transfer of radioactive material. These requirements not only comply with terms of the Agreement, but also protect the health and safety of employees of persons with these radioactive materials, patients or clients of these persons, and the general public. Without these requirements that are compatible with federal regulations, Arizona cannot remain an Agreement State. If Arizona lost primacy for the regulation of radioactive materials in Arizona, regulated entities would still need to comply with the federal requirements, but would need to pay the much higher fees to the NRC rather than the fees under the rules in 9 A.A.C. 7. Thus, the benefit of the rules outweighs the costs of the rules. Although the issues described in this report may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as the federal regulations. Therefore, the Department believes that the rules, with this constraint and few exceptions, impose the

least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules rely on the following federal regulations, but are not more stringent than the regulations:
10 CFR 30; 10 CFR 30.3; 10 CFR 30.32(j); 10 CFR 30.35; 10 CFR 30.36(g)(1), (i), and (j); 10 CFR 31.5(b), (c), and (d); 10 CFR 31.5(c)(13)(i); 10 CFR 32; 10 CFR 32.11; 10 CFR 32.18; 10 CFR 32.21; 10 CFR 32.22; 10 CFR 32.26; 10 CFR 32.52; 10 CFR 32.53; 10 CFR 32.54; 10 CFR 32.55; 10 CFR 32.56; 10 CFR 32.57; 10 CFR 32.58; 10 CFR 32.59; 10 CFR 32.61; 10 CFR 32.62; 10 CFR 32.72; 10 CFR 32.74; 10 CFR 32.201; 10 CFR 32.210; 10 CFR 32.211; 10 CFR 35.3204; 10 CFR 40.3; 10 CFR 40.25; 10 CFR 40.36 10; CFR 40.42(g)(1); 10 CFR 40.42(i); 10 CFR 40.42(j); 10 CFR 40.54; 10 CFR 70.25; 10 CFR 70.38(g)(1), (i), and (j); 10 CFR 70.39; and 10 CFR 110.

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:

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 15, without any substantive changes, from 12 A.C.C. 1, Article 3, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. All but 14 of the rules in Article 3 were adopted after July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department is to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit, issued under the rules in 9 A.A.C. 7, applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Since the rules in Article 3 must comply with requirements of the Agreement, possible changes must be discussed with and, in some cases, approved by the NRC before they can be proposed. As discussed with the Council, the Department is planning to extensively revise and reorganize the Chapter. To that end, the Department has requested approval to begin the rulemaking, as required by A.R.S. § 41-1039(A), but has not yet received this approval. Given the complex and technical nature of the content of the Chapter and the need to coordinate and collaborate with the NRC in drafting revisions to the Chapter, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before December 2025.

ARTICLE 3. RADIOACTIVE MATERIAL LICENSING

Section

R9-7-301. Ownership, Control, or Transfer of Radioactive Material

R9-7-302. Source Material; Exemptions

R9-7-303. Radioactive Material Other Than Source Material; Exemptions

R9-7-304. License Types

R9-7-305. General Licenses – Source Material

R9-7-306. General License – Radioactive Material Other Than Source Material

R9-7-308. Filing Application for Specific Licenses

R9-7-309. General Requirements for Issuance of Specific Licenses

R9-7-310. Special Requirements for Issuance of Specific Broad Scope Licenses

R9-7-311. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

R9-7-312. Issuance of Specific Licenses

R9-7-313. Specific Terms and Conditions

R9-7-314. Expiration of License

R9-7-315. Renewal of License

R9-7-316. Amendment of Licenses at Request of Licensee

R9-7-317. Department Action on Applications to Renew or Amend

R9-7-318. Transfer of Radioactive Material

R9-7-319. Modification, Revocation, or Termination of a License

R9-7-320. Reciprocal Recognition of Licenses

R9-7-322. The Need for an Emergency Plan for Response to a Release of Radioactive Material

R9-7-323. Financial Assurance and Recordkeeping for Decommissioning

R9-7-324. Public Notification and Public Participation

R9-7-325. Timeliness in Decommissioning Facilities

Exhibit A. Exempt Concentrations

Exhibit B. Exempt Quantities

Exhibit C. Limits for Class B and C Broad Scope Licenses (R9-7-310)

Exhibit D. Radioactive Material Quantities Requiring Consideration for an Emergency Plan (R9-7-322)

Exhibit E. Application Information

ARTICLE 3. RADIOACTIVE MATERIAL LICENSING

R9-7-301. Ownership, Control, or Transfer of Radioactive Material

A. In addition to the requirements of this Article, all licensees are subject to the requirements of 9 A.A.C. 7, Article 1, Article 4, and Article 10. Licensees engaged in industrial radiographic operations are subject to the requirements of 9 A.A.C. 7, Article 5; licensees using radioactive material in the practice of medicine are subject to the requirements of 9 A.A.C. 7, Article 7; licensees transporting radioactive material are subject to the requirements contained in 9 A.A.C. 7, Article 15; and licensees using radioactive material in well logging operations are subject to the requirements in 9 A.A.C. 7, Article 17.

B. Notwithstanding any other provisions of this Article, any person may own radioactive material, provided that the ownership does not include the actual possession, custody, use, or physical transfer of radioactive material or the manufacture or production of any article that contains radioactive material without the applicable certification, license, or registration.

C. A manufacturer, processor, or producer of any equipment, device, commodity, or other product that contains source material or radioactive material whose subsequent possession, use, transfer, or disposal by all other persons is exempt from regulatory requirements may only obtain authority to transfer possession or control of the material from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R9-7-302. Source Material; Exemptions

A. Any person is exempt from this Article to the extent the person receives, possesses, uses, delivers or transfers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 1/20th of 1 percent (0.0005) of the mixture, compound, solution, or alloy.

B. Any person is exempt from this Article to the extent the person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material, provided that, the person does not refine or process the ore except as authorized in a specific license.

C. Any person is exempt from the requirements for a license set forth in this Article if the person receives, possesses, uses, or transfers:

1. Any quantities of thorium contained in:
    a. Incandescent gas mantles;
    b. Vacuum tubes;
    c. Welding rods;
    d. Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;
    e. Germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting, provided that each lamp does not contain more than 2 grams of thorium;

f. Rare earth metals, compounds, mixtures, or products containing not more than 0.25 percent by weight thorium, uranium, or any combination of thorium and uranium; or

g. Individual neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium;

2. Source material contained in the following products:

a. Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent source material by weight;

b. Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass or ceramic used in construction; or

c. Piezoelectric ceramic containing not more than 2 percent source material by weight;

3. Photographic film, negatives, and prints containing uranium or thorium;

4. Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subsection does not authorize the chemical, physical, or metallurgical treatment or processing of the finished product or part;

5. Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of counterweights, provided that:

a. Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";

b. Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED";

c. The exemption contained in subsection (C)(5) does not authorize the chemical, physical, or metallurgical treatment or processing of any counterweight other than repair or restoration of any plating or other covering; and

d. The requirements specified in subsections (C)(5)(a) and (b) need not be met by counterweights manufactured prior to December 31, 1969; provided, that these counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, "CAUTION – RADIOACTIVE MATERIAL – URANIUM";

6. Natural or depleted uranium metal used as shielding and constituting part of any shipping container; provided that:

a. The shipping container is conspicuously and legibly impressed with the legend "CAUTION – RADIOACTIVE SHIELDING – URANIUM," and

b. The uranium metal is encased in mild steel or equally fire resistant metal with minimum wall

thickness of 1/8 inch (3.2 mm);

7. Thorium or uranium contained in or on finished optical lenses, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that the exemption contained in this Section does not authorize either:
   a. The shaping, grinding, or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or
   b. The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, spectacles, or the eyepieces of binoculars or other optical instruments;
8. Uranium contained in detector heads of fire detection units, provided that each detector head contains not more than 5 nanocuries (185 Bq) of uranium; or
9. Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:
   a. The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and
   b. The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

D. No person may initially transfer for sale or distribution a product containing source material to persons exempt under subsection (C), or equivalent regulations of the NRC or another Agreement State, unless authorized by a license issued under R9-7-318 to initially transfer such products for sale or distribution.

E. Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under R9-7-318 for distribution only and are exempt from the requirements of Articles 4 and 10 of this Chapter, and R9-7-309(1) and (2).

F. The exemptions in subsections (C), (D), and (E) do not authorize the manufacture of any of the products described.

R9-7-303. Radioactive Material Other Than Source Material; Exemptions

A. Exempt concentrations

1. Except as provided in subsection (A)(3) and (A)(4), any person is exempt from this Article if the person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in Exhibit A.
2. This Section shall not be deemed to authorize the import of radioactive material or products containing radioactive material.
3. A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license issued under R9-7-311(A) or the requirements of this Article to the extent that this person

transfers radioactive material contained in a product or material in concentrations not in excess of those specified in Exhibit A of this Article and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

4. A person shall not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under subsection (A)(1) or equivalent Regulations of the U.S. Nuclear Regulatory Commission or any Agreement State or Licensing State, except in accordance with a license issued under 10 CFR 32.11.

B. Exempt items

1. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, or persons who initially transfer for sale or distribution the following products, a person is exempt from this Chapter to the extent that the person receives, possesses, uses, transfers, owns, or acquires the following products:
   a. Timepieces, hands, or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:
      i. 925 megabecquerels (25 millicuries) of tritium per timepiece;
      ii. 185 megabecquerels (5 millicuries) of tritium per hand;
      iii. 555 megabecquerels (15 millicuries) of tritium per dial (bezels when used shall be considered part of the dial);
      iv. 3.7 megabecquerels (100 microcuries) of promethium-147 per watch or 7.4 megabecquerels (200 microcuries) of promethium-147 per any other timepiece;
      v. 740 kBq (20 microcuries) of promethium-147 per watch hand or 1.48 megabecquerels (40 microcuries) of promethium-147 per other timepiece hand;
      vi. 2.22 megabecquerels (60 microcuries) of promethium-147 per watch dial or 4.44 MBq (120 microcuries) of promethium-147 per other timepiece dial (bezels, when used, shall be considered part of the dial);
      vii. The levels of radiation from hands and dials containing promethium-147 shall not exceed, when measured through 50 milligrams per square centimeter of absorber:
         (1) For wrist watches, 1.0 μGy (0.1 millirad) per hour at 10 centimeters from any surface of the watch;
         (2) For pocket watches, (0.1 millirad) per hour at 1 centimeter from any surface;
         (3) For any other timepiece, 2.0 μGy (0.2 millirad) per hour at 10 centimeters from any surface;
      viii. 37 kBq (1 microcurie) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007;

b. Static elimination devices which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 μCi) of polonium-210 per device.
    i. Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 μCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.
    ii. Such devices authorized before October 23, 2012 for use under the general license then provided in R9-7-306 and equivalent regulations of the NRC or Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the NRC.
c. Balances of precision containing not more than 37 megabecquerels (1 millicurie) of tritium per balance or not more than 18.5 megabecquerels (0.5 millicurie) of tritium per balance part manufactured before December 17, 2007;
d. Marine compasses containing not more than 27.75 gigabecquerels (750 millicuries) of tritium gas and other marine navigational instruments containing not more than 9.25 gigabecquerels (250 millicuries) of tritium gas manufactured before December 17, 2007;
e. Ionization chamber smoke detectors containing not more than 37 kBq (1 microcurie) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;
f. Electron tubes: Provided that each tube does not contain more than one of the following specified quantities of radioactive material:
    i. 5.55 GBq (150 millicuries) of tritium per microwave receiver protector tube or 370 megabecquerels (10 millicuries) of tritium per any other electron tube;
    ii. 37 kBq (1 microcurie) of cobalt 60;
    iii. 185 kBq (5 microcuries) of nickel 63;
    iv. 1.11 megabecquerels (30 microcuries) of krypton 85;
    v. 185 kBq (5 microcuries) of cesium 137;
    vi. 1.11 megabecquerels (30 microcuries) of promethium-147;
    vii. And provided further, that the level of radiation due to radioactive material contained in each electron tube does not exceed 10 μGy (1 millirad) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber. The term “electron tubes” includes spark gap tubes, power tubes, gas tubes, including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical current;
g. Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material provided that:
    i. Each source contains no more than one exempt quantity set forth in Exhibit B of this Article;

and

ii. Each instrument contains no more than 10 exempt quantities. For the purposes of this subsection, an instrument's source or sources may contain either one type or different types of radionuclide and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Exhibit B of this Article, provided the sum of the fractions do not exceed unity;

iii. For the purposes of subsection (B)(1)(h) only, 185 kBq (50 nanocurie) of americium-241 is considered an exempt quantity under Exhibit B of this Article;

h. Any person who desires to apply radioactive material to, or to incorporate radioactive material into, the products exempted in subsection (B)(1)(a), or who desires to initially transfer for sale or distribution such products containing radioactive material, should apply for a specific license pursuant to R9-7-311 of this Article, which license states that the product may be distributed by the licensee to persons exempt from the rules pursuant to subsection (A)(1).

2. Self-luminous products containing tritium, krypton-85, or promethium-147:

a. Except for persons who manufacture, process, initially transfer for sale or distribution, or produce self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in subsection (B)(2)(c), a person is exempt from this Chapter if the person receives, possesses, uses, owns, transfers or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported, initially transferred for sale or distribution, or transferred under a specific license issued by the U.S. Nuclear Regulatory Commission and described in 10 CFR 32.22, and the license authorizes the transfer of the products to persons who are exempt from regulatory requirements.

b. Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under subsection (B)(2)(a), should apply for a license:

i. Under 10 CFR 32 and for a certificate of registration in accordance with 10 CFR 32.210, and

ii. As described in R9-7-311.

c. A person is exempt from this Chapter if the person receives, possesses, uses, or transfers articles containing less than 3.7 kBq (100 nanocuries) of radium-226, manufactured prior to October 1, 1978.

3. Gas and aerosol detectors containing byproduct material

a. Except for persons who manufacture, process, initially transfer for sale or distribution, or produce gas and aerosol detectors containing radioactive material, a person is exempt from this Chapter if the person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, provided that

detectors containing radioactive material shall be manufactured, imported, or transferred according to a specific license issued by the U.S. Nuclear Regulatory Commission and described in 10 CFR 32.26, or equivalent regulations of an Agreement or Licensing State, this exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007 in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or equivalent regulations of an Agreement or Licensing State and the license authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

b. Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State are exempt under subsection (B)(3)(a), provided that the device is labeled in accordance with the specific license authorizing distribution of the general licensed device, and that the detectors meet the requirements of the regulations of the U.S. Nuclear Regulatory Commission.

c. Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under subsection (B)(3)(a), should apply for a license under 10 CFR 32.26 and for a certificate of registration in accordance with 10 CFR 32.210.

4. Certain industrial devices

a. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in this Chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under R9-7-311 of this Article, which license authorizes the initial transfer of the device for use under this Section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

b. Any person who desires to manufacture, process, produce, or initially transfer, for sale or distribution, industrial devices containing byproduct material for use under subsection (B)(4)(a), shall apply for a license described in R9-7-311 and for a certificate of registration in accordance with 10 CFR 32.210.

C. Exempt quantities

1. Except as provided in subsections (C)(2), (3), and (7), a person is exempt from this Chapter if the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities each

of which does not exceed the applicable quantity set forth in Exhibit B of this Article.

2. This subsection does not authorize the production, packaging, or repackaging or transfer of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.
3. Except as specified in this subsection, a person shall not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Exhibit B of this Article, knowing or having reason to believe the described quantities of radioactive material will be transferred to persons exempt under subsection (C) or equivalent regulations of the U.S. Nuclear Regulatory Commission or any Agreement State or Licensing State. A person may transfer radioactive material for commercial distribution under a specific license issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.18 which license states that the radioactive material may be transferred by the licensee to persons exempt under this subsection or the equivalent regulations of the U.S. Nuclear Regulatory Commission or any Agreement State or Licensing State.
4. Sources containing exempt quantities of radioactive material shall not be bundled or placed in close proximity for the purpose of using the radiation from the combined sources in place of a single source, containing a licensable quantity of radioactive material.
5. Possession and use of bundled or combined sources containing exempt quantities of radioactive material in unregistered devices by persons exempt from licensing is prohibited.
6. Any person, who possesses radioactive material received or acquired before September 25, 1971, under the general license issued under R9-7-311(A) of this Article or similar general license of an Agreement State or the NRC, is exempt from the requirements for a license issued under R9-7-311(A) of this Article to the extent that this person possesses, uses, transfers, or owns radioactive material.
7. No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by the exemption described in subsection (C)(6) so that the aggregate quantity exceeds the limits set forth in Exhibit B, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the rules in this Section.

R9-7-304. License Types

A. Activities requiring license. Except as provided in 10 CFR 30.3 (revised January 1, 2013, incorporated by reference, and available under R9-7-101; this incorporated material contains no future editions or amendments), in subsection (B)(1), and for persons exempt as provided in R9-7-302 and R9-7-303 of this Article, no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter and in accordance with 10 CFR 30.3.

B. Licenses for radioactive materials are of two types: general and specific.

1. A general license is provided by rule, grants authority to a person for certain activities involving radioactive material, and is effective without the filing of an application with the Department or the issuance of a licensing document to a particular person. However, registration with the Department may be required by the particular general license.
2. The Department issues a specific license to a named person who has filed an application for a license under the applicable provision of this Chapter. A specific licensee is subject to all of the applicable rules in this Chapter and any limitation contained in the license document.

R9-7-305. General Licenses – Source Material

A. A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities.

1. No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year.
2. As applicable:
    a. No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this subsection unless it is accounted for under the limits of subsection (A)(1);
    b. No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this subsection; or
    c. No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

B. A person who receives, possesses, uses, or transfers source material under a general license granted under subsection (A) is exempt from the provisions of Article 4 and Article 10 of this Chapter, provided the receipt, possession, use, or transfer is within the terms of the general license, except that such person shall

comply with the provisions of R9-7-434 and R9-7-452. This exemption does not apply to any person who is also in possession of source material under a specific license issued under this Article.

C. This subsection grants a general license that authorizes a person to receive acquire, possess, use, or transfer depleted uranium contained in industrial products and devices provided:

1. The depleted uranium is contained in the industrial product or device for the purpose of providing a concentrated mass in a small volume of the product or device;
2. The industrial products or devices have been manufactured or initially transferred in accordance with a specific license governed by R9-7-311(J), or a specific license issued by the NRC or another Agreement State that authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an Agreement State; and
3. The person files an ARRA 23 "Registration Certificate -- Use of Depleted Uranium Under General License" with the Department. The person shall provide the information requested on the certificate and listed in Exhibit E. The person shall submit the information within 30 days after first receipt or acquisition of the depleted uranium, returning the completed registration certificate to the Department. The person shall report in writing to the Department any change in information originally submitted to the Department on ARRA 23. The person shall submit the change report within 30 days after the effective date of the described change.

D. A person who receives, acquires, possesses, or uses depleted uranium according to the general license provided under subsection (C) shall:

1. Not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;
2. Not abandon the depleted uranium;
3. Transfer the depleted uranium as prescribed in R9-7-318. If the transferee receives the depleted uranium under a general license established by subsection (C), the transferor shall furnish the transferee with a copy of this subsection and a copy of the registration certificate. If the transferee receives the depleted uranium under a general license governed by a regulation of the NRC or another Agreement State that is equivalent to subsection (C), the transferor shall furnish the transferee a copy of the equivalent rule and a copy of the registration certificate, accompanied by a letter explaining that use of the product or device is regulated by the NRC or an Agreement State under requirements substantially similar to those in this Section;
4. Within 30 days of any transfer, report in writing to the Department the name and address of the person receiving the depleted uranium; and
5. Not export depleted source material except under a license issued by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 110.

E. A person who receives, acquires, possesses, uses, or transfers depleted uranium in accordance with a general license granted under subsection (C) is exempt from the requirements in Articles 4 and 10 of this Chapter with respect to the depleted uranium covered by that general license.

F. Any person who receives, possesses, uses, or transfers source material in accordance with subsection (A) shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Department about such contamination and may consult with the Department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in R9-7-452.

G. No person may initially transfer or distribute source material to persons generally licensed under subsection (A)(1) or (2), or equivalent regulations of the NRC or another Agreement State, unless authorized by a specific license issued in accordance with R9-7-318 or equivalent provisions of another Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample.

R9-7-306. General License – Radioactive Material Other Than Source Material

A. Certain measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.

1. This subsection grants a general license to a commercial or industrial firm; a research, educational or medical institution; an individual conducting business; or a state or local government agency to receive, acquire, possess, use, or transfer radioactive material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, according to the provisions of 10 CFR 31.5(b), (c), and (d), (Revised January 1, 2013, incorporated by reference, and available under R9-7-101. The incorporated material contains no future editions or amendments.
2. A general licensee shall receive a device from one of the specific licensees described in this Section or through a transfer made under subsection (A)(4)(k).
3. A general license in subsection (A)(1) applies only to radioactive material contained in devices that have been manufactured or initially transferred and labeled in accordance with the requirements contained in:
    a. A specific license issued under R9-7-311(A), or
    b. An equivalent specific license issued by the NRC or another Agreement State.
    c. An equivalent specific license issued by a State with rules or regulations comparable to this Section.

4. A person who acquires, receives, possesses, uses, or transfers radioactive material in a device licensed under subsection (A)(1) or through a transfer made under subsection (A)(4)(h), shall:
    a. Ensure that all labels and safety statements affixed to a device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained and not removed, and comply with all instructions and precautions on the labels.
    b. Ensure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as specified on the label.
        i. A general licensee need not test a device that contains only krypton for leakage of radioactive material; and
        ii. A general licensee need not test a device for leakage of radioactive material if the device contains only tritium, not more than 3.7 megabecquerels (100 microcuries) of other beta and/or gamma emitting material, or 370 kilobecquerels (10 microcuries) of alpha emitting material, or the device is held in storage, in the original shipping container, before initial installation.
    c. Ensure that the tests required by subsection (A)(4)(b) and other testing, installation, servicing, and removal from installation involving the radioactive material or its shielding or containment, are performed:
        i. In accordance with the device label instructions, or
        ii. By a person holding a specific license under R9-7-311(A) or in accordance with the provisions of a specific license issued by the NRC or an Agreement State which authorizes distribution of devices to persons generally licensed by the NRC or an Agreement State.
    d. Maintain records of compliance with the requirements in subsections (A)(4)(b) and (c) that show the results of tests; the dates that required activities were performed, and the names of persons performing required activities involving radioactive material from the installation and its shielding or containment. The records shall be maintained for three years from the date of the recorded event or until transfer or disposal of the device.
    e. Immediately suspend operation of a device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 microcurie) or more of removable radioactive material.
        i. A general licensee shall not operate the device until it has been repaired by the manufacturer or another person holding a specific license to repair this type of device that was issued by the Department under R9-7-311(A), the NRC, or an Agreement State which authorizes distribution of devices to persons generally licensed by the NRC or an Agreement State.
        ii. If necessary the general licensee shall dispose of the device and any radioactive material from

the device by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Department.

iii. Within 30 days of an event governed by subsection (A)(4)(e) the general licensee shall furnish a report that contains a brief description of the event and the remedial action taken and, in the case of detection of 185 Becquerel (0.005 microcurie) or more of removable radioactive material or failure of or damage to a source likely to result in contamination of the general licensee's facility or the surrounding area, if applicable, a plan for ensuring that the general licensee's facility and surrounding area, if applicable, are acceptable for unrestricted use. The radiological criteria for unrestricted use in R9-7-452 may be used to prepare the plan, as determined by the Department, on a case-by-case basis.

f. Not abandon a device that contains radioactive material.

g. Not export a device that contains radioactive material except in accordance with 10 CFR 110, revised January 1, 2013, incorporated by reference, and available under R9-7-101. The incorporated material contains no future editions or amendments.

h. Transfer or dispose of a device that contains radioactive material only by export as authorized in subsection (A)(4)(g), transfer to another general licensee as authorized in subsection (A)(4)(k) or a person who is authorized to receive the device by a specific license issued by the Department, the NRC, or an Agreement State, or collection as waste if authorized by equivalent regulations of an Agreement State, or the NRC, or as otherwise approved under subsection (A)(4)(j).

i. Within 30 days after the transfer or export of a device to a specific licensee, furnish a report to the Department. The report shall:

   i. Identify the device by manufacturer's (or initial transferor's) name, model number, and serial number;

   ii. Provide the name, address, and license number of the person receiving the device (license number not applicable if exported); and

   iii. Provide the date of transfer or export.

j. Obtain written Department approval before transferring a device to any other specific licensee that is not authorized in accordance with subsection (A)(4)(h).

k. Transfer a device to another general licensee only:

   i. If the device remains in use at a particular location. The transferor shall provide the transferee with a copy of this Section, a copy of R9-7-443, R9-7-445, and R9-7-448 and any safety documents identified on the device label. Within 30 days of the transfer, the transferor shall report to the Department the manufacturer's (or initial transferor's) name; the model number and the serial number of the device transferred; the transferee's name and mailing address for the location of use; and the name, title, and telephone number of the responsible individual

appointed by the transferee in accordance with subsection (A)(4)(n); or

ii. If the device is held in storage in the original shipping container at its intended location of use before initial use by a general licensee, and by a person that is not a party to the transaction.

l. Comply with the provisions of R9-7-443, R9-7-444, R9-7-445, R9-7-447, and R9-7-448 for reporting and notification of radiation incidents, theft or loss of licensed material, and is exempt from the other requirements of 9 A.A.C 7, Articles 4 and 10.

m. Respond to written requests from the Department to provide information relating to the general license within 30 days from the date on the request, or a longer time period specified in the request. If the general licensee cannot provide the requested information within the specified time period, the general licensee shall request a longer period to supply the information before expiration of the time period, providing the Department with a written justification for the request.

n. Appoint an individual responsible for knowledge of applicable laws and possessing the authority to take actions required to comply with applicable radiation safety laws. The general licensee, through this individual, shall ensure the day-to-day compliance with applicable radiation safety laws. This provision does not relieve the general licensee of responsibility.

o. Register, in accordance with subsections (A)(4)(p) and (q), any device that contains at least 370 megabecquerels (10 millicuries) of cesium-137, 3.7 megabecquerels (0.1 millicuries) of strontium-90, 37 megabecquerels (1 millicurie) of cobalt-60, or 37 megabecquerels (1 millicurie) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described under subsection (A)(4)(q)(iv), represents a separate general licensee and requires a separate registration and fee.

p. Register each device annually with the Department and pay the fee required by R9-7-1306, Category D4, if in possession of a device that meets the criteria in subsection (A)(4)(o). The general licensee shall register by verifying, correcting, and adding to the information provided in a request for registration received from the Department. The registration information shall be submitted to the Department within 30 days from the date on the request for registration. In addition, a general licensee holding devices meeting the criteria of subsection (A)(4)(o) is subject to the bankruptcy notification requirements in R9-7-313(D).

q. In registering a device, furnish the following information and any other registration information specifically requested by the Department:

i. Name and mailing address of the general licensee;

ii. Information about each device, including the manufacturer (or initial transferor), model number, serial number, radioisotope, and activity (as indicated on the label);

iii. Name, title, and telephone number of the responsible individual appointed by the general

licensee under subsection (A)(4)(n);

iv. Address or location at which each device is used and stored. For a portable device, the address of the primary place of storage;

v. Certification by the responsible individual that the information concerning each device has been verified through a physical inventory and review of label information; and

vi. Certification by the responsible individual that the individual is aware of the requirements of the general license.

r. Report a change in mailing address for the location of use or a change in the name of the general licensee to the Department within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

s. Not use a device if the device has not been used for a period of two years. If a device with shutters is not being used, the general licensee shall ensure that the shutters are locked in the closed position. The testing required by subsection (A)(4)(b) need not be performed during a period of storage. However, if a device is put back into service or transferred to another person, and has not been tested during the required test interval, the general licensee shall ensure that the device is tested for leakage before use or transfer and that the shutter is tested before use. A device kept in standby for future use is excluded from the two-year time limit in this subsection if the general licensee performs a quarterly physical inventory regarding the standby devices.

5. A person that is generally licensed by an Agreement State with respect to a device that meets the criteria in subsection (A)(4)(o) is exempt from registration requirements if the device is used in an area subject to Department jurisdiction for a period less than 180 days in any calendar year. The Department does not request registration information from a general licensee if the device is exempted from licensing requirements in subsection (A)(4)(o).

6. The general license granted under subsection (A)(1) is subject to the provisions of 9 A.A.C. 7, Articles 1, 3, 12, and 15, and A.R.S. §§ 30-654(B)(13), 30-657(A) and (B), 30-681, and 30-685 through 30-689.

7. The general license in subsection (A)(1) does not authorize the manufacture or import of devices containing byproduct material.

B. Luminous safety devices for aircraft

1. This subsection grants a general license that authorizes a person to own, receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided that each device contains not more than 370 gigabecquerels (10 curies) of tritium or 11.1 gigabecquerels (300 millicuries) of promethium-147; and each device has been manufactured, assembled, initially transferred, or imported according to a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured or assembled according to the specifications contained in a specific license issued to the manufacturer or assembler of the device by the Department

or any Agreement State or Licensing State in accordance with licensing requirements equivalent to those in 10 CFR 32.53.

2. A person who owns, receives, acquires, possesses, or uses a luminous safety device according to the general license granted in subsection (B)(1) is:
   a. Exempt from the requirements of 9 A.A.C. 7, Article 4 and Article 10 except that the person shall comply with the reporting and notification provisions of R9-7-443, R9-7-444, R9-7-445, R9-7-447, and R9-7-448;
   b. Not authorized to manufacture, assemble, repair, or import a luminous safety device that contains tritium or promethium-147;
   c. Not authorized to export luminous safety devices containing tritium or promethium-147;
   d. Not authorized to own, receive, acquire, possess, or use radioactive material contained in instrument dials; and
   e. Subject to the provisions of 9 A.A.C. 7, Articles 1, 3, 12, and 15 and A.R.S. §§ 30-654(B)(13), 30-657(A) and (B), 30-681, and 30-685 through 30-689.

C. This subsection grants a general license that authorizes a person who holds a specific license to own, receive, possess, use, and transfer radioactive material if the Department issues the license; or special nuclear material if the NRC issues the license. For americium-241, radium-226, and plutonium contained in calibration or reference sources, this subsection grants a general license in accordance with the provisions of subsections (C)(1), (2), and (3). For plutonium, ownership is included in the licensed activities.

1. This subsection grants a general license for calibration or reference sources that have been manufactured according to the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. Nuclear Regulatory Commission under 10 CFR 32.57 or 10 CFR 70.39. This general license also governs calibration or reference sources that have been manufactured according to specifications contained in a specific license issued to the manufacturer by the Department, an Agreement State, or a Licensing State, according to licensing requirements equivalent to those contained in 10 CFR 32.57 or 10 CFR 70.39, revised January 1, 2013, incorporated by reference, and available under R9-7-101. The incorporated material contains no future editions or amendments.
2. A general license granted under subsection (C) or (C)(1) is subject to the provisions of 9 A.A.C. 7, Articles 1, 3, 4, 10, 12, and 15 and A.R.S. §§ 30-654(B)(13), 30-657(A) and (B), 30-681, and 30-685 through 30-689. In addition, a person who owns, receives, acquires, possesses, uses, or transfers one or more calibration or reference sources under a general license granted under subsection (C) or (C)(1) shall:
   a. Not possess at any one time, at any location of storage or use, more than 185 kBq (5 microcuries) of americium-241, plutonium, or radium-226 in calibration or reference sources;
   b. Not receive, possess, use, or transfer a calibration or reference source unless the source, or the

storage container, bears a label that includes one of the following statements, as applicable, or a substantially similar statement that contains the same information:

i. The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION – RADIOACTIVE MATERIAL – THIS SOURCE CONTAINS (name of the appropriate material) – DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

Name of manufacturer or importer

ii. The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of any Licensing State. Do not remove this label.

CAUTION – RADIOACTIVE MATERIAL – THIS SOURCE CONTAINS RADIUM-226. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

Name of manufacturer or importer

c. Not transfer, abandon, or dispose of a calibration or reference source except by transfer to a person authorized to receive the source by a license from the Department, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State;

d. Store a calibration or reference source, except when the source is being used, in a closed container designed, constructed, and approved for containment of americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

e. Not use a calibration or reference source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

3. The general license granted under subsection (C) or (C)(1) does not authorize the manufacture or import of calibration or reference sources that contain americium-241, plutonium, or radium-226.

4. The general license granted under subsections (C) or (C)(1) does not authorize the manufacture or export of calibration or reference sources that contain americium-241, plutonium, or radium-226.

D. This subsection grants a general license that authorizes a person to receive, possess, use, transfer, own, or acquire carbon-14 urea capsules, which contain one microcurie of carbon-14 urea for "in vivo" human diagnostic use:

1. Except as provided in subsections (D)(2) and (3), a physician is exempt from the requirements for a specific license, provided that each carbon-14 urea capsule for "in vivo" diagnostic use contains no more than 1 microcurie.

2. A physician who desires to use the capsules for research involving human subjects shall obtain a

specific license issued according to the specific licensing requirements in this Article.

3. A physician who desires to manufacture, prepare, process, produce, package, repackage, or transfer carbon-14 urea capsules for commercial distribution shall obtain a specific license from the Department, issued according to the requirements in 10 CFR 32.21, (Revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.)
4. Nothing in this subsection relieves physicians from complying with applicable FDA and other federal and state requirements governing receipt, administration, and use of drugs.

E. This subsection grants a general license that authorizes any physician, clinical laboratory, or hospital to use radioactive material for certain "in vitro" clinical or laboratory testing.

1. The general licensee is authorized to receive, acquire, possess, transfer, or use, for any of the following stated tests, the following radioactive materials in prepackaged units:
   a. Iodine-125, in units not exceeding 370 kilobecquerel (10 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or radiation from such material, to human beings or animals.
   b. Iodine-131, in units not exceeding 370 kilobecquerel (10 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
   c. Carbon-14, in units not exceeding 370 kilobecquerel (10 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
   d. Hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
   e. Iron-59, in units not exceeding 740 kilobecquerel (20 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
   f. Cobalt-57 or selenium-75, in units not exceeding 370 kilobecquerels (10 microcuries) each for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
   g. Mock iodine-125 reference or calibration sources, in units not exceeding 1.85 kBq (50 nanocurie) of iodine-129 and 185 becquerel (5 nanocurie) of americium-241 each, for use in "in vitro" clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation from such material, to human beings or animals.
2. A person shall not acquire, receive, possess, use, or transfer radioactive material according to the

general license established by this subsection until the person has filed with the Department ARRA-9, "Certificate -- "In Vitro" Testing with Radioactive Material Under General License," provided the information listed in Exhibit E, and received a validated copy of ARRA-9, which indicates the assigned certification number. The physician, clinical laboratory, or hospital shall furnish on ARRA-9 the following information:

a. Name, telephone number, and address of the physician, clinical laboratory, or hospital; and
b. A statement that the physician, clinical laboratory, or hospital has radiation measuring instruments to carry out "in vitro" clinical or laboratory tests with radioactive material and that tests will be performed only by personnel competent to use the instruments and handle the radioactive material.

3. A person who receives, acquires, possesses, or uses radioactive material according to the general license granted under this subsection shall:
   a. Not possess at any one time, in storage or use, a combined total of not more than 7.4 megabecquerels (200 microcuries) of iodine-125, iodine-131, iron-59, cobalt-57, or selenium-75 in excess of 7.4 megabecquerels (200 microcuries), or acquire or use in any one calendar month more than 18.5 megabecquerels (500 microcuries) of these radionuclides.
   b. Store the radioactive material, until used, in the original shipping container or in a container that provides equivalent radiation protection.
   c. Use the radioactive material only for the uses authorized by subsection (E).
   d. Not transfer radioactive material to a person who is not authorized to receive it according to a license issued by the Department, the U.S. Nuclear Regulatory Commission, or any Agreement State or Licensing State, or in any manner other than in an unopened, labeled shipping container received from the supplier.
   e. Not dispose of a mock iodine-125 reference or calibration source described subsection (E)(1) except as authorized by R9-7-434.
   f. Package or prepackage a unit bearing a durable, clearly visible label: identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 0.37 megabecquerel (10 microcuries) of iodine-131, iodine-125, selenium-75, or carbon-14; 1.85 megabecquerels (50 microcuries) of hydrogen-3 (tritium); or 0.74 megabecquerel (20 microcuries) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 0.185 kilobecquerel (0.005 microcurie) of americium-241 each; or cobalt-57 in units not exceeding 0.37 megabecquerel (10 microcuries).
   g. Package to display the radiation caution symbol and the words, "Caution, Radioactive Material", and "Not for Internal or External Use in Humans or Animals."
4. The general licensee shall not receive, acquire, possess, transfer, or use radioactive material according to subsection (E)(1):

a. Except as prepackaged units that are labeled according to the provisions of a specific license issued by the U.S. Nuclear Regulatory Commission, or any Agreement State that authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, cobalt-57, selenium-75, or mock iodine-125 for distribution to persons generally licensed under subsection (E) or its equivalent federal law; and

b. Unless one of the following statements, or a substantially similar statement that contains the same information, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

i. This radioactive material may be acquired, received, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation from such material, to human beings or animals. The acquisition, receipt, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

_____

Name of manufacturer

ii. This radioactive material shall be acquired, received, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation from such material, to human beings or animals. The receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of a Licensing State.

_____

Name of manufacturer

5. A physician, clinical laboratory or hospital that possesses or uses radioactive material under a general license granted by subsection (E):

a. Shall report to the Department in writing, any change in the information furnished on the ARRA-9. The report shall be furnished within 30 days after the effective date of the change; and

b. Is exempt from the requirements of 9 A.A.C. 7, Article 4 and Article 10 with respect to radioactive material covered by the general license, except that a person using mock iodine-125 sources, described in subsection (E)(1)(g), shall comply with the provisions of R9-7-434, R9-7-443, and R9-7-444 of this Chapter.

6. For the purposes of subsection (E), a licensed veterinary care facility is considered a "clinical laboratory."

F. This subsection grants a general license that authorizes a person to own, receive, acquire, possess, use, and transfer strontium-90, contained in ice detection devices, provided each device contains not more than 1.85

megabecquerels (50 microcuries) of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission or each device has been manufactured according to the specifications contained in a specific license issued by the Department or any Agreement State to the manufacturer of the device under licensing requirements equivalent to those in 10 CFR 32.61. A person who receives, owns, acquires, possesses, uses, or transfers strontium-90 contained in ice detection devices under a general license in accordance with subsection (F):

1. Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating, discontinue use of the device until it has been inspected, tested for leakage, and repaired by a person who holds a specific license from the U.S. Nuclear Regulatory Commission or an Agreement State to manufacture or service ice detection devices; or dispose of the device according to the provisions of R9-7-434;
2. Shall assure that each label, affixed to the device at the time of receipt, which bears a statement that prohibits removal of the labels, maintained on the device; and
3. Is exempt from the requirements of 9 A.A.C. 7, Article 4 and Article 10, except that the user of an ice detection device shall comply with the provisions of R9-7-434, R9-7-443, and R9-7-444.
4. Shall not manufacture, assemble, disassemble, repair, or import an ice detection device that contains strontium-90.
5. Is subject to the provisions of 9 A.A.C. 7, Articles 1, 3, 12, and 15, and A.R.S. §§ 30-654(B), 30-657(A) and (B), 30-681, and 30-685 through 30-689.

G. This subsection grants a general license that authorizes a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of subsections (H) and (I), radium-226 contained in the following products manufactured prior to November 30, 2007.

1. Antiquities originally intended for use by the general public. For the purposes of this subsection, antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.
2. Intact timepieces containing greater than 0.037 megabecquerel (1 microcurie), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.
3. Luminous items installed in air, marine, or land vehicles.
4. All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.
5. Small radium sources containing no more than 0.037 megabecquerel (1 microcurie) of radium-226. For the purposes of this subsection, “small radium sources” means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static

eliminators, or as designated by the NRC.

H. Persons who acquire, receive, possess, use, or transfer byproduct material under the general license issued in subsection (G) are exempt from the provisions 9 A.A.C. 7, Articles 1, 3, 4, 7, 10, 12, and 15 and A.R.S. §§ 30-654(B)(13), 30-657(A) and (B), 30-681, and 30-685 through 30-689, to the extent that the receipt, possession, use, or transfer of byproduct material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this chapter. Any person who acquires, receives, possesses, uses, or transfers byproduct material in accordance with the general license in subsection (G):

1. Shall notify the Department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Department within 30 days.
2. Shall not abandon products containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to Article 4 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Department.
3. Shall not export products containing radium-226 except in accordance with 10 CFR 110 revised January 1, 2013, incorporated by reference, and available under R9-7-101. The incorporated material contains no future editions or amendments.
4. Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under Article 3, equivalent regulations of an Agreement State, or the NRC.
5. Shall respond to written requests from the Department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Department Director a written justification for the request.

I. The general license in subsection (G) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

R9-7-308. Filing Application for Specific Licenses

A. An applicant for a specific license shall file a Department application. The applicant shall prepare the application in duplicate, one copy for the Department and the other for the applicant.

B. The Department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Department to determine whether the application

should be granted or denied or whether a license should be modified or revoked.

C. Each application shall contain the information specified in Exhibit (E) of this Article and be signed by the applicant, licensee, or person duly authorized to act for the applicant or licensee.

D. Unless R9-7-1302 precludes combination with a license of another category, an application for a specific license may include a request for a license that authorizes more than one activity.

E. In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Department provided the references are clear and specific.

F. The Department shall make applications and documents submitted to the Department available for public inspection, but may withhold any document or part of a document from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

G. Except as provided in subsections (G)(1), (2), and (3), an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either identify the source or device by manufacturer and model number as registered with the Department, with the NRC, or with an Agreement State, or, for a source or a device containing radium-226 or accelerator-produced radioactive material, with the Department, the NRC, or an Agreement State under 10 CFR 32.210 revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

1. For sources or devices manufactured before October 23, 2012, that are not licensed under R9-7-306, R9-7-310, R9-7-311 or registered with the NRC or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c) the application must include:
    a. All available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and
    b. Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.
2. For sealed sources and devices allowed to be distributed without registration of safety information, the applicant may supply only the manufacturer, model number, and radionuclide and quantity.
3. If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

H. A certificate holder or licensee who no longer manufactures or initially transfers any of the sealed source(s) or device(s) covered by a particular certificate issued with the Department, with the NRC, or with an

Agreement State shall request inactivation of the registration or license with the Department, with the NRC, or with an Agreement State program that the device is currently registered by in accordance with 10 CFR 32.211 revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

R9-7-309. General Requirements for Issuance of Specific Licenses

A license application shall be approved if the Department determines that:

1. The applicant is qualified by reason of training and experience to use the material in question for the purpose requested according to these rules, in a manner that will minimize danger to public health and safety or property;
2. The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;
3. The issuance of the license will not be inimical to the health and safety of the public;
4. The applicant satisfies all applicable special requirements in R9-7-310, R9-7-311, R9-7-322, R9-7-323, and 9 A.A.C. 7, Articles 5, 7, and 17; and
5. The applicant demonstrates that a letter has been sent, return receipt requested, to the Mayor's office of the city, town, or, if not within an incorporated community, to the County Board of Supervisors of the county in which the applicant proposes to operate which describes:
   a. The nature of the proposed activity involving radioactive material; and
   b. The facility, including use and storage areas.

R9-7-310. Special Requirements for Issuance of Specific Broad Scope Licenses

A. The Department shall issue three classes of academic and industrial broad scope licenses, and only a single class A medical broad scope license.

1. The license may authorize the radioactive materials in multi-curie quantities, and may authorize other radioactive materials and forms in addition to those listed in subsection (A)(1)(a). A license is a broad scope class A license if it:
   a. Contains the exact wording "Any radioactive material with Atomic Number 3 through 83" or "Any radioactive material with Atomic Number 84 through 92" in License Item 6; and
   b. Contains the word "any" to authorize the chemical or physical form of the materials in License Item 7;
2. A broad scope class B license is any specific license which authorizes the acquisition, possession, use, and transfer of the radioactive materials specified in Exhibit C of 9 A.A.C. 7, Article 3 in any chemical or physical form and in quantities determined as follows:
   a. The possession limit, if only one radionuclide is possessed, is the quantity specified for that

radionuclide in Exhibit C, Column I; or

b. The possession limit for multiple radionuclides is determined as follows: The sum of the ratios for all radionuclides possessed under the license shall not exceed unity (1). The ratio for each radionuclide is determined by dividing the quantity possessed by the applicable quantity in Exhibit C, Column I.

3. A broad scope class C license is any specific license authorizing the possession and use of the radioactive materials specified in Exhibit C of 9 A.A.C. 7, Article 3 in any chemical or physical form and in quantities determined as follows:
   a. The possession limit, if only one radionuclide is possessed, is the quantity specified for that radionuclide in Exhibit C, Column II; or
   b. The possession limit for multiple radionuclides is determined as follows: The sum of the ratios for all radionuclides possessed under the license shall not exceed unity (1). The ratio for each radionuclide is determined by dividing the quantity possessed by the applicable quantity in Exhibit C, Column II.

B. The Department shall approve:

1. An application for a class A broad scope license if:
   a. The applicant satisfies the general requirements specified in R9-7-309;
   b. The applicant has engaged in a reasonable number of activities involving the use of radioactive material. For purposes of this subsection, the requirement of "reasonable number of activities" can be satisfied by showing that the applicant has five years of experience in the use of radioactive material. The Department may accept less than five years of experience if the applicant's qualifications are adequate for the scope of the proposed license; and
   c. The applicant has established administrative controls and provisions relating to organization, management, procedures, recordkeeping, material control, accounting, and management review that are necessary to assure safe operations, including:
      i. Establishment of a radiation safety committee composed of a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;
      ii. Appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and
      iii. Establishment of appropriate administrative procedures to assure:
         (1) Control of procurement and use of radioactive material;
         (2) Completion of safety evaluations of proposed uses of radioactive material which take into consideration matters such as the adequacy of facilities and equipment, training and

experience of the user, and operating or handling procedures; and

(3) Review, approval, and recording by the radiation safety committee of safety evaluations of proposed uses prepared in accordance with this subsection prior to use of the radioactive material.

2. An application for a class B broad scope license if:
   a. The applicant satisfies the general requirements specified in R9-7-309; and
   b. The applicant has established administrative controls and provisions relating to organization, management, procedures, recordkeeping, material control, accounting, and management review that are necessary to assure safe operations, including:
      i. Appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and available for advice and assistance on radiation safety matters; and
      ii. Establishment of appropriate administrative procedures to assure:
         (1) Control of procurement and use of radioactive material;
         (2) Completion of safety evaluations of proposed uses of radioactive material which take into consideration matters such as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and
         (3) Review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared according to subsection (B)(2)(b)(ii) prior to use of the radioactive material.
3. An application for a class C broad scope license if:
   a. The applicant satisfies the general requirements specified in R9-7-309; and
   b. The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of, individuals who have received:
      i. A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and
      ii. At least 40 hours of training and experience in the safe handling of radioactive material, the characteristics of ionizing radiation, units of dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and
   c. The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

C. Unless specifically authorized, broad-scope licensees shall not:

1. Conduct tracer studies in the environment involving direct release of radioactive material;
2. Acquire, receive, possess, use, own, import, or transfer devices containing 3.7 petabecquerels (100,000

curies) or more of radioactive material in sealed sources used for irradiation of materials;

3. Conduct activities for which a specific license is issued under R9-7-311 and 9 A.A.C. 7, Articles 5, 7, or 17; or
4. Add or cause the addition of radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being.

D. Radioactive material possessed under the class A broad scope license shall only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

E. Radioactive material possessed under the class B broad scope license shall only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

F. Radioactive material possessed under the class C broad scope license shall only be used by, or under the direct supervision of, individuals who satisfy the requirements of R9-7-310(B)(3)(b).

R9-7-311. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

A. Licensing the manufacture and distribution of devices to persons generally licensed under R9-7-306(A).

1. The Department shall grant a specific license to manufacture or distribute each device that contains radioactive material, excluding special nuclear material, to persons generally licensed under R9-7-306(A) or equivalent regulations of the U.S. NRC, an Agreement State, or the Licensing State if:
   a. The applicant satisfies the requirements of R9-7-309;
   b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:
      i. The device can be safely operated by persons not having training in radiological protection;
      ii. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive a dose in excess of 10 percent of the limits specified in R9-7-408; and
      iii. Under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:
         (1) Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye: 150 mSv (15 rem)
         (2) Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter; 2 Sv (200 rem)
         (3) Other organs: 500 mSv (50 rem)

c. Each device bears a durable, legible, clearly visible label or labels that contain in a clearly identified and separate statement:
   i. Instructions and precautions necessary to assure safe installation, operating, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);
   ii. The requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for the testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and
   iii. The information called for in one of the following statements in the same or substantially similar form:

   The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

   CAUTION – RADIOACTIVE MATERIAL

   _____

   (name of manufacturer or distributor)

   The receipt, possession, use and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

   CAUTION – RADIOACTIVE MATERIAL

   _____

   (name of manufacturer or distributor)

d. The model, serial number, and name of manufacturer or distributor may be omitted from the label if the information location is specified in labeling affixed to the device;
e. Each device with a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label that provides the device model number and serial number, the isotope and quantity, the words, “Caution-Radioactive Material,” the radiation symbol described in R9-7-428, and the name of the manufacturer or initial distributor; and
f. Each device meets the criteria in 10 CFR 31.5(c)(13)(i) (revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments) and bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing, if separable, or the device if the source housing is not separable, that includes

the words, “Caution-Radioactive Material,” and, if practicable, the radiation symbol described in R9-7-428.

g. The device has been registered in the Sealed Source and Device Registry.

2. In the event the applicant desires that the device undergo mandatory testing at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the application shall contain sufficient information to demonstrate that the longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Department shall consider information which includes, but is not limited to:
   a. Primary containment (source capsule),
   b. Protection of primary containment,
   c. Method of sealing containment,
   d. Containment construction materials,
   e. Form of contained radioactive material,
   f. Maximum temperature withstood during prototype tests,
   g. Maximum pressure withstood during prototype tests,
   h. Maximum quantity of contained radioactive material,
   i. Radiotoxicity of contained radioactive material, and
   j. Operating experience with identical devices or similarly designed and constructed devices.
3. In the event the applicant desires that the general licensee under R9-7-306(A), or under equivalent regulations of the NRC or an Agreement State or Licensing State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the application shall include written instructions to be followed by the general licensee, estimated calendar quarter doses associated with the activity or activities, and bases for the estimates. The submitted information shall demonstrate that performance of the activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of 10 percent of the limits specified in R9-7-408.
4. A licensee authorized under subsection (A) to distribute a device to a generally licensed person shall provide, if a device that contains radioactive material is to be transferred for use under the general license granted in R9-7-306(A), the name of each person that is licensed under R9-7-311(A) and the information specified in this subsection for each person to whom a device will be transferred. The

licensee shall provide this information before the device may be transferred. In the case of transfer through another person, the licensee shall provide the listed information to the intended user before initial transfer to the other person.

a. The licensee shall provide:
   i. A copy of the general license, issued under R9-7-306(A),
   ii. A copy of R9-7-443 and R9-7-445,
   iii. A list of the services that can only be performed by a specific licensee,
   iv. Information on authorized disposal options, including estimated costs of disposal, and
   v. A list of civil penalties for improper disposal.
b. The licensee shall:
   i. Report on a quarterly basis to the responsible Agreement State or NRC all transfers of devices to persons for use under a general license in accordance with 10 CFR 32.52, revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
   ii. Maintain all information concerning transfers and receipts of devices that supports the reports required by subsection (A)(4)(b)(i).
   iii. Maintain records required by subsection (A)(4)(b)(i) for a period of three years following the date of the recorded event.

5. If radioactive material is to be transferred in a device for use under an equivalent general license of the NRC or another Agreement State, each person that is licensed under R9-7-304(B) shall provide the information specified in this subsection to each person to whom a device will be transferred. The licensee shall provide this information before the device is transferred. In the case of transfer through another person, the licensee shall provide the listed information to the intended user before initial transfer to the other person. The licensee shall provide:
   a. A copy of the Agreement State's requirements that are equivalent to R9-7-306(A), R9-7-443, and R9-7-445, and to A.R.S. § 30-657. If a copy of NRC regulations is provided to a prospective general licensee in lieu of the Agreement State's requirements, the licensee shall explain in writing that use of the device is regulated by the Agreement State. If certain requirements do not apply to a particular device, the licensee may omit the requirement from the material provided;
   b. A list of the services that can only be performed by a specific licensee;
   c. Information on authorized disposal options, including estimated costs of disposal; and
   d. The name, title, address, and telephone number of the individual at the Agreement State regulatory agency who can provide additional information.
6. A licensee may propose to the Department an alternate method of informing the customer.
7. If a licensee has notified the Department of bankruptcy under R9-7-313(E) or is terminating under R9-

7-319, the licensee shall provide, upon request, to the Department, the NRC, or another Agreement State, records of the disposition as required under A.R.S. § 30-657.

8. A licensee authorized to transfer a device to a generally licensed person, shall comply with the following requirements:
   a. The person licensed under subsection (A) shall report all transfers of devices to persons for use under a general license obtained under R9-7-306(A), and all receipts of devices from persons licensed under R9-7-306(A) to the Department, the NRC, or other affected Agreement State. The report shall be submitted on a quarterly basis, in a clear and legible form, and contain the following information:
      i. The identity of each general licensee by name and mailing address for the location of use. If there is no mailing address for the location of use, the person licensed under subsection (A) shall submit an alternate address for the general licensee, along with information on the actual location of use;
      ii. The name, title, and telephone number of a person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the applicable laws;
      iii. The date of transfer;
      iv. The type, model number, and serial number of the device transferred; and
      v. The quantity and type of radioactive material contained in the device.
   b. If one or more intermediaries will temporarily possess the device at the intended place of use before its possession by the intended user, the report shall include the information required of the general licensee in subsection (A)(4) for both the intended user and each intermediary, clearly identifying the intended user and each intermediary.
   c. For devices received from a general licensee, licensed under R9-7-306(A), the report shall include:
      i. The identity of the general licensee by name and address;
      ii. The type, model number, and serial number of the device received;
      iii. The date of receipt; and
      iv. In the case of a device not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.
   d. If the person licensed under subsection (A) makes a change to a device possessed by a general licensee so that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.
   e. The report shall cover a calendar quarter, be filed within 30 days of the end of each calendar quarter, and clearly indicate the period covered by the report.
   f. The report shall clearly identify the person licensed under subsection (A) submitting the report and

include the license number of the license.

g. If no transfers are made to or from persons generally licensed under R9-7-306(A) during a reporting period, the person licensed under subsection (A) shall submit a report indicating the lack of activity.

9. The licensee shall maintain records of all transfers for Department inspection. Records shall be maintained for three years after termination of the license to manufacture the generally licensed devices regulated under R9-7-306(A).

B. The Department shall grant a specific license to manufacture, assemble, repair, or initially transfer luminous safety devices that contain tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under R9-7-306(B), if the applicant satisfies:

1. The general requirements specified in R9-7-309; and
2. The requirements of 10 CFR 32.53 through 32.56 revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

C. The Department shall grant a specific license to manufacture or initially transfer calibration or reference sources that contain americium-241, radium-226, or plutonium for distribution to persons generally licensed under R9-7-306(C) if the applicant satisfies:

1. The general requirements of R9-7-309; and
2. The requirements of 10 CFR 32.57, 32.58, 32.59, and 70.39, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

D. The Department shall grant a specific license to distribute radioactive material for use by a physician under the general license in R9-7-306(D) if:

1. The general requirements of R9-7-309; and
2. The requirements of 10 CFR 32.57, 32.58, 32.59, and 70.39, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

E. The Department shall grant for a specific license to manufacture or distribute radioactive material for use under the general license of R9-7-306(E) if:

1. The applicant satisfies the general requirements specified in R9-7-309.
2. The radioactive material is to be prepared for distribution in prepackaged units of:
   a. Iodine-125 in units not exceeding 370 kBq (10 microcuries) each;
   b. Iodine-131 in units not exceeding 370 kBq (10 microcuries) each;
   c. Carbon-14 in units not exceeding 370 kBq (10 microcuries) each;
   d. Hydrogen-3 (tritium) in units not exceeding 1.85 MBq (50 microcuries) each;
   e. Iron-59 in units not exceeding 740 kBq (20 microcuries) each;
   f. Cobalt-57 or selenium-75 in units not exceeding 370 kilobecquerels (10 microcuries) each;

g. Mock iodine-125 in units not exceeding 1.85 kBq (50 nanocuries) of iodine-129 and 185 Bq (5 nanocuries) of americium-241 each.

3. Each prepackaged unit bears a durable, clearly visible label:
   a. Identifying the radioactive contents as to chemical form and radionuclide and indicating that the amount of radioactivity does not exceed 370 kilobecquerels (10 microcuries) of iodine-125, iodine-131, cobalt-57, selenium-75, or carbon-14; 1.85 megabecquerels (50 microcuries) of hydrogen-3 (tritium); 740 kilobecquerels (20 microcuries) of iron-59; or mock iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 185 becquerels (0.005 microcurie) of americium-241 each; and
   b. Displaying the radiation caution symbol described in R9-7-428, the words, "CAUTION, RADIOACTIVE MATERIAL," and the phrase "Not for Internal or External Use in Humans or Animals."
4. One of the following statements, or a substantially similar statement that contains the information called for in the following statements appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:
   a. This radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation from the radioactive material, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

      _____

      Name of Manufacturer
   b. This radioactive drug may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation from the radioactive material, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

      _____

      Name of Manufacturer
5. The label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information about the precautions to be observed in handling and storing the specified radioactive material. In the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in R9-7-434.

F. The Department shall grant for a specific license to manufacture and distribute ice detection devices to persons generally licensed under R9-7-306(F) if the applicant satisfies:

1. The general requirements of R9-7-309; and
2. The criteria of 10 CFR 32.61 and 32.62, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

G. The Department shall grant a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs that contain radioactive material for use by a person authorized in accordance with Article 7 of this Chapter, if the applicant meets all of the requirements in 10 CFR 30.32(j) or 10 CFR 32.72, revised January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

1. Authorization under this Section to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.
2. Each licensee authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:
    a. Satisfy the labeling requirements in R9-7-431 for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.
    b. Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in R9-7-449.
3. A licensee that is a pharmacy authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual who prepares PET radioactive drugs be an:
    a. Authorized nuclear pharmacist that meets the requirements in R9-7-712, or
    b. Individual under the supervision of an authorized nuclear pharmacist as specified in R9-7-706.
4. A pharmacy, authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of R9-7-712.

H. The Department shall grant a specific license to manufacture and distribute generators or reagent kits that contain radioactive material for preparation of radiopharmaceuticals by persons licensed according to 9 A.A.C. 7, Article 7 if:

1. The applicant satisfies the general requirements of R9-7-309;
2. The applicant submits evidence that:

a. The generator or reagent kit is to be manufactured, labeled and packaged according to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, a new drug application (NDA) approved by the Food and Drug Administration (FDA), a biologic product license issued by FDA, or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA; or

b. The manufacture and distribution of the generator or reagent kit are not subject to the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act.

3. The applicant submits information on the radionuclide; chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;

4. The label affixed to the generator or reagent kit contains information on the radionuclide, including quantity, and date of assay; and

5. The label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit, contains:

a. Adequate information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

b. A statement that this generator or reagent kit (as appropriate) is approved for use by persons licensed by the Department under 9 A.A.C. 7, Article 7 or equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State or Licensing State. The labels, leaflets or brochures required by this subsection supplement the labeling required by FDA and they may be separate from or, with the approval of FDA, combined with the labeling required by FDA.

I. The Department shall grant a specific license to manufacture and distribute sources and devices that contain radioactive material to a person licensed in accordance with Article 7 of this Chapter for use as a calibration, transmission, or reference source or for medical purposes, if the applicant meets all of the requirements in 10 CFR 32.74, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

J. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass volume applications.

1. The Department shall grant a specific license to manufacture industrial products and devices that contain depleted uranium for use under R9-7-305(C) or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State if:

a. The applicant satisfies the general requirements in R9-7-309;

b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the

industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive a radiation dose in excess of 10 percent of the limits specified in R9-7-408;

c. The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

2. In the case of an industrial product or device whose unique benefits are questionable, the Department shall approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.
3. The Department may deny any application for a specific license under this subsection if the end use or uses of the industrial product or device cannot be reasonably foreseen.
4. Each person licensed under subsection (J)(1) shall:
   a. Maintain the level of quality control required by the license in the manufacture of the industrial product or device and the installation of the depleted uranium into the product or device;
   b. Label or mark each unit to:
      i. Identify the manufacturer of the product or device, the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and
      ii. State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;
   c. Assure that the depleted uranium, before being installed in each product or device, has been impressed with the following legend, clearly legible through any plating or other covering: "Depleted Uranium";
   d. Furnish a copy of the general license contained in R9-7-305(C) and a copy of ARRA-23 to each person to whom depleted uranium in a product or device is transferred for use under a general license contained in R9-7-305(C); or
   e. Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R9-7-305(C) and a copy of the U.S. Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in R9-7-305(C) and a copy of ARRA-23 to each person to whom depleted uranium in a product or device is transferred for use under a general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a document explaining that use of the product

or device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in R9-7-305(C);

f. Report to the Department all transfers of industrial products or devices to persons for use under the general license in R9-7-305(C). The report shall identify each general licensee by name and address, an individual by name or position who serves as the point of contact person for the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under R9-7-305(C) during the reporting period, the report shall so indicate;

i. Report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in 10 CFR 40.25; or

ii. Report to the responsible state agency all transfers of devices manufactured and distributed under subsection (J)(4)(f) for use under a general license in that state's regulations equivalent to R9-7-305(C);

iii. The report required in subsection (J)(4)(f)(i) or (ii) shall identify each general licensee by name and address, an individual by name or position who serves as the contact person for the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person;

iv. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission;

v. If no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement state agency; and

vi. Keep records showing the name, address, and contact person for each general licensee to whom depleted uranium in industrial products or devices is transferred for use under a general license provided in R9-7-305(C) or equivalent regulations of the U.S. Nuclear Regulatory Commission or of an Agreement State. The records shall be maintained for a period of three years and show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the reporting requirements of this Section.

K. A licensee who manufactures nationally tracked sources, as defined in Article 4, shall:

1. Serialize the sources in accordance with 10 CFR 32.201, revised January 1, 2013, incorporated by

reference, and available under R9-7-101. This incorporated material contains no future editions or amendments; and

2. Report manufacturing activities in accordance with R9-7-454.

R9-7-312. Issuance of Specific Licenses

A. Upon determination that a license application meets the requirements of the Act and Department rules, the Department shall grant a specific license that may contain conditions or limitations if the Department has determined that additional requirements regarding the proposed activity will protect health and safety.

B. The Department may incorporate in any license at the time of issuance, or thereafter by rule or order, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material in order to:

1. Minimize danger to public health and safety or property;
2. Require reports and recordkeeping, and provide for inspections of activities under the license as may be necessary to protect health and safety; and
3. Prevent loss or theft of material subject to this Article.

C. The Department may verify information contained in an application and secure additional information necessary to make a determination on issuance of a license and whether any special conditions should be attached to the license. The Department may inspect the facility or location where radioactive materials would be possessed or used, and discuss details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant.

R9-7-313. Specific Terms and Conditions

A. Each license issued under this Article is subject to all provisions of A.R.S. Title 30, Chapter 4 and to all rules, regulations, and orders of the Department.

B. A licensee shall not transfer, assign, or in any manner dispose of a license issued or granted under this Article or a right to possess or utilize radioactive material granted by any license issued under this Article unless the Department finds that the transfer is consistent with the Department's statutes and rules, and gives its consent in writing. An application for transfer of license must include:

1. The identity, technical and financial qualifications of the proposed transferee; and
2. Financial assurance for decommissioning information required by R9-7-323.

C. Each person licensed by the Department under this Article shall confine the use and possession of the material licensed to the locations and purposes authorized in the license.

D. Each license issued pursuant to the rules in Articles 3, 5, 7, and 15 of this Chapter shall be deemed to contain the provisions set forth in the Act, whether or not these provisions are expressly set forth in the license.

E. The Department may incorporate, in any license issued pursuant to the rules in this Chapter, at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of byproduct material as it deems appropriate or necessary in order to:

1. Promote the common defense and security;
2. Protect health or to minimize danger to life or property;
3. Protect restricted data; or
4. Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and rules thereunder.

F. Licensees required to submit emergency plans in accordance with R9-7-322 shall follow the emergency plan approved by the Department. The licensee may change the approved plan without Department approval only if the changes do not reduce the commitment of the plan. The licensee shall furnish the change to the Department and to affected offsite response organizations within six months after the change is made. Proposed changes that reduce, or potentially reduce, the commitment of the approved emergency plan may not be implemented without prior application to and prior approval by the Department.

G. Each person licensed under this Section and each general licensee that is required to register under R9-7-306(A)(4)(o) shall notify the Department in writing if the licensee decides to permanently discontinue any or all activities involving materials authorized under the license. A specific licensee or general licensee shall notify the Department, in writing:

1. Immediately following the filing of a petition for bankruptcy under any Chapter of Title 11 of the United States Code if the petition for bankruptcy is by or against:
   a. The licensee;
   b. An entity (as defined in the bankruptcy code) controlling the licensee or listing the license or licensee as property of the estate; or
   c. An affiliate (as defined in the bankruptcy code) of the licensee; and
2. Providing the following information:
   a. The bankruptcy court in which the petition for bankruptcy was filed, and
   b. The bankruptcy case title and number, and
   c. The date the petition was filed.

H. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with R9-7-720. The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of any test that exceeds the permissible

concentration listed in R9-7-720 at the time of generator elution, in accordance with 10 CFR 35.3204.

I. Inalienability of Licenses

1. No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Department, after securing full information, finds that the transfer is in accordance with the provisions of this act and gives its consent in writing.
2. An application for transfer of license must include:
   a. The identity, technical and financial qualifications of the proposed transferee; and
   b. Financial assurance for decommissioning information required by R9-7-323, 10 CFR 40.3 and 10 CFR 70.25.

R9-7-314. Expiration of License

Except as provided in R9-7-315(B), each specific license expires at the end of the day, in the month and year stated on the license.

R9-7-315. Renewal of License

A. An applicant shall file an application for renewal of a specific license according to R9-7-308.

B. If a licensee files a renewal application not less than 30 days before the license expiration date and the existing license and associated renewal application is in proper form, the existing license does not expire until a final renewal determination is made by the Department.

R9-7-316. Amendment of Licenses at Request of Licensee

An applicant shall file an application for amendment of a specific license by complying with R9-7-308 and specifying the grounds for the amendment.

R9-7-317. Department Action on Applications to Renew or Amend

In considering an application by a licensee to renew or amend a specific license, the Department shall apply the criteria set forth in R9-7-309, R9-7-310, or R9-7-311, as applicable.

R9-7-318. Transfer of Radioactive Material

A. A licensee shall not transfer radioactive material except as authorized under this Section.

B. Except as otherwise provided in the license and subject to the provisions of subsections (C) and (D), any licensee may transfer radioactive material:

1. To the Department, after receiving prior approval from the Department;
2. To the Department of Energy;

3. To any person exempt from the rules in this Article to the extent permitted under the exemption;
4. To any person authorized to receive radioactive material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Department, the U.S. Nuclear Regulatory Commission, or any Agreement State or Licensing State, or to any person otherwise authorized to receive radioactive material by the Federal Government or any agency of the Federal Government, the Department, any Agreement State or Licensing State; or
5. As otherwise authorized by the Department in writing.

C. Before transferring radioactive material to a specific licensee of the Department, the U.S. Nuclear Regulatory Commission, or an Agreement State or Licensing State, or to a general licensee who is required to register with the Department, the U.S. Nuclear Regulatory Commission, or an Agreement State or Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

D. The transferor shall use one or more of the following methods for the verification required by subsection (C):

1. The transferor shall possess, and read, a current copy of the transferee's specific license or registration certificate;
2. The transferor shall possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;
3. For emergency shipments the transferor shall accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided the oral certification is confirmed in writing within 10 days;
4. The transferor shall obtain information equivalent to that in subsection (D)(1) to (3) compiled by a reporting service from official records of the Department, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State or Licensing State regarding the identity of any licensee and the scope and expiration date of any license, registration, or certificate; or
5. When none of the methods of verification described in subsections (D)(1) to (4) are readily available or when a transferor desires to verify that information received by one of the above methods is correct or up-to-date, the transferor shall obtain and record confirmation from the Department, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State or Licensing State that the transferee is licensed to receive the radioactive material.

E. A transferor shall prepare and transport radioactive material as prescribed in the provisions of 9 A.A.C. 7, Article 15.

F. The Department shall approve an application for a specific license to initially transfer source material for use under R9-7-305, or equivalent regulations of the NRC or another Agreement State, if:

1. The applicant satisfies the general requirements specified in R9-7-309; and
2. The applicant submits adequate information on, and the Department approves, the methods to be used for quality control, labeling, and providing safety instructions to recipients.

G. Each person licensed under this Section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "RADIOACTIVE MATERIAL."

H. Each person licensed under this Section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

I. Each person licensed under this Section shall provide the information specified in subsections (I)(1) and (2) to each person to whom source material is transferred for use under R9-7-305 or equivalent provisions in the NRC or Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

1. A copy of R9-7-305 and R9-7-318, or relevant equivalent regulations of the NRC or another Agreement State; and
2. Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the source material.

J. Each person licensed under 10 CFR 40.54 shall file a report with the Department that includes the following information:

1. The name, address, and license number of the person who transferred the source material;
2. For each general licensee under R9-7-305 or equivalent Agreement State provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and
3. The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

K. Each person licensed under this Section shall maintain all information that supports the reports required by this Section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the Department, the NRC, or another Agreement State agency.

R9-7-319. Modification, Revocation, or Termination of a License

A. The terms and conditions of all licenses are subject to amendment, revision, or modification, and a license

may be suspended or revoked by reason of amendments to the Department's statutes or rules and orders issued by the Department.

B. The Department may revoke, suspend, or modify any license, in whole or in part, for any material false statement in the application; any omission or misstatement of fact required by statute, rule, or order, or because of conditions revealed by the application or any report, record, or inspection or other means that would cause the Department to refuse to grant a license; or any violation of license terms and conditions, or the Department's statutes, rules, or orders.

C. Except in cases of willfulness or those in which the public health, interest, or safety requires otherwise, the Department shall not modify, suspend, or revoke a license unless, before the institution of proceedings, facts or conduct that may warrant action have been called to the attention of the licensee in writing and the licensee has been accorded an opportunity to demonstrate or achieve compliance.

D. The Department may terminate a specific license upon a written request by the licensee that provides evidence the licensee has met the termination criteria in R9-7-451 and R9-7-452, and the decommissioning requirements in R9-7-323.

E. Specific licenses, including expired licenses, continue in effect until terminated by written notice to the licensee, when the Department determines that the licensee has:

1. Properly disposed of all radioactive material;
2. Made a reasonable effort to eliminate residual radioactive contamination, if present;
3. Performed an accurate radiation survey that demonstrates the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-323;
4. Submitted other information that is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in R9-7-323.
5. Provided records to the Department that detail the disposal of all radioactive material in unsealed form with a half-life greater than 120 days, and copies of the records required by 10 CFR 30.35(g), January 1, 2004, which is incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

R9-7-320. Reciprocal Recognition of Licenses

A. This subsection grants a general license to perform specific licensed activities in Arizona for a period not to exceed 180 days in any calendar year to any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity involving the use of radioactive material from the U.S. Nuclear Regulatory Commission, Licensing State, or any Agreement State, provided that:

1. The license does not limit the activity to specific installations or locations;
2. Following the first notification, application, and payment of fees, the licensee shall notify the

Department three days prior to entering the state and prior to each non-consecutive visit while reciprocity remains in effect.

3. The out-of-state licensee complies with all applicable statutes, now or hereafter in effect, rules, and orders of the Department and with all the terms and conditions of the license, except those terms and conditions inconsistent with applicable statutes, rules and orders of the Department;
4. The out-of-state licensee supplies any other information the Department requests; and
5. The out-of-state licensee does not transfer or dispose of radioactive material possessed or used under the general license provided in this Section except by transfer to a person:
   a. Specifically licensed by the Department or by the U.S. Nuclear Regulatory Commission to receive the radioactive material; or
   b. Exempt under R9-7-303(A).

B. Notwithstanding the provisions of subsection (A)(1), this subsection grants a general license to manufacture, install, transfer, demonstrate, or service a device described in R9-7-306(A)(1) to any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, Licensing State, or an Agreement State authorizing the same activities within areas subject to the jurisdiction of the licensing body, provided that:

1. The person files a report with the Department within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this State. Each report shall identify the general licensee to whom the device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;
2. The device has been manufactured, labeled, installed, and serviced according to the applicable provisions of the specific license issued to the person by the U.S. Nuclear Regulatory Commission or an Agreement State;
3. The person entering the state ensures that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear the following statement: “Removal of this label is prohibited”; and
4. The holder of the specific license furnishes a copy of the general license contained in R9-7-306(A)(1), or equivalent rules of the agency having jurisdiction over the manufacture or distribution of the device, to each general licensee to whom the licensee transfers the device or on whose premises the device is installed.

C. The Department may withdraw, limit, or qualify the acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed under a license, upon determining that an action is necessary to prevent undue hazard to public health and safety, or property.

D. Before radioactive material can be used at a temporary job site within the state at any federal facility, a specific licensee shall determine the jurisdictional status of the job site. If the jurisdictional status is unknown, the specific licensee shall contact the controlling federal agency to determine whether the job site

is under exclusive federal jurisdiction.

E. Before using radioactive material at a job site under exclusive federal jurisdiction, a specific licensee shall:

1. Obtain authorization from the NRC; and
2. Use the radioactive material in accordance with applicable NRC regulations and orders, and be able to demonstrate to the Department that the correct license fee was paid to the NRC.

F. Before radioactive material can be used at a temporary job site in another state, a specific licensee shall obtain authorization from the state, if it is an Agreement State, or from the NRC for any non-Agreement State, either by filing for reciprocity or applying for a specific license.

R9-7-322. The Need for an Emergency Plan for Response to a Release of Radioactive Material

A. For purposes of this Section, "Emergency Plan" means a procedure that will be followed when an accident occurs involving licensed radioactive materials for which an offsite response may be needed from organizations, such as police, fire, or medical organizations.

B. Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Exhibit D, "Radioactive Material Quantities Requiring Consideration for an Emergency Plan" shall contain either:

1. An evaluation showing that the maximum dose to a person off-site due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or
2. An emergency plan for responding to a release of radioactive material.

C. One or more of the following factors may be used to support an evaluation submitted under subsection (B)(1):

1. The radioactive material is physically separated so that only a portion could be involved in an accident.
2. All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;
3. The release fraction in the respirable size range would be lower than the release fraction shown in Exhibit D due to the chemical or physical form of the material;
4. The solubility of the radioactive material would reduce the dose received;
5. Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Exhibit D;
6. Operating restrictions or procedures would prevent a release fraction as large as that shown in Exhibit D; or
7. Other factors appropriate for the specific facility.

D. An emergency plan for responding to a release of radioactive material submitted under subsection (B)(2) shall include the following information:

1. A brief description of the licensee's facility and areas near the site that could expose a member of the

public to a dose equal to or greater than the levels expressed in subsection (B)(1).

2. An identification of each type of radioactive materials accident for which protective actions may be needed.
3. A classification system for classifying accidents as alerts or site area emergencies.
4. Identification of the means of detecting each type of accident in a timely manner.
5. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.
6. A brief description of the methods and equipment to assess releases of radioactive materials.
7. A brief description of the responsibilities of licensee personnel responsible for promptly notifying offsite response organizations and the Department; also responsibilities for developing, maintaining, and updating the plan.
8. A commitment to and a brief description of the means to promptly notify offsite response organizations and request off-site assistance, including medical assistance for the treatment of contaminated and injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Department immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.
9. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Department.
10. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.
11. A brief description of the means of restoring the facility to a safe condition after an accident.
12. Provisions for conducting quarterly communications checks with off-site response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the verifying and updating of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Their participation is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise, using individuals without direct implementation responsibility for the plan.

Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

13. A certification that the applicant has met its responsibilities in A.R.S. §§ 26-341 through 26-353 (Emergency Planning and Community Right-to-Know Act of 1986), if applicable to the applicant's activities at the proposed place of use of the radioactive material.

E. The licensee shall allow 60 days for the off-site response organizations, expected to respond in case of an accident, to comment on the licensee's emergency plan before submitting it to the Department. The licensee shall provide any comments received within the 60 days to the Department with the emergency plan.

R9-7-323. Financial Assurance and Recordkeeping for Decommissioning

A. For purposes of terminating specific licensed activities:

1. "Decommissioning" means to remove a radioactive material use facility safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the radioactive material use license.
2. "Byproduct material" as used in 10 CFR 30, means "radioactive material" which is defined in A.R.S. § 30-651.
3. "Facility" means the entire site of radioactive material use, or any separate building or outdoor area where it is used.
4. "Appendix B to Part 30" as used in 10 CFR 30, means Appendix E in 9 A.A.C. 7, Article 4.
5. "Financial security" means having a net worth of not less than $10,000.

B. When applying, each non-government applicant for a specific license that authorizes the possession and use of radioactive material, and each non-government holder of a license to possess and use radioactive material issued before the effective date of this Section, shall submit to the Department a decommissioning funding plan or certification of financial security, as required in A.R.S. § 30-672(H). A licensee required to meet the requirements in subsection (C) is exempt from the requirements in this subsection.

C. When applying, each applicant for a specific license that authorizes the possession and use of radioactive material, and each holder of a license to possess and use radioactive material issued before the effective date of this Section, shall submit to the Department a decommissioning funding plan or certification of financial assurance that meets the requirements in 10 CFR 30.35, 40.36, and 70.25, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. Each decommissioning funding plan shall be submitted to the Department for review and approval and shall contain a detailed cost estimate for decommissioning, in an amount reflecting:

1. The cost of an independent contractor to perform all decommissioning activities;

2. The cost of meeting the R9-7-452(B) criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R9-7-452(C), the cost estimate may be based on meeting the R9-7-452(C) criteria;
3. The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination;
4. The ability to meet the provisions of this Section, for which the cost estimate may be based on meeting the criteria specified in this Section; and
5. An adequate contingency factor, including:
    a. Identification of and justification for using the key assumptions contained in the DCE;
    b. A description of the method of assuring funds for decommissioning including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;
    c. A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and
    d. An original signed copy of the financial instrument obtained to satisfy the requirements of subsection (F) unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning.

D. Each licensee required to provide financial assurance for decommissioning a radioactive material facility under this Section shall maintain records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Department. The licensee shall maintain the following records during the decommissioning process:

1. Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, and site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. The licensee shall keep records identifying the involved radionuclides and associated quantities, forms, and concentrations.
2. As-built drawings showing modifications of structures and equipment in restricted areas where radioactive materials are used and stored, and locations of possible inaccessible contamination. If drawings are not available, the licensee shall provide appropriate records describing each location of possible contamination.
3. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

E. Decommissioning procedures:

1. Upon expiration or termination of principal activities a licensee shall notify the Department in writing

whether the licensee is discontinuing licensed activities. The licensee shall begin decommissioning its facility within 60 days after the Department receives notice of the decision to permanently terminate principal activities, or within 12 months after receipt of notice, submit to the Department a decommissioning plan, as prescribed in 10 CFR 30.36(g)(1), 40.42(g)(1), and 70.38(g)(1), revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments. The licensee shall begin decommissioning upon approval of the plan if the license has expired or no licensed activities have been conducted at the licensee's facility for a period of 24 months.

2. In addition to the notification requirements in subsection (E)(1), the licensee shall maintain in effect all decommissioning financial assurances required by this Section. The financial assurances shall be increased or may be decreased as appropriate to cover the cost estimate established for decommissioning in subsection (E)(1). The licensee may reduce the amount of the financial assurance following approval of the decommissioning plan, provided the radiological hazard is decreasing and the licensee has the approval of the Department.
3. The Department shall extend the time periods established in subsection (E)(1) if a new time period is in the best interest of public health and safety.
   a. The licensee shall submit a request for an extension no later than 30 days after the Department receives the notice required in subsection (E)(1).
   b. If a licensee has requested an extension, the licensee is not required to commence decommissioning activities required in subsection (E)(1), until the Department has made a determination on the request submitted to the Department under subsection (E)(3)(a).
4. Except as provided in subsection (E)(5), the licensee shall complete decommissioning of a facility as soon as practicable but no later than 24 months following the initiation of decommissioning; and except as provided in subsection (E)(5), when decommissioning involves the entire facility, the licensee shall request license termination as soon as practicable but no later than 24 months following initiation of decommissioning.
5. The Department shall approve a request for an alternate schedule for completion of decommissioning and license termination if the Department determines that the alternative is warranted by consideration of the conditions specified in 10 CFR 30.36(i), 40.42(i), and 70.38(i), revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
6. As a final step in decommissioning, the licensee shall meet the requirements specified in 10 CFR 30.36(j), 40.42(j), and 70.38(j), revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

F. Each person licensed under this Article shall keep records of information important to the decommissioning

of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with R9-7-318, licensees shall transfer all records described in subsections (F)(1) through (F)(4) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Department considers important to decommissioning consists of:

1. Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.
2. As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.
3. Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:
   a. All areas designated and formerly designated as restricted areas as defined under R9-7-102;
   b. All areas outside of restricted areas that require documentation under subsection (F)(1);
   c. All areas outside of restricted areas where current and previous wastes have been buried as documented under R9-7-441; and
   d. All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in R9-7-451 or R9-7-452; or apply for approval for disposal under R9-7-435.
4. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

G. In providing financial assurance under this Section, each licensee shall use the financial assurance funds only for decommissioning activities and each licensee shall monitor the balance of funds held to account for market variations. The licensee shall replenish the funds, and report such actions to the Department, as follows:

1. If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee shall increase the balance to

cover the cost, and shall do so within 30 days after the end of the calendar quarter.

2. If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee shall increase the balance to cover the cost, and shall do so within 30 days of the occurrence.
3. Within 30 days of taking the actions required by subsection (G)(1) or (G)(2), the licensee shall provide a written report of such actions to the Director of the Department, and state the new balance of the fund.

H. The financial instrument must include the licensee's name, license number, and docket number, and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. When any of the foregoing information changes, the licensee must, within 30 days, submit financial instruments to the Department reflecting such changes. The financial instrument submitted must be a signed original or signed original duplicate, except where a copy of the signed original is specifically permitted. Financial assurance for decommissioning must be provided by one or more of the following methods:

1. Prepayment. Prepayment is the deposit before the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment must be made into a trust account, and the trustee and the trust must be acceptable to the Department.
2. A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are approved by the Department. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are approved by the Department. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are approved by the Department. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are approved by the Department. Except for an external sinking fund, a parent company guarantee or a guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this Section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:
    a. The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face-value amount be paid to the beneficiary

automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Department within 30 days after receipt of notification of cancellation.

b. The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Department. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

c. The surety method or insurance must remain in effect until the Department has terminated the license.

3. An external sinking fund in which deposits are made at least annually, coupled with a surety method, insurance, or other guarantee method, the value of which may reduce by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund must be in the form of a trust. If the other guarantee method is used, no surety or insurance may be combined with the external sinking fund. The surety, insurance, or other guarantee provisions must be as stated in subsection (H)(2).
4. In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning, and indicating that funds for decommissioning will be obtained when necessary.
5. When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

R9-7-324. Public Notification and Public Participation

Upon the receipt of a license termination plan (LTP) or decommissioning plan from a licensee, or a proposal by a licensee for decommissioning of a site in accordance with R9-7-452(C) and (D) or for other events when the Department deems a notice to be in the public interest, the Department shall:

1. Notify and solicit comments from:
   a. State and local governments and any Indian Nation or other indigenous people who have legal rights that could be affected by the decommissioning, and
   b. The Arizona Department of Environmental Quality for cases in which the licensee proposes to decommission a site in accordance with R9-7-452(D).
2. Publish the notice in the Arizona Administrative Register and use other methods of publication such as local newspapers, letters to local organizations, or any other method that is reasonably calculated to provide notice, and solicit comments from affected parties.

R9-7-325. Timeliness in Decommissioning Facilities

A. "Principal activities," as used in this Section, means activities authorized by the license that are essential to achieving the purposes for which the license was issued or amended. Storage, during which licensed material is not accessed for use, or disposal and other activities incidental to decontamination or decommissioning are not principal activities.

B. Each specific license revoked by the Department expires at midnight on the date of the Department's final determination to revoke the license, the expiration date stated in the determination, or as otherwise provided by Department order.

C. Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material, until the Department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

1. Limit actions involving radioactive material to those related to decommissioning;
2. Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements; and
3. Pay the applicable annual fee for the license category listed in R9-7-1306.

D. Within 60 days of the occurrence of any of the following, each licensee shall notify the Department in writing of the occurrence and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with Department requirements, or submit within 12 months of notification a decommissioning plan, if required by R9-7-323, and begin decommissioning upon approval of that plan if:

1. The license expires in accordance with subsection (B) or R9-7-314, unless the licensee submits a renewal application in accordance with R9-7-315;
2. The licensee decides to permanently terminate principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Department requirements;
3. No principal activities under the license have been conducted for a period of 24 months; or
4. No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Department requirements.

Exhibit A. Exempt Concentrations

Element (atomic number)	Isotope	Column I Gas Concentration (□Ci/ml)[2]	Column II Liquid and Solid Concentration (□Ci/ml)[1]
Antimony (51)	Sb-122		$3X10^{-4}$
	Sb-124		$2X10^{-4}$
	Sb-125		$1X10^{-3}$
Argon (18)	Ar-37	$1X10^{-3}$	
	Ar-41	$4X10^{-7}$	
Arsenic (33)	As-73		$5X10^{-3}$
	As-74		$5X10^{-4}$
	As-76		$2X10^{-4}$
	As-77		$8X10^{-4}$
Barium (56)	Ba-131		$2X10^{-3}$
	Ba-140		$3X10^{-4}$
Beryllium (4)	Be-7		$2X10^{-2}$
Bismuth (83)	Bi-206		$4X10^{-4}$
Bromine (35)	Br-82	$4X10^{-7}$	$3X10^{-3}$
Cadmium (48)	Cd-109		$2X10^{-3}$
	Cd-115m		$3X10^{-4}$
	Cd-115		$3X10^{-4}$
Calcium (20)	Ca-45		$9X10^{-5}$
	Ca-47		$5X10^{-4}$
Carbon (6)	C-14	$1X10^{-6}$	$8X10^{-3}$
Cerium (58)	Ce-141		$9X10^{-4}$
	Ce-143		$4X10^{-4}$
	Ce-144		$1X10^{-4}$
Cesium (55)	Cs-131		$2X10^{-2}$
	Cs-134m		$6X10^{-2}$
	Cs-134		$9X10^{-5}$
Chlorine (17)	Cl-38	$9X10^{-7}$	$4X10^{-3}$
Chromium (24)	Cr-51		$2X10^{-2}$
Cobalt (27)	Co-57		$5X10^{-3}$
	Co-58		$1X10^{-3}$
	Co-60		$5X10^{-4}$

Copper (29)	Cu-64		$3X10^{-3}$
Dysprosium (66)	Dy-165		$4X10^{-3}$
	Dy-166		$4X10^{-4}$
Erbium (68)	Er-169		$9X10^{-4}$
	Er-171		$1X10^{v}$
Europium (63)	Eu-152		$6X10^{-4}$
	(T_r=9.2 h)		
	Eu-155		$2X10^{-3}$
Fluorine (9)	F-18	$2X10^{-6}$	$8X10^{-3}$
Gadolinium (64)	Gd-153		$2X10^{-3}$
	Gd-159		$8X10^{-4}$
Gallium (31)	Ga-72		$4X10^{-4}$
Germanium (32)	Ge-71		$2X10^{-2}$
Gold (79)	Au-196		$2X10^{-3}$
	Au-198		$5X10^{-4}$
	Au-199		$2X10^{-3}$
Hafnium (72)	Hf-181		$7X10^{-4}$
Hydrogen (1)	H-3	$5X10^{-6}$	$3X10^{-2}$
Indium (49)	In-113m		$1X10^{-2}$
	In-114m		$2X10^{-4}$
Iodine	I-126	$3X10^{-9}$	$2X10^{-5}$
	I-131	$3X10^{-9}$	$2X10^{-5}$
	I-132	$8X10^{-8}$	$6X10^{-4}$
	I-133	$1X10^{-8}$	$7X10^{-5}$
	I-134	$2X10^{-7}$	$1X10^{-3}$
Iridium (77)	Ir-190		$2X10^{-3}$
	Ir-192		$4X10^{-4}$
	Ir-194		$3X10^{-4}$
Iron (26)	Fe-55		$8X10^{-3}$
	Fe-59		$6X10^{-4}$
Krypton (36)	Kr-85m	$1X10^{-6}$	
	Kr-85	$3X10^{-6}$	
Lanthanum (57)	La-140		$2X10^{-4}$
Lead (82)	Pb-203		$4X10^{-3}$
Lutetium (71)	Lu-177		$1X10^{-3}$

Manganese (25)	Mn-52	$3X10^{-4}$
	Mn-54	$1X10^{-3}$
	Mn-56	$1X10^{-3}$
Mercury (80)	Hg-197m	$2X10^{-3}$
	Hg-197	$3X10^{-3}$
	Hg-203	$2X10^{-4}$
Molybdenum (42)	Mo-99	$2X10^{-3}$
Neodymium (60)	Nd-147	$6X10^{-4}$
	Nd-149	$3X10^{-3}$
Nickel (28)	Ni-65	$1X10^{-3}$
Niobium (Columbium)(41)	Nb-95	$1X10^{-3}$
	Nb-97	$9X10^{-3}$
Osmium (76)	Os-185	$7X10^{-4}$
	Os-191m	$3X10^{-2}$
	Os-191	$2X10^{-3}$
	Os-193	$6X10^{-4}$
Palladium (46)	Pd-103	$3X10^{-3}$
	Pd-109	$9X10^{-4}$
Phosphorus (15)	P-32	$2X10^{-4}$
Platinum (78)	Pt-191	$1X10^{-3}$
	Pt-193m	$1X10^{-2}$
	Pt-197m	$1X10^{-2}$
	Pt-197	$1X10^{-3}$
Potassium (19)	K-42	$3X10^{-3}$
Praseodymium (59)	Pr-142	$3X10^{-4}$
	Pr-143	$5X10^{-4}$
Promethium (61)	Pm-147	$2X10^{-3}$
	Pm-149	$4X10^{-4}$
Rhenium (75)	Re-183	$6X10^{-3}$
	Re-186	$9X10^{-4}$
	Re-188	$6X10^{-4}$
Rhodium (45)	Rh-103m	$1X10^{-1}$
	Rh-105	$1X10^{-3}$
Rubidium (37)	Rb-86	$7X10^{-4}$
Ruthenium (44)	Ru-97	$4X10^{-3}$

	Ru-103		$8X10^{-4}$
	Ru-105		$1X10^{-3}$
	Ru-106		$1X10^{-4}$
Samarium (62)	Sm-153		$8X10^{-4}$
Scandium (21)	Sc-46		$4X10^{-4}$
	Sc-47		$9X10^{-4}$
	Sc-48		$3X10^{-4}$
Selenium (34)	Se-75		$3X10^{-3}$
Silicon (14)	Si-31		$9X10^{-3}$
Silver (47)	Ag-105		$1X10^{-3}$
	Ag-110m		$3X10^{-4}$
	Ag-111		$4X10^{-4}$
Sodium (11)	Na-24		$2X10^{-3}$
Strontium (38)	Sr-85		$1X10^{-3}$
	Sr-89		$1X10^{-4}$
	Sr-91		$7X10^{-4}$
	Sr-92		$7X10^{-4}$
Sulfur (16)	S-35	$9X10^{-8}$	$6X10^{-4}$
Tantalum (73)	Ta-182		$4X10^{-4}$
Technetium (43)	Tc-96m		$1X10^{-1}$
	Tc-96		$1X10^{-3}$
Tellurium (52)	Te-125m		$2X10^{-3}$
	Te-127m		$6X10^{-4}$
	Te-127		$3X10^{-3}$
	Te-129m		$3X10^{-4}$
	Te-131m		$6X10^{-4}$
	Te-132		$3X10^{-4}$
Terbium (65)	Tb-160		$4X10^{-4}$
Thallium (81)	Tl-200		$4X10^{-3}$
	Tl-201		$3X10^{-3}$
	Tl-202		$1X10^{-3}$
	Tl-204		$1X10^{-3}$
Thulium (69)	Tm-170		$5X10^{-4}$
	Tm-171		$5X10^{-3}$
Tin (50)	Sn-113		$9X10^{-4}$

	Sn-125		$2X10^{-4}$
Tungsten (Wolfram) (74)	W-181		$4X10^{-3}$
	W-187		$7X10^{-4}$
Vanadium (23)	V-48		$3X10^{-4}$
Xenon (54)	Xe-131m	$4X10^{-6}$	
	Xe-133	$3X10^{-6}$	
	Xe-135	$1X10^{-6}$	
Ytterbium (70)	Yb-175		$1X10^{-3}$
Yttrium (39)	Y-90		$2X10^{-4}$
	Y-91m		$3X10^{-2}$
	Y-91		$3X10^{-4}$
	Y-92		$6X10^{-4}$
	Y-93		$3X10^{-4}$
Zinc (30)	Zn-65		$1X10^{-3}$
	Zn-69m		$7X10^{-4}$
	Zn-69		$2X10^{-2}$
Zirconium (40)	Zr-95		$6X10^{-4}$
	Zr-97		$2X10^{-4}$
	(See notes at end of appendix)		
Beta and/or gamma emitting radioactive material not listed above with half-life less than three years		$1X10^{-10}$	$1X10^{-6}$

NOTE 1: Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in Schedule A the activity stated is that of the parent isotope and takes into account the daughters.

1/ Values are given in Column I only for those materials normally used as gases

2/ □Ci/gm are for solids

NOTE 2: For purposes of Section 303 where there is involved a combination of isotopes, the limit for the combination should be derived as follows: Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in Schedule A for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (i.e., unity).

EXAMPLE:

$$\frac{\text{Concentration of Isotope A in Product}}{\text{Exempt concentration of Isotope A}} + \frac{\text{Concentration of Isotope B in Product}}{\text{Exempt concentration of Isotope B}} \leq 1$$

Exhibit B. Exempt Quantities

Material	**Microcuries**
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10

Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) (9.2 h)	100
Europium-152 (Eu-152) (13 yr)	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au-195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1

Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191(Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100

Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100

Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium-131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-43 (V-48)	10
Xenon-131m (Xe-131m)	1,000

Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radionuclide material not listed above other than alpha-emitting radioactive material	0.1

Exhibit C. Limits for Class B and C Broad Scope Licenses (R9-7-310)

Radioactive Material	**Col. I curies**	**Col. II curies**
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1.
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1.
Cesium-134m	100	1.
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1.
Chromium-51	100	1.
Cobalt-57	10	0.1
Cobalt-58m	100	1.

Cobalt-58	1	0.01
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1.
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2 h)	10	0.1
Europium-152 (13 yr)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1.
Gadolinium-153	1	0.1
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1.
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.1
Holmium-166	10	0.1
Hydrogen-3	100	1.
Indium-113m	100	1.
Indium-114m	1	0.1
Indium-115m	100	1.
Indium-115	1	0.1
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.001
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.1
Iodine-134	10	0.1
Iodine-135	1	0.1
Iridium-192	1	0.1
Iridium-194	10	0.1

Iron-55	10	0.1
Iron-59	1	0.1
Krypton-85	100	1.
Krypton-87	10	0.1
Lanthanum-140	1	0.1
Lutetium-177	10	0.1
Manganese-52	1	0.1
Manganese-54	1	0.1
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.1
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.1
Nickel-65	10	0.1
Niobium-93m	1	0.1
Niobium-95	1	0.1
Niobium-97	100	1.
Osmium-185	1	0.1
Osmium-191m	100	1.
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1.
Platinum-193	10	0.1
Platinum-197m	100	1.
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01

Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	00.1
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01
Ruthenium-97	100	1.
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85	1,000	10
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulfur-35	100	0.1
Tantalum-182	1	0.01

Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1.
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1.
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-197	10	0.1
Vanadium-43	1	0.01
Xenon-131m	1,000	10
Xenon-133	100	1.
Xenon-135	100	1.
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1

Zinc-69	100	1.
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha emitting radioactive material not listed above.	0.1	0.001

Exhibit D. Radioactive Material Quantities Requiring Consideration for an Emergency Plan (R9-7-322)

Radioactive Material	Release Fraction	Quantity (Ci)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252	.001	9 (20 mg)
Carbon-14 (Non CO)	.01	50,000
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	3,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Gadolinium-153	.01	5,000
Germanium-68	.01	2,000

Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Indium-114m	.01	1,000
Iodine-125	.5	10
Iodine-131	.5	10
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	.01	8
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Radium-226	.001	100
Ruthenium-106	.01	200
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90

Sulfur-35	.5	900
Technetium-99	.01	10,000
Technetium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400
Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment beta-gamma	.001	10,000
Irradiated material, any form other than solid non-combustible	.01	1,000
Irradiated material, solid non-combustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta gamma	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha	.0001	20

Combinations of radioactive materials listed above:

For combinations of radioactive materials, consideration of the need for an emergency plan is required if the

sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Exhibit D exceeds 1.

NOTE: Waste packaged in Type B containers does not require an emergency plan.

Exhibit E. Application Information

1. Radioactive Material (RAM) Specific License Application Information

An applicant shall provide the following information in a specific license application before a license is issued to the applicant. The Department shall provide an application form to an applicant with a guide, when possible, to ensure that correct information is provided in the application:

Name and mailing address of applicant	Use location
Contact person	Telephone number
Users of RAM	Training of users
Radiation Safety Officer identity (RSO)	Duties of RSO
Description of RAM and uses	Description of radiation detection/measurement instruments and their calibration
Personnel monitoring	Bioassay program
Facility description	Survey program
Leak test program	Records management program
Instruction to personnel	Waste disposal program
Emergency procedures	Procedures for ordering, receiving, and opening packages
Description of animal use	Licensing fee provided with application
Copy of letter-of-intent	Description of ALARA and quality management to local governing body programs
Description of transportation procedures	Certifying signature
Legal structure of licensee's operation	

Other licensing requirements listed in: R9-7-310, R9-7-311, R9-7-312, R9-7-511, R9-7-703, and R9-7-1721

2. Radioactive Material (RAM) General License Application Information

An applicant shall provide the following information on a registration certificate. The certificate will be validated and returned to the applicant if the information provided is complete.

Name and address	Telephone number
Where will the radioactive material be used	Address of use location
Description of radioactive material use	Date
Authorizing signature and printed name	Position of person signing the form

Statutory Authority for the Rules in 9 A.A.C. 7, Article 3

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain

certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

30-681. Inspections

A. The department or its duly authorized representatives may enter at all reasonable times on any private or public property for the purpose of determining whether there is compliance with or a violation of this chapter and rules adopted under this chapter, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

B. If the director determines that there is reasonable cause to believe that a radiation source is not in compliance with the licensing requirements of this chapter, the director or the director's designee or agent may enter on and into the premises of any radiation source that is licensed or required to be licensed pursuant to this chapter at any reasonable time to determine compliance with this chapter and rules adopted pursuant to this chapter. An application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If the inspection shows that the radiation source is not adhering to the licensing requirements of this chapter, the director may take action authorized by this chapter. A radiation source whose license has been suspended or revoked in accordance with this subsection is subject to inspection when applying for relicensure or reinstatement of the license.

30-688. Emergency action

A. If the director finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, the director may:

1. Order the summary suspension of a license pending proceedings for revocation or another action. These proceedings shall be promptly instituted and determined.

2. Order the impoundment of sources of radiation in the possession of any person that is not equipped to comply with or that fails to comply with this chapter or any rule adopted pursuant to this chapter.

B. The director may apply to the superior court for an injunction to restrain a person from violating a provision of this chapter or a rule adopted pursuant to this chapter. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The person may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

30-689. Violation; classification

A. Any person who violates any provision of this chapter or any rule, regulation or order placed in effect pursuant thereto by the commission is guilty of a class 2 misdemeanor.

B. The provisions of subsection A shall not apply to any emergency regulation or order unless or until the person so violating such regulation or order has had actual knowledge of the regulation or order.

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.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 14

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 14, 2023**

SUBJECT: **Department of Health Services**
Title 9, Chapter 10, Article 14

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 14 regarding Substance Abuse Transitional Activities.

The Department did not propose any changes to the rules in the last 5YRR.

Proposed Action

The Department is proposing to amend one of its rules in order to make it more effective. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council January 2024.

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:

Overall, the Department believes that the recent changes made to the rules in 2019 and 2020 may have created a minimal increase in costs, but believes that the benefit of having

more effective and understandable rules outweigh any costs incurred. Barring this, 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 Department identifies the following as stakeholders: the Department, health care institutions, personnel members, patients/residents of a health care institution and their families, 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 states 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.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department indicates they did not receive any written criticisms to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are overall effective in achieving their objectives, with the exception of the following:

R9-10-1413 - Food Services

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.

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 rules require the issuance of a specific agency authorization, which is authorized by A.R.S. 36-405. A general permit is not applicable.

11. Conclusion

As mentioned above, the Department is proposing one of its rules in order to make it more effective. The Department plans to submit a Notice of Final Rulemaking to the Council by January 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

May 2, 2023

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. 10, Article 14, Five-Year-Review Report for Substance Abuse Transitional Facilities

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. 10, Article 14, Substance Abuse Transitional Facilities, which is due on May 31, 2023.

The Department reviewed the rules in 9 A.A.C. 10, Article 14, 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 me at (602) 542-1020.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services -

Health Care Institutions: Licensing

Article 14. Substance Abuse Transitional Facilities

May 2023

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, and 36-2023

2. The objective of each rule:

Rule	Objective
R9-10-1401	To set out definitions clarifying and interpreting the terms contained in Title 9, Chapter 10, Article 14.
R9-10-1402	The objectives of the rule are to: a. Set out the qualifications, duties, and appointment procedures for a substance abuse transitional facility's administrator; b. Mandate the adoption and annual review of a quality management program according to A.A.C. R9-10-1403; c. Ensure that a facility's administrator establishes, documents, and implements policies and procedures to protect the health and safety of a participant that cover a facility's administrative functions including, but not limited to: job descriptions, duties, and qualifications; orientation and in-service education; complaint submission; cardiopulmonary resuscitation training; first aid training; medical records; and participant rights; d. Ensure that a facility's administrator establishes, documents, and implements policies and procedures for services that cover intake, discharge, informed consent, provision of care, medication administration and disposal, infection control, environmental services, receipt and refund of participant fees, physical security, tobacco use, participant control, and participant monitoring; e. Require that policies and procedures are available and reviewed at least once every three years; f. Establish Department notification procedures to be followed in the event of a participant's death, self-injury, abuse, neglect, or exploitation; and g. Require that a facility have the following documents conspicuously posted or available upon request: participant's rights, facility's current license, location at which inspection reports are available for review, and days and times when a participant may accept visitors and make telephone calls.
R9-10-1403	The objectives of the rule are to: a. Mandate the establishment, documentation, and implementation of an ongoing quality management program in substance abuse transitional facilities; and

	b. Require the submission of a documented report to the governing authority that identifies concerns about the delivery of services at the facility and the facility's actions in response to identified concerns.
R9-10-1404	The objectives of the rule are to: a. Ensure that a facility's contracted services comply with the requirements of A.A.C. Title 9, Chapter 10, Article 14; and b. Require that a facility's administrator maintains documentation of a facility's current contracted services.
R9-10-1405	The objectives of the rule are to: a. Mandate that personnel members possess the minimum qualifications, skills, certifications, and knowledge required for their respective position. b. Ensure that a substance abuse transitional facility has sufficient personnel to meet the needs of and ensure the health and safety of participants; c. Document in-service education and orientation requirements as they relate to each personnel member's duties; d. Prescribe training for personnel on how to manage a participant's sudden, intense, or out-of-control behavior; e. Require evidence of freedom from infectious tuberculosis from all personnel who are or are expected to have direct interaction with a participant for more than eight hours a week; f. Require that personnel records are maintained by the facility; and g. Set out staffing requirements at substance abuse transitional facilities.
R9-10-1406	The objectives of the rule are to: a. Require that a substance abuse transitional facility obtain general consent from a participant or participant's representative before or at the time of admission; b. Ensure that an assessment is performed, documented, and routinely reviewed/updated; and c. Set out referral procedures for physical and behavioral health services.
R9-10-1407	To set out the required discharge procedures for a participant including, but not limited to, preparation of a discharge summary, referral to detoxification services, identification of specific needs for the participant upon discharge, identification of community resources that may be available to the participant, and update of a discharged participant's medical record.
R9-10-1408	To establish procedures that a substance abuse transitional facility must follow in the event of a participant's non-emergency transfer including, but not limited to, evaluation of a participant before transfer, transfer of a participant's medical record to the receiving health care institution, explanation of the risks and benefits of the transfer to the participant or participant's representative, and documentation of the transfer in the participant's medical record.
R9-10-1409	The objectives of the rule are to: a. Establish, document, and implement policies and procedures that give participants notice of their rights under A.A.C. R9-10-1409(B); b. Enumerate participant rights and set out prohibited practices in substance abuse transitional facilities; and c. Provide participants with the right to expressly consent to or refuse treatment.
R9-10-1410	The objectives of the rule are to: a. Set out the contents of a participant's medical record; and b. Implement safeguards for physical and electronic medical records.
R9-10-1411	The objectives of the rule are to:

	a. Ensure that counseling is provided in compliance with a substance abuse transitional facility's scope of services and a participant's assessment; b. Require that counseling is provided by a behavioral health professional with sufficient skills and knowledge to address the participant's behavioral health issue; and c. Set out the factors that must be documented following each counseling session.
R9-10-1412	The objectives of the rule are to: a. Require the implementation of policies and procedures for medication services including, but not limited to, providing information about medication, responding to medication errors/overdoses/adverse reactions, reviewing a participant's medication regimen, documenting medication administration, and assisting participants in obtaining medication; b. Ensure that policies and procedures for medication administration are reviewed and approved by a medical practitioner; c. Guarantee that verbal orders for medication services are taken by a nurse; d. Set out guidelines that a substance abuse transitional facility must follow when providing participants with assistance in the self-administration of medication; and e. Safeguard medications stored in substance abuse transitional facilities.
R9-10-1413	The objectives of the rule are to: a. Require the designation of a director of food services or the hiring of a registered dietician to ensure that the nutritional needs of participants are met; b. Set out the process for giving notice of upcoming meals; and c. Ensure that food is obtained, prepared, served, and stored safely.
R9-10-1414	The objectives of the rule are to: a. Require the development, documentation, implementation, and review of a disaster plan; b. Ensure that evacuation drills are regularly conducted and documented; and c. Require that fire inspections are regularly conducted and documented.
R9-10-1415	The objectives of the rule are to: a. Ensure that a substance abuse transitional facility's premises are regularly cleaned, disinfected, and kept free from potentially hazardous conditions; b. Require regular equipment testing, calibration, and repair; c. Regulate tobacco use on the premises; d. Ensure adequate heat and cooling on the premises; and e. Implement and document a pest control program.
R9-10-1416	The objectives of the rule are to: a. Prescribe physical premises requirements for facility bathrooms, participant bedrooms, facility showers/bathtubs, common areas, and dining areas; and b. Require the installation of a fire alarm system.

3. <u>Are the rules effective in achieving their objectives?</u> **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

R9-10-1413	The rule is effective, but could be improved in subsection (B)(5) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

4. Are the rules consistent with other rules and statutes? **Yes _X_** **No ___**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. Are the rules enforced as written? **Yes _X_** **No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. Are the rules clear, concise, and understandable? **Yes _X_** **No __**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___** **No _X_**

If yes, please fill out the table below:

Rule	Explanation

8. Economic, small business, and consumer impact comparison:

Arizona Revised Statutes ("A.R.S.") § 36-405(A) requires the Arizona Department of Health Services ("Department") to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. It further requires that the standards and requirements shall relate to the construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services

according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care, and standard of patient care required for licensure. Pursuant to Arizona Administrative Code ("A.A.C.") R9-10-102(A)(18), one class of health care institution is a "[s]ubstance abuse transitional facility." As defined in A.A.C. R9-10-101(195), a "[s]ubstance abuse transitional facility" means "a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem." Rules pertaining to and governing substance abuse transitional facilities are contained in A.A.C. Title 9, Chapter 10, Article 14, were enacted through an exempt rulemaking in October 2013 at 19 A.A.R. 2015 and renumbered/amended by exempt rulemaking at 20 A.A.R. 1409, effective July 1, 2014. Facilities previously labeled as Level 4 transitional agencies were reclassified as substance abuse transitional facilities. Additionally, the former rules applying to Level 4 transitional agencies under A.A.C. Title 9, Chapter 20, Articles 2 and 12 were replaced in whole with the current Article 14 rules governing substance abuse transitional facilities. The rules include requirements relating to facility administration, personnel, staffing, participant rights, admission, discharge, transfer, behavioral health services, participant records, medication administration, food services, physical plant standards, and environmental safety standards. The rules in Article 14 were last revised through expedited rulemaking at 26 A.A.R. 3041, with an immediate effective date of November 3, 2020. In 2019, the rules were amended through three separate rulemakings by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019; final rulemaking at 25 A.A.R. 1583, effective October 1, 2019; and final expedited rulemaking, at 25 A.A.R. 3481, effective November 5, 2019.

Stakeholders for these rulemakings included the Department, facility owners, physicians and other health care providers, facility participants, and the general public. Presently, there are only three active substance abuse transitional facilities with a total licensed capacity of 42. The Department has issued zero initial licenses since the last 5-year review report in 2018. All substance abuse transitional facility licenses are perpetual and will remain valid as long as yearly license fees are paid. In the last fiscal year, there were no complaints, complaint investigations conducted, or enforcement actions taken against substance abuse transitional facilities. In this economic, small business, and consumer impact comparison, annual cost/revenues are designated as minimal when $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

The regular rulemaking in 2019 at 25 A.A.R. 1583, amended R9-10-1414 to comply with Laws 2017, Ch. 122. The new statutory requirements eliminated renewal licensure for health care institutions and requires a health care institution license to remain valid unless subsequently suspended or revoked by the Department. Therefore, an "initial" license was no longer consistent with the new statutory requirements. Later in 2019, R9-10-1416 was amended by final expedited rulemaking, at 25 A.A.R. 3481 to update cross-references. The Department estimates that these changes have provided a significant benefit to facilities for not having to renew their licensure and for having updated clearer rules.

The 2020 expedited rulemaking at 26 A.A.R. 3041, amended one rule, R9-10-1405, to comply with new statutory requirements implemented by Laws 2019, Ch. 215, § 4. The new legislation, which amends A.R.S. § 36-405.02, requires the Department to allow "a person who is employed at a health care institution that provides behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide behavioral health or other related health care services pursuant to all applicable department rules." In the 2019 expedited rulemaking at 25 A.A.R. 259, R9-10-1415 was amended to add a cross-reference for a pest control program that complies with A.A.C. R3-8-201(C)(4). This change in the rule provided better clarity to those affected by the rules as to what pest control program is appropriate, in addition to making the rules in Article 14 more consistent with other Articles in Chapter 10. The Department believes that all persons affected by the rules have received a significant benefit from having rules that comply with the statutory requirements for pest control programs, as well as ensuring a behavioral health professional is at least 18 years old.

Overall, the Department believes that the changes made to the rules may have created a minimal increase in costs, but believes that the benefit of having more effective and understandable rules outweighs any costs incurred. 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.

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 2018 Five-Year-Review Report, the Department stated that there was no plan to amend the rules in 9 A.A.C. 10, Article 14.

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 has determined that 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.

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 in A.A.C. Title 9, Chapter 10, Article 14 are not governed by 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 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, 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.

Although the item described in paragraph three is minor, not substantive, and does not inhibit those regulated by the rules from understanding and complying with the rules, a change as described in paragraph three could improve the effectiveness of the rules. The Department plans to amend the rules to address this item and submit a Notice of Final Rulemaking to the Council by January 2024.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

R9-10-1401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

"Emergency medical care technician" has the same meaning as in A.R.S. § 36-2201.

R9-10-1402. Administration

A. A governing authority shall:

1. Consist of one or more individuals accountable for the organization, operation, and administration of a substance abuse transitional facility;
2. Establish, in writing:
   a. A substance abuse transitional facility's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who meets the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1403;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
   a. Expected not to be present on a substance abuse transitional facility's premises for more than 30 calendar days, or
   b. Not present on a substance abuse transitional facility's premises for more than 30 calendar days; and
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:

1. Is directly accountable to the governing authority for the daily operation of the substance abuse transitional facility and all services provided by or at the substance abuse transitional facility;
2. Has the authority and responsibility to manage the substance abuse transitional facility; and
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on a substance abuse transitional facility's premises and accountable for the substance abuse transitional facility when the administrator is not present on the substance abuse transitional facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to services provided to a participant;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training, including:
      i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
      ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
   f. Include a method to identify a participant to ensure the participant receives physical health services and behavioral health services as ordered;
   g. Cover first aid training;
   h. Cover participant rights, including assisting a participant who does not speak English or who has a physical or other disability to become aware of participant rights;
   i. Cover specific steps for:
      i. A participant to file a complaint, and
      ii. The substance abuse transitional facility to respond to a participant's complaint;
   j. Cover medical records, including electronic medical records;
   k. Cover quality management, including incident reports and supporting documentation;
   l. Cover contracted services; and
   m. Cover when an individual may visit a participant in the substance abuse transitional facility;
2. Policies and procedures for services are established, documented, and implemented to protect the health and safety of a participant that:
   a. Cover participant screening, admission, assessment, transfer, discharge planning, and discharge;

b. Include when general consent and informed consent are required;
c. Cover the provision of behavioral health services and physical health services;
d. Cover medication administration, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
e. Cover infection control;
f. Cover environmental services that affect participant care;
g. Cover the process for receiving a fee from and refunding a fee to a participant or the participant's representative;
h. Cover the security of a participant's possessions that are allowed on the premises;
i. Cover smoking tobacco products on the premises;
j. Cover how the facility will respond to a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual; and
k. Cover how often periodic monitoring occurs based on a participant's condition;

3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to employees; and
5. Unless otherwise stated:
   a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
   b. When documentation or information is required by this Chapter to be submitted on behalf of a substance abuse transitional facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the substance abuse transitional facility.

D. An administrator shall provide written notification to the Department of a participant's:
1. Death, if the participant's death is required to be reported according to A.R.S. § 11-593, within one working day after the participant's death; and
2. Self-injury, within two working days after the participant inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

E. If abuse, neglect, or exploitation of a participant is alleged or suspected to have occurred before the participant was admitted or while the participant is not on the premises and not receiving services from a substance abuse transitional facility's employee or personnel member, an administrator shall immediately report the alleged or suspected abuse, neglect, or exploitation of the participant according to A.R.S. § 46-454.

F. If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a participant is receiving services from a substance abuse transitional facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the participant according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (F)(1); and
   c. The report in subsection (F)(2);
4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the participant and any change to the participant's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

G. An administrator shall establish, document, and implement a process for responding to a participant's need for immediate and unscheduled behavioral health services or physical health services.

H. An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, an employee, a participant, or a participant's representative:
1. The participant rights listed in R9-10-1409,
2. The facility's current license,
3. The location at which inspection reports are available for review or can be made available for review, and
4. The days and times when a participant may accept visitors and make telephone calls.

R9-10-1403. Quality Management

An administrator shall ensure that:
1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate services provided to participants;

c. A method to evaluate the data collected to identify a concern about the delivery of services related to participant care;
d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to participant care; and
e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
a. An identification of each concern about the delivery of services related to participant care, and
b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to participant care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-1404. Contracted Services

An administrator shall ensure that:
1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1405. Personnel

A. An administrator shall ensure that:
1. A personnel member is:
a. At least 21 years old, or
b. If providing behavioral health services, at least 18 years old;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

B. An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
a. Are based on:
i. The type of behavioral health services or physical health services expected to be provided by the personnel member according to the established job description, and
ii. The acuity of participants receiving behavioral health services or physical health services from the personnel member according to the established job description;
b. Include:
i. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
a. Before the personnel member provides behavioral health services or physical health services, and
b. According to policies and procedures;
3. An emergency medical care technician complies with the requirements in 9 A.A.C. 25 for certification and medical direction;
4. A substance abuse transitional facility has sufficient personnel members with the qualifications, education, experience, skills, and knowledge necessary to:
a. Provide the behavioral health services and physical health services in the substance abuse transitional facility's scope of services,
b. Meet the needs of a participant, and
c. Ensure the health and safety of a participant;
5. A written plan is developed and implemented to provide orientation specific to the duties of a personnel member;
6. A personnel member's orientation is documented, to include:
a. The personnel member's name,
b. The date of the orientation, and
c. The subject or topics covered in the orientation;
7. In addition to the training required in subsections (B)(1) and (B)(5), a written plan is developed and implemented to provide a personnel member with in-service education specific to the duties of the personnel member;
8. A personnel member's skills and knowledge are verified and documented:
a. Before providing services related to participant care, and
b. At least once every 12 months after the date the personnel member begins providing services related to participant care; and
9. An individual's in-service education and, if applicable, training in how to respond to a participant's sudden, intense, or out-of-control behavior is documented, to include:

a. The personnel member's name,
b. The date of the training, and
c. The subject or topics covered in the training.

C. An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor receives direct supervision as defined in A.A.C. R4-6-101.

D. An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the substance abuse transitional facility, and
2. As specified in R9-10-113.

E. An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.

F. An administrator shall ensure that a personnel record is maintained for a personnel member, employee, volunteer, or student that contains:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the individual's job duties;
   c. The individual's completed orientation and in-service education as required by policies and procedures;
   d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   e. The individual's completion of the training required in subsection (B)(8), if applicable;
   f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
   g. Cardiopulmonary resuscitation training, if required for the individual according to subsection (H) or policies and procedures;
   h. First aid training, if required for the individual according to subsection (H) or policies and procedures; and
   i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (D).

G. An administrator shall ensure that personnel records are:
1. Maintained:
   a. Throughout an individual's period of providing services at or for a substance abuse transitional facility, and
   b. For at least 24 months after the last date the individual provided services at or for a substance abuse transitional facility; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the substance abuse transitional facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

H. An administrator shall ensure at least one personnel member who is present at the substance abuse transitional facility during hours of facility operation has first-aid and cardiopulmonary resuscitation training certification specific to the populations served by the facility.

I. An administrator shall ensure that:
1. At least one personnel member is present and awake at a substance abuse transitional facility at all times when a participant is on the premises;
2. In addition to the personnel member in subsection (I)(1), at least one personnel member is on-call and available to come to the substance abuse transitional facility if needed;
3. A substance abuse transitional facility has sufficient personnel members to provide general participant supervision and treatment and sufficient personnel members or employees to provide ancillary services to meet the scheduled and unscheduled needs of each participant;
4. There is a daily staffing schedule that:
   a. Indicates the date, scheduled work hours, and name of each individual assigned to work, including on-call individuals;
   b. Includes documentation of the employees who work each day and the hours worked by each employee; and
   c. Is maintained for at least 12 months after the last date on the documentation;
5. A behavioral health professional is present on the substance abuse transitional facility's premises or on-call; and
6. A registered nurse is present on the substance abuse transitional facility's premises or on-call.

R9-10-1406. Admission; Assessment

An administrator shall ensure that:
1. A participant is admitted based upon the participant's presenting behavioral health issue and treatment needs and the substance abuse transitional facility's ability and authority to provide behavioral health services or physical health services consistent with the participant's needs;
2. General consent is obtained from a participant or the participant's representative before or at the time of admission ;
3. The general consent obtained in subsection (2) is documented in the participant's medical record;
4. An assessment of a participant is completed or updated by an emergency medical care technician or a registered nurse;
5. If an assessment is completed or updated by an emergency medical care technician, a registered nurse reviews the assessment within 24 hours after the completion of the assessment to ensure that the assessment identifies the behavioral health services and physical health services needed by the participant;

6. If an assessment that complies with the requirements in this Section is received from a behavioral health provider other than the substance abuse transitional facility or the substance abuse transitional facility has a medical record for the participant that contains an assessment that was completed within 12 months before the date of the participant's current admission:
   a. The participant's assessment information is reviewed and updated if additional information that affects the participant's assessment is identified, and
   b. The review and update of the participant's assessment information is documented in the participant's medical record within 48 hours after the review is completed;
7. An assessment:
   a. Documents a participant's:
      i. Presenting issue;
      ii. Substance abuse history;
      iii. Co-occurring disorder;
      iv. Medical condition and history;
      v. Behavioral health treatment history;
      vi. Symptoms reported by the participant; and
      vii. Referrals needed by the participant, if any;
   b. Includes:
      i. Recommendations for further assessment or examination of the participant's needs,
      ii. The behavioral health services and physical health services that will be provided to the participant, and
      iii. The signature and date signed of the personnel member conducting the assessment; and
   c. Is documented in participant's medical record;
8. A participant is referred to a medical practitioner if a determination is made that the participant requires immediate physical health services or the participant's behavioral health issue may be related to the participant's medical condition;
9. If a participant requires behavioral health services that the substance abuse transitional facility is not authorized or not able to provide, a personnel member arranges for the participant to be provided transportation to transfer to another health care institution where the behavioral health services can be provided;
10. A request for participation in a participant's assessment is made to the participant or the participant's representative;
11. An opportunity for participation in the participant's assessment is provided to the participant or the participant's representative;
12. Documentation of the request in subsection (10) and the opportunity in subsection (11) is in the participant's medical record; and
13. A participant's assessment information is:
   a. Documented in the medical record within 48 hours after completing the assessment, and
   b. Reviewed and updated when additional information that affects the participant's assessment is identified.

R9-10-1407. Discharge

A. An administrator shall ensure that:
1. If a participant is not being transferred to another health care institution, before discharging the participant from a substance abuse transitional facility, a personnel member:
   a. Identifies the specific needs of the participant after discharge necessary to assist the participant to address the participant's substance abuse issues;
   b. Identifies any resources, including family members, community social services, peer support services, and Regional Behavioral Health Agency staff, that may be available to assist the participant; and
   c. Documents the information in subsection (A)(1)(a) and the resources in subsection (A)(1)(b) in the participant's medical record; and
2. When an individual is discharged, a personnel member:
   a. Provides the participant with discharge information that includes:
      i. The identified specific needs of the participant after discharge, and
      ii. Resources that may be available for the participant; and
   b. Contacts any resources identified as required in subsection (A)(1)(b).

B. An administrator shall ensure that there is a documented discharge order by a medical practitioner before a participant is discharged unless the participant leaves the facility against a medical practitioner's advice.

C. An administrator shall ensure that, at the time of discharge, a participant receives a referral for behavioral health services that the participant may need after discharge, if applicable.

D. An administrator shall ensure that a discharge summary:
1. Is entered into the participant's medical record within 10 working days after a participant's discharge; and
2. Includes the following information completed by an individual authorized by policies and procedures:
   a. The participant's presenting issue and other behavioral health and physical health issues identified in the participant's assessment;
   b. A summary of the behavioral health services and physical health services provided to the participant;
   c. The name, dosage, and frequency of each medication for the participant ordered at the time of the participant's discharge by a medical practitioner at the facility; and
   d. A description of the disposition of the participant's possessions, funds, or medications brought to the facility by the participant.

E. An administrator shall ensure that a participant who is dependent upon a prescribed medication is offered a written referral to detoxification services or opioid treatment before the participant is discharged.

R9-10-1408. Transfer

Except for a transfer of a participant due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the participant;
2. According to policies and procedures:
   a. An evaluation of the participant is conducted before the transfer;
   b. Information in the participant's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A personnel member explains risks and benefits of the transfer to the participant or the participant's representative; and
3. Documentation in the participant's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the participant during a transfer.

R9-10-1409. Participant Rights

A. An administrator shall ensure that:

1. The requirements in subsection (B) and the participant rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a participant or the participant's representative receives a written copy of the requirements in subsection (B) and the participant rights in subsection (C); and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that include:
   a. How and when a participant or the participant's representative is informed of participant rights in subsection (C), and
   b. Where participant rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A participant is treated with dignity, respect, and consideration;
2. A participant is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Seclusion;
   i. Restraint;
   j. Retaliation for submitting a complaint to the Department or another entity;
   k. Misappropriation of personal and private property by the substance abuse transitional facility's personnel members, employees, volunteers, or students; or
   l. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the participant's treatment needs, except as established in a fee agreement signed by the participant or the participant's representative; and
3. A participant or the participant's representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication, associated risks, and possible complications;
   d. Is informed of the participant complaint process; and
   e. Except as otherwise permitted by law, provides written consent to the release of information in the participant's:
      i. Medical record, or
      ii. Financial records.

C. A participant has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that:
   a. Supports and respects the participant's individuality, choices, strengths, and abilities;
   b. Supports the participant's personal liberty and only restricts the participant's personal liberty according to a court order, by the participant's or the participant's representative's general consent, or as permitted in this Chapter; and
   c. Is provided in the least restrictive environment that meets the participant's treatment needs;
3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:

a. A participant may be photographed when admitted to a substance abuse transitional facility for identification and administrative purposes;
b. For a participant receiving treatment according to A.R.S. Title 36, Chapter 37; or
c. For video recordings used for security purposes that are maintained only on a temporary basis;
4. To review, upon written request, the participant's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the substance abuse transitional facility is not authorized or not able to provide behavioral health services or physical health services needed by the participant;
6. To participate or have the participant's representative participate in the development of or decisions concerning treatment;
7. To receive assistance from a family member, the participant's representative, or other individual in understanding, protecting, or exercising the participant's rights;
8. To be provided locked storage space for the participant's belongings while the participant receives services; and
9. To be informed of the requirements necessary for the participant's discharge.

R9-10-1410. Medical Records

A. An administrator shall ensure that:
1. A medical record is established and maintained for each participant according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a participant's medical record is:
a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;
3. An order is:
a. Dated when the order is entered in the participant's medical record and includes the time of the order;
b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A participant's medical record is available to an individual:
a. Authorized according to policies and procedures to access the participant's medical record;
b. If the individual is not authorized according to policies and procedures, with the written consent of the participant or the participant's representative; or
c. As permitted by law; and
6. A participant's medical record is protected from loss, damage, or unauthorized use.

B. If a substance abuse transitional agency maintains participants' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a participant's medical record contains:
1. Participant information that includes:
a. The participant's name;
b. The participant's address;
c. The participant's date of birth; and
d. Any known allergies, including medication allergies;
2. A participant's presenting behavioral health issue;
3. Documentation of general consent and, if applicable, informed consent for treatment by the participant or the participant's representative, except in an emergency;
4. If applicable, the name and contact information of the participant's representative and:
a. The document signed by the participant consenting for the participant's representative to act on the participant's behalf; or
b. If the participant's representative:
i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. Documentation of medical history and results of a physical examination;
6. The date of admission and, if applicable, date of discharge;
7. Orders;
8. Assessment;
9. Progress notes;
10. Documentation of substance abuse transitional agency services provided to the participant;
11. If applicable, documentation of any actions taken to control the participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
12. The disposition of the participant upon discharge;
13. The discharge plan;
14. A discharge summary, if applicable; and

15. Documentation of a medication administered to a participant that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. For a medication administered for pain:
        i. An evaluation of the participant's pain before administering the medication, and
        ii. The effect of the medication administered;
    d. For a psychotropic medication:
        i. An evaluation of the participant's behavior before administering the psychotropic medication, and
        ii. The effect of the psychotropic medication administered;
    e. The signature of the individual administering the medication; and
    f. Any adverse reaction a participant has to the medication.

R9-10-1411. Behavioral Health Services

A. An administrator shall ensure that counseling is:
1. Offered as described in the substance abuse transitional facility's scope of services,
2. Provided according to the frequency and number of hours identified in the participant's assessment, and
3. Provided by a behavioral health professional.

B. An administrator shall ensure that:
1. A behavioral health professional providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
2. Each counseling session is documented in a participant's medical record to include:
    a. The date of the counseling session;
    b. The amount of time spent in the counseling session;
    c. Whether the counseling was individual counseling, family counseling, or group counseling;
    d. The treatment goals addressed in the counseling session; and
    e. The signature of the personnel member who provided the counseling and the date signed.

R9-10-1412. Medication Services

A. If a facility provides medication administration or assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication services:
1. Include:
    a. A process for providing information to a participant about medication prescribed for the participant including:
        i. The prescribed medication's anticipated results,
        ii. The prescribed medication's potential adverse reactions,
        iii. The prescribed medication's potential side effects, and
        iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    b. Procedures for preventing, responding to, and reporting:
        i. A medication error,
        ii. An adverse reaction to a medication, or
        iii. A medication overdose;
    c. Procedures to ensure that a participant's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the participant's needs;
    d. Procedures for documenting medication administration and assistance in the self-administration of medication;
    e. Procedures for assisting a participant in obtaining medication; and
    f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. Specify a process for review through the quality management program of:
    a. A medication administration error, and
    b. An adverse reaction to a medication.

B. If a substance abuse transitional facility provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
    a. Are reviewed and approved by a medical practitioner;
    b. Specify the individuals who may:
        i. Order medication, and
        ii. Administer medication;
    c. Ensure that medication is administered to a participant only as prescribed;
    d. Cover the documentation of a participant's refusal to take prescribed medication in the participant's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a participant:
    a. Is administered in compliance with an order, and
    b. Is documented in the participant's medical record.

C. If a substance abuse transitional facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A participant's medication is stored by the substance abuse transitional facility;

2. The following assistance is provided to a participant:
   a. A reminder when it is time to take the medication;
   b. Opening the medication container for the participant;
   c. Observing the participant while the participant removes the medication from the container;
   d. Verifying that the medication is taken as ordered by the participant's medical practitioner by confirming that:
      i. The participant taking the medication is the individual stated on the medication container label,
      ii. The participant is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      iii. The participant is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
   e. Observing the participant while the participant takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
   a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse;
   b. Includes:
      i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
6. Assistance in the self-administration of medication provided to a participant:
   a. Is in compliance with an order, and
   b. Is documented in the participant's medical record.

D. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

E. When medication is stored at the substance abuse transitional facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions of the medication container; and
3. Policies and procedures are established, documented, and implemented for:
   a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
   b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
   c. A medication recall and notification of participants who received recalled medication;
   d. Storing, inventorying, and dispensing controlled substances; and
   e. Documenting the maintenance of a medication requiring refrigeration.

F. An administrator shall ensure that a personnel member immediately reports a medication error or a participant's adverse reaction to a medication to the medical practitioner who ordered the medication and the registered nurse required in R9-10-1405(I)(6).

R9-10-1413. Food Services

A. An administrator shall ensure that:
1. If a substance abuse transitional facility has a licensed capacity of more than 10 participants:
   a. Food services are provided in compliance with 9 A.A.C. 8, Article 1; and
   b. A copy of the substance abuse transitional facility's food establishment license or permit required according to subsection (A)(1) is maintained;
2. If a substance abuse transitional facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the facility:
   a. A copy of the contracted food establishment's license or permit is maintained by the substance abuse transitional facility; and
   b. The substance abuse transitional facility is able to store, refrigerate, and reheat food to meet the dietary needs of a participant;
3. A registered dietitian is employed full-time, part-time, or as a consultant; and
4. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the participants.

B. A registered dietitian or director of food services shall ensure that:
1. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and

b. In a form to meet the needs of a participant such as cut, chopped, ground, pureed, or thickened;
2. A food menu is:
   a. Prepared at least one week in advance,
   b. Conspicuously posted, and
   c. Maintained for at least 60 calendar days after the last day included in the food menu;
3. If there is a change to a posted food menu, the change is noted on the posted menu no later than the morning of the day the change occurs;
4. Meals and snacks provided by the substance abuse transitional facility are served according to posted menus;
5. Meals and snacks for each day are planned using the applicable guidelines in http://www.health.gov/dietaryguidelines/2010.asp;
6. A participant is provided:
   a. A diet that meets the participant's nutritional needs as specified in the participant's assessment;
   b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(6)(d);
   c. The option to have a daily evening snack identified in subsection (B)(6)(d)(ii) or other snack; and
   d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      i. The participant agrees; and
      ii. The participant is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
7. A participant requiring assistance to eat is provided with assistance that recognizes the participant's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
8. Water is available and accessible to participants at all times, unless otherwise stated in a participant's assessment.

C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Potentially hazardous food is maintained as follows:
   a. Foods requiring refrigeration are maintained at 41° F or below; and
   b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      i. Ground beef and any food containing ground beef are cooked to heat all parts of the food to at least 155° F;
      ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      v. If the facility serves a population that is not a highly susceptible population, rare roast beef may be served cooked to an internal temperature of at least 145° F for at least three minutes and a whole muscle intact beef steak may be served cooked on both top and bottom to a surface temperature of at least 145° F; and
      vi. Leftovers are reheated to a temperature of at least 165° F;
4. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
5. Frozen foods are stored at a temperature of 0° F or below; and
6. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

R9-10-1414. Emergency and Safety Standards

A. An administrator shall ensure that:
1. An evacuation drill for employees and participants on the premises is conducted at least once every six months on each shift;
2. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the drill;
   b. The amount of time taken for all employees and participants to evacuate the substance abuse transitional facility;
   c. Any problems encountered in conducting the drill; and
   d. Recommendations for improvement, if applicable;
3. An evacuation path is conspicuously posted on each hallway of each floor of the facility;
4. A disaster plan is developed, documented, maintained in a location accessible to personnel members, and, if necessary, implemented that includes:
   a. When, how, and where participants will be relocated;
   b. How a participant's medical record will be available to individuals providing services to the participant during a disaster;
   c. A plan to ensure a participant's medication will be available to administer to the participant during a disaster; and
   d. A plan for obtaining food and water for individuals present in the substance abuse transitional facility or the substance abuse transitional facility's relocation site during a disaster;
5. The disaster plan required in subsection (A)(4) is reviewed at least once every 12 months;
6. Documentation of a disaster plan review required in subsection (A)(5) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:

a. The date and time of the disaster plan review;
b. The name of each employee or volunteer participating in the disaster plan review;
c. A critique of the disaster plan review; and
d. If applicable, recommendations for improvement; and

7. A disaster drill for employees is conducted on each shift at least once every three months and documented.

B. An administrator shall ensure that:

1. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal,
2. Any repairs or corrections stated on the fire inspection report are made, and
3. Documentation of a current fire inspection is maintained.

R9-10-1415. Environmental Standards

A. An administrator shall ensure that:

1. The premises and equipment are sufficient to accommodate the activities, treatment, and ancillary services stated in the substance abuse transitional facility's scope of services;
2. The premises and equipment are:
   a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment,
   b. Clean, and
   c. Free from a condition or situation that may cause a participant or other individual to suffer physical injury or illness;
3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
4. Biohazardous waste and hazardous waste are identified, stored, used, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Equipment used at the substance abuse transitional facility is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
7. Garbage and refuse are:
   a. Stored in plastic bags in covered containers, and
   b. Removed from the premises at least once a week;
8. Heating and cooling systems maintain the facility at a temperature between 70° F and 84° F at all times;
9. A space heater is not used;
10. Common areas:
    a. Are lighted to assure the safety of participants, and
    b. Have lighting sufficient to allow personnel members to monitor participant activity;
11. Hot water temperatures are maintained between 95° F and 120° F in the areas of the substance abuse transitional facility used by participants;
12. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
13. Soiled linen and soiled clothing stored by the substance abuse transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
14. Oxygen containers are secured in an upright position;
15. Poisonous or toxic materials stored by the substance abuse transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
16. Combustible or flammable liquids and hazardous materials stored by the substance abuse transitional facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants;
17. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    c. Documentation of testing is retained for at least 12 months after the date of the test; and
18. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

B. An administrator shall ensure that:

1. Smoking tobacco products is not permitted within a substance abuse transitional facility; and
2. Smoking tobacco products may be permitted on the premises outside a substance abuse transitional facility if:
   a. Signs designating smoking areas are conspicuously posted, and
   b. Smoking is prohibited in areas where combustible materials are stored or in use.

R9-10-1416. Physical Plant Standards

A. An administrator shall ensure that a substance abuse transitional facility has:

1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, that is in working order; and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, that is in working order; or
2. An alternative method to ensure participant safety that is documented and approved by the local jurisdiction.

B. An administrator shall ensure that:
1. If a participant has a mobility, sensory, or other physical impairment, modifications are made to the premises to ensure that the premises are accessible to and usable by the participant; and
2. A substance abuse transitional facility has:
   a. A room that provides privacy for a participant to receive treatment or visitors; and
   b. A common area and a dining area that:
      i. Are not converted, partitioned, or otherwise used as a sleeping area; and
      ii. Contain furniture and materials to accommodate the recreational and socialization needs of the participants and other individuals in the facility.

C. An administrator shall ensure that:
1. For every six participants, there is at least one working toilet that flushes and one sink with running water;
2. For every eight participants, there is at least one working bathtub or shower;
3. A participant bathroom provides privacy when in use and contains:
   a. A shatter-proof mirror;
   b. Toilet tissue for each toilet;
   c. Soap accessible from each sink;
   d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is used by more than one participant;
   e. A window that opens or another means of ventilation; and
   f. Nonporous surfaces for shower enclosures, clean usable shower curtains, and slip-resistant surfaces in tubs and showers;
4. Each participant is provided a bedroom for sleeping; and
5. A participant bedroom complies with the following:
   a. Is not used as a common area;
   b. Except as provided in subsection (D):
      i. Contains a door that opens into a hallway, common area, or outdoors; and
      ii. In addition to the door in subsection (C)(5)(b)(i), contains another means of egress;
   c. Is constructed and furnished to provide unimpeded access to the door;
   d. Has window or door covers that provide participant privacy;
   e. Except as provided in subsection (D), is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
   f. Has floor to ceiling walls:
   g. Is a:
      i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
      ii. Shared bedroom that, except as provided in subsection (D):
         (1) Is shared by no more than eight participants;
         (2) Contains at least 60 square feet of floor space, not including a closet, for each individual occupying the bedroom; and
         (3) Provides at least three feet of floor space between beds or bunk beds;
   h. Except as provided in subsection (D), contains for each participant occupying the bedroom:
      i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
      ii. Individual storage space for personnel effects and clothing such as a dresser or chest; and
   i. Has sufficient lighting for participant occupying the bedroom to read.

D. An administrator of a substance abuse transitional facility that uses a building that was licensed as a rural substance abuse transitional center before October 1, 2013 shall ensure that:
1. A bedroom has a door that allows egress from the bedroom,
2. A shared bedroom contains enough space to allow each participant occupying the bedroom to freely move about the bedroom,
3. A bed is of a sufficient size to accommodate a participant using the bed and provide space for all parts of the participant's body on the bed's mattress, and
4. A participant is provided storage space on a substance abuse transitional facility's premises that is accessible to the participant.

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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room.

Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-2023. Rules

A. The department shall adopt and enforce rules to establish standards for approved public and private treatment facilities that must be met for a treatment facility to be approved. The department periodically shall inspect approved facilities at reasonable times and in a reasonable manner. Each approved public and private treatment facility shall file with the department on request information the department requires pursuant to rule. The department shall remove from the list of approved treatment facilities a facility that without good cause fails to furnish information as requested or that files fraudulent information.

B. The department in compliance with subsection A of this section shall adopt and may amend or repeal rules for the acceptance of persons into a treatment program, in light of the available treatment resources and facilities, with a view to the early and effective provision of evaluation and treatment for alcoholics and intoxicated persons. In establishing the rules, the department shall be guided by the following standards:

1. An intoxicated person or person incapacitated by alcohol, who voluntarily seeks treatment or who is transported to an approved facility by a peace officer or other person, shall be initially brought to and evaluated at a local alcoholism reception center.

2. A person shall receive an initial evaluation.

3. A patient shall be initially assigned or transferred to outpatient treatment or intermediate treatment, unless the person is found to require inpatient treatment.

4. A person shall not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.

5. An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

6. Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves the facility or another form of treatment will have available and use other appropriate treatment.

C. The administration shall:

1. Enlist the assistance of all public and private agencies, organizations and individuals engaged in the prevention of alcoholism and treatment of alcoholics and intoxicated persons at approved public and private facilities.

2. Cooperate with the state department of corrections in establishing and conducting programs to provide treatment for alcoholics in penal institutions and alcoholics on parole or community supervision from penal institutions at approved public and private facilities.

3. Cooperate with the department of education, schools, police departments, courts and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons and in preparing curriculum materials for use at all levels of school education.

4. Specify a uniform method for keeping statistical information by approved public and private treatment facilities and collect and make available relevant statistical information, including the number of persons treated, frequency of admission, and readmission and frequency and duration of treatment.

5. Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

6. Prepare an annual report on drug abuse treatment programs in this state that receive monies from the administration to be submitted by January 1 of each year to the governor, the president of the senate and the speaker of the house of representatives and to be made available to the general public through the Arizona drug and gang prevention resource center. The report shall include:

(a) The name and location of each program.

(b) The amount and sources of funding for each program.

(c) The number of clients who received services during the preceding fiscal year.

(d) A description of the demographic characteristics of the client population served by each program, including age groups, gender and ethnicity.

(e) A description of client problems addressed by the programs, including the types of substances abused.

(f) A summary of the numbers and types of services available and provided during the preceding fiscal year.

(g) An evaluation of the results achieved by the programs.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: **June 14, 2023**

SUBJECT: **Department of Health Services**
Title 9, Chapter 10, Article 3

This Five Year Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 3 regarding Behavioral Health Inpatient Facilities.

In the last 5YRR of these rules, the Department proposed to amend several of its rules. The Department completed the proposed course of action through final expedited rulemaking effective October 1, 2019.

Proposed Action

The Department indicates the rules are overall clear, concise, understandable, and effective, with the exception of one rule. The Department is proposing to amend two of its rules, and plans to submit a Notice of Final Rulemaking to the Council by February 2024.

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 rules require that the Arizona Department of Health ("Department") adopt rules that establish minimum standards and requirements for factors ensuring public health, safety, and welfare. Historical revisions include fixing grammatical errors to increase understanding, the lowering of personnel age requirements for specific healthcare services, and the correction of cross-references. Currently, the department believes that the above rule changes provide significant benefit to stakeholders and estimates that the actual costs are consistent with those identified when developing the rules. The Department identifies no matters that prevent the rules from being effective, clear, and enforceable.

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 rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other 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 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.

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:

R9-10-303 - Administration

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:

R9-10-321 - Food Services

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 statutes 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 rules require the issuance of a specific agency authorization, authorized by A.R.S. 36-405, therefore a general permit is not applicable.

11. Conclusion

As mentioned above, the Department is proposing to amend two of its rules in order to make them more effective, and consistent with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by February 2024.
Council staff recommends approval of this report.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF HEALTH SERVICES

May 18, 2023

VIA: E-MAIL: grrc@azdoa.gov
Nicole Sornsin, Chairperson
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 10, Article 3 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 10 Health Care Institutions, Article 3 Behavioral Health Inpatient Facilities which is due on May 31, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 10, Article 3 with the intention that those rules do not expire under 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@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. – Health Services

Chapter 10. Department of Health Services – Health Care Institutions: Licensing

Article 3. Behavioral Health Inpatient Facilities

May 2023

1. Authorization of the rule by existing statutes:

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-405, 36-421, and 36-502(A) and (B)

2. The objective of each rule:

Rule	Objective
R9-10-301	To define terms used in the Article so requirements are clear and terms are interpreted consistently.
R9-10-302	To specify license application requirements specific to behavioral health inpatient facilities (in addition to the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1).
R9-10-303	To establish minimum requirements and responsibilities of a behavioral health inpatient facility's governing authority and administrator.
R9-10-304	To establish minimum requirements for a behavioral health inpatient facility's quality management program.
R9-10-305	To establish minimum requirements for a person who contracts with the licensee to provide behavioral health inpatient facility services.
R9-10-306	To establish minimum standards for behavioral health inpatient facility personnel and minimum standards for documentation of personnel member qualifications.
R9-10-307	To establish minimum requirements for admission and assessment.
R9-10-308	To establish minimum requirements for developing and implementing a treatment plan for a patient.
R9-10-309	To establish minimum requirements for discharge and discharge planning.
R9-10-310	To establish minimum requirements for transport and transfer to ensure that a patient's health and safety are not compromised as a result of a transport or transfer.
R9-10-311	To establish minimum standards for patient rights.
R9-10-312	To establish minimum requirements for patient medical records.
R9-10-313	To establish minimum requirements for transportation and patient outings.
R9-10-314	To establish minimum requirements for physical health services provided by a behavioral health inpatient facility.
R9-10-315	To establish minimum requirements for behavioral health services provided by a behavioral health inpatient facility.
R9-10-316	To establish minimum requirements for using restraint or seclusion in a behavioral health inpatient facility.

R9-10-317	To establish minimum requirements for a behavioral health inpatient facility that provides behavioral health observation/stabilization services.
R9-10-318	To establish minimum requirements for a behavioral health inpatient facility that provides child and adolescent residential treatment services.
R9-10-319	To establish minimum requirements for a behavioral health inpatient facility that provides detoxification services.
R9-10-320	To establish minimum requirements for medication services.
R9-10-321	To establish minimum requirements for food services provided at a behavioral health inpatient facility.
R9-10-322	To establish minimum emergency and safety standards.
R9-10-323	To establish minimum environmental standards.
R9-10-324	To establish minimum physical plant standards.

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
R9-10-321	The rule is effective but could be improved in subsection (B)(3) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

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
R9-10-303	The rule is consistent with other rules and statutes, however subsection (C)(2)(i) could be amended to replace the term "telemedicine" with "telehealth" to adhere to the statutory changes pursuant to Laws 2021, Ch. 320, that amended the definitions in A.R.S. § 36-3601 regarding telehealth in the state of Arizona.

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.") § 36-405(A) requires the Arizona Department of Health Services ("Department") to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. It further requires that the standards and requirements related to construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care, and standard of patient care required for the purposes of licensure. Prior to 2013, the rules for facilities now located under behavioral health inpatient facility licensure had been adopted at 9 Arizona Administrative Code (A.A.C.) 20. In 2013, the rules for level 1 residential treatment centers and level 1 sub-acute agencies from 9 A.A.C. 20 were revised in their entirety, integrated with other health care institution licensure rules, and moved to 9 A.A.C. 10, Article 3 as part of an exempt rulemaking to comply with Laws 2011, Ch. 96. Later, Laws 2013, Ch. 10, § 13, amended Laws 2011, Ch. 96 to extend the time for the Department to further revise the rules in 9 A.A.C. 10 under exempt rulemaking authority to April 30, 2014, during which time another exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 (effective July 1, 2014) further revised all but three of the rules and added a new Section. An economic, small business, and consumer impact statement was not required for these rulemakings pursuant to Laws 2011, Ch. 96, and Laws 2013, Ch. 10, as part of an exempt rulemaking. However, the Department believes that the annual costs and revenue changes are assumed to be designed as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Stakeholders for these rulemakings include the Department, Arizona behavioral health inpatient facilities, health care providers (including behavioral health professionals), social workers, patients and their families, and the general public.

Currently, there are 64 licensed behavioral health inpatient facilities in Arizona as of January 1, 2023. The Department received 11 initial applications in 2022. In 2022, the Department conducted 40 complaint surveys, 12 compliance surveys, and received $1,500.00 in monetary penalties as a result of six late survey enforcements. Four behavioral health inpatient facilities closed in 2022.

As part of an expedited rulemaking in 2019 at 25 A.A.R. 259, the rules in R9-10-323, Environmental Standards, were amended, effective January 8, 2019. The rules regarding pest control programs were amended to reduce regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The rules in R9-10-302, R9-10-303, R9-10-306, R9-10-307, R9-10-308, R9-10-309, R9-10-314, R9-10-315, R9-10-316, R9-10-321, and R9-10-324 were amended by final rulemaking found at 25 A.A.R. 1583, effective October 1, 2019. The rules in R9-10-302 were amended to clarify language regarding supplemental application requirements for a license application and subsection (2) to be more clear and understandable. R9-10-303 was amended to include an addition of subsection (J) regarding a physician or registered nurse practitioner on-call at a behavioral health inpatient facility and what requirements the administrator needs to ensure are followed at the facility. Subsection (C) was amended to include the additions in subsection (J) as part of the administrator's duties to ensure that are a part of the policies and procedures. The rules in R9-10-306 were revised in subsection (J) to make the requirements for personnel to be present or on-call through telemedicine. R9-10-307 was amended to make the rule clearer regarding a patient's assessment to determine the acuity of a patient's behavioral health issue, and the staffing levels or personnel member qualifications that would be required for the needs of the patient and facility. The rules in R9-10-308, R9-10-314, and R9-10-315 were amended to make the rules clearer with grammatical and formatting changes, and to include the specifications of patient acuity addressed in R9-10-307. R9-10-316 was revised to correct a grammatical error in subsection (B)(4)(d) for the rule to be more understandable. A cross-reference in R9-10-321 regarding food services was amended to update the U.S. Department of Health and Human Services dietary guidelines from the 2010 version to the 2015 version. Lastly, R9-10-324 was revised to correct a grammatical error in subsection (B)(8)(b). The Department believes the costs of amending the rules were minimal and provided a significant benefit to behavioral health inpatient facilities, patients, families of the patients, and the general public.

The Department later conducted another rulemaking in 2019 found at 25 A.A.R. 3481, to revise the rules in R9-10-322 Emergency and Safety Standards, with an immediate effective date of November 5, 2019. The rule was revised to update the incorporations by reference to the National Fire Protection Association's current codes and standards, to the new section in R9-10-104.01 to provide clarifications on the incorporations by reference. The Department believes the costs of these amended rules were minimal and provided a significant benefit to behavioral health inpatient facilities, patients, families of the patients, and the general public.

The Department amended the rules in R9-10-318 through final expedited rulemaking found at 26 A.A.R. 551, with an immediate effective date of March 3, 2020. The rule was revised to correct and include a cross-reference to A.R.S. Title 15, Chapter 7, Article 4, regarding a patient's educational needs that must be addressed through the Arizona Department of Education. The rules in R9-10-306 were amended by final expedited rulemaking found at 26 A.A.R. 3041, with an immediate effective date of November 3, 2020. The Department revised the rules pursuant to Laws 2019 Ch. 215, which required the Department to allow for a person who is employed at a health care institution and provides behavioral health services, who is not a licensed behavioral health professional and who is at least 18 years of age to provide behavioral health or other related health care

services. As a result, R9-10-306 was amended to change the personnel age requirements from 21 years of age to 18 years old. The Department believes the costs of these amended rules were minimal and provided a significant benefit to individuals who are seeking employment, behavioral health inpatient facilities, patients, families of the patients, and the general public.

Lastly, the Department amended five rules through exempt rulemaking found at 27 A.A.R. 661, effective May 1, 2021. The rules were amended to adhere to Laws 2020, Ch. 4, which required the Department to adopt rules related to admitting and discharging patients who have attempted suicide or exhibited suicidal ideation from inpatient care. Laws 2020, Ch. 4, gave the Department exempt rulemaking authority to implement these requirements. The rules in R9-10-303 were revised to include in subsection (C)(2) that an administrator of a behavioral health inpatient facility must cover in their policies and procedures discharge planning regarding a patient who was admitted after a suicide attempt or who exhibits suicidal ideation. R9-10-307 was amended to include a suicide assessment requirement, if a patient was admitted to the facility after a suicide attempt or who exhibited suicidal ideation at the time of admission. Section R9-10-307 was also amended to correct cross-references, renumbering in subsection (A), and the addition of subsection (B) regarding the results of the suicide assessment being made available to the patient or the patient's representative. The rules R9-10-308 regarding treatment plans were revised to include any results of the suicide assessment required in R9-10-307, and information specific to the treatment of the patient to prevent a reoccurrence. Discharge requirements in R9-10-309 were amended to adhere to the statutory requirements in Laws 2020, Ch. 4, to include the information of the suicide assessment from R9-10-307, and the documentation that is required to be provided at the time of discharge. Also, R9-10-309 had revisions of reformatting and numbering to adhere to the additions of the rule changes. Lastly, the rules in R9-10-315 for behavioral health services were revised to include the addition of the suicide assessment requirements for those patients that are court-ordered for an evaluation, and the section was also reformatted to adhere to this addition. The Department believes the costs of the amended rules were moderate, and provided a significant benefit to behavioral health inpatient facilities, patients, families of the patients, and the general public to ensure safety of patients and the public.

The Department believes the rule changes, as described above, that are more easily understood, complied with, and enforced, may have provided a significant benefit to the affected persons, including the Department, behavioral health inpatient facilities, and participants. 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.

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 2018 five-year review report, the Department proposed to amend the rules in a rulemaking. The Department completed this plan of action by final expedited rulemaking at 25 A.A.R. 1583, effective October 1, 2019.

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 has determined that 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.

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)?

Federal laws are not applicable to the rules in 9 A.A.C. 10, Article 3.

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. 36-405, 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 in its review of Article 3 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 a rulemaking by February 2024 to amend the rules to address the issue as described in this report.

d. Include the process for providing a patient access to:
   i. Incoming mail, and
   ii. An advocate or legal representative;
e. Include the process for providing treatment to a patient while in administrative separation;
f. Include the process for establishing investigative goals; and
g. Include the process for determining when administrative separation will no longer be used for a patient.

Historical Note

New Section R9-10-235 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

Article 3, consisting of Sections R9-10-311 through R9-10-333, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-301. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

"Child and adolescent residential treatment services" means behavioral health services and physical health services provided in or by a behavioral health inpatient facility to a patient who is:

Under 18 years of age, or

Under 21 years of age and meets the criteria in R9-10-318(B).

Historical Note

New Section R9-10-301 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-302. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a behavioral health inpatient facility shall include in a Department-provided format whether the applicant is requesting authorization to provide:

1. Inpatient services to individuals 18 years of age and older, including the licensed capacity requested;
2. Pre-petition screening;
3. Court-ordered evaluation;
4. Court-ordered treatment;
5. Behavioral health observation/stabilization services, including the licensed occupancy requested for providing behavioral health observation/stabilization services to individuals:
   a. Under 18 years of age, and
   b. 18 years of age and older;
6. Child and adolescent residential treatment services, including the licensed capacity requested;
7. Detoxification services;
8. Seclusion;
9. Clinical laboratory services;
10. Radiology services; or
11. Diagnostic imaging services.

Historical Note

New Section R9-10-302 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-303. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health in-patient facility;
2. Establish, in writing:
   a. A behavioral health inpatient facility's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-304;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
   a. Expected not to be present on the behavioral health inpatient facility's premises for more than 30 calendar days, or
   b. Not present on the behavioral health inpatient facility's premises for more than 30 calendar days; and
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:
1. Is directly accountable to the governing authority of a behavioral health inpatient facility for the daily operation of the behavioral health inpatient facility and for all services provided by or at the behavioral health inpatient facility;
2. Has the authority and responsibility to manage the behavioral health inpatient facility; and
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health inpatient facility's premises and accountable for the behavioral health inpatient facility when the administrator is not present on the behavioral health inpatient facility's premises.

C. An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to services provided to a patient;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training including:
      i. The method and content of cardiopulmonary resuscitation training,

ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
f. Cover first aid training;
g. Cover the requirements in subsection (J), if applicable;
h. Include a method to identify a patient to ensure the patient receives physical health and behavioral health services as ordered;
i. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
j. Cover specific steps for:
i. A patient to file a complaint, and
ii. The behavioral health inpatient facility to respond to a patient's complaint;
k. Cover health care directives;
l. Cover medical records, including electronic medical records;
m. Cover quality management, including incident reports and supporting documentation;
n. Cover contracted services; and
o. Cover when an individual may visit a patient in the behavioral health inpatient facility;

2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a patient that:
a. Cover patient screening, admission, assessment, treatment plan, transport, and transfer;
b. Cover discharge planning and discharge, including the requirements in R9-10-309(B) for a patient who was admitted after a suicide attempt or who exhibits suicidal ideation;
c. Cover the provision of behavioral health services and physical health services;
d. Include when general consent and informed consent are required;
e. Cover restraint and, if applicable, seclusion;
f. Cover dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
g. Cover prescribing a controlled substance to minimize substance abuse by a patient;
h. Cover infection control;
i. Cover telemedicine, if applicable;
j. Cover environmental services that affect patient care;
k. Cover patient outings;
l. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of patients or the public;
m. If the behavioral health inpatient facility is involved in research, cover the establishment or use of a Human Subject Review Committee;
n. Cover the process for receiving a fee from a patient and refunding a fee to a patient;
o. Cover the process for obtaining patient preferences for social, recreational, or rehabilitative activities and meals and snacks;
p. Cover the security of a patient's possessions that are allowed on the premises; and
q. Cover smoking and the use of tobacco products on the premises;

3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers and students; and
5. Unless otherwise stated:
a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health inpatient facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health inpatient facility.

D. An administrator shall designate a:
1. Medical director who:
a. Provides direction for physical health services provided by or at the behavioral health inpatient facility;
b. Is a physician or registered nurse practitioner; and
c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1)(a) and (b);
2. Clinical director who:
a. Provides direction for the behavioral health services provided by or at the behavioral health inpatient facility;
b. Is a behavioral health professional; and
c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(2)(a) and (b); and
3. Registered nurse to provide direction for nursing services provided by or at the behavioral health inpatient facility.

E. An administrator shall provide written notification to the Department of a patient's:
1. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death; and
2. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

F. Except as specified in R9-10-318(A)(1), if abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a behavioral health inpatient facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454.

G. If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a behavioral health inpatient facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;

2. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (G)(1); and
   c. The report in subsection (G)(2);
4. Maintain the documentation in subsection (G)(3) for at least 12 months after the date of the report in subsection (G)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (G)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (G)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

H. An administrator shall establish and document the criteria for determining when a patient's absence is unauthorized, including the criteria for a patient who:
1. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
2. Is absent against medical advice; or
3. Is under the age of 18.

I. An administrator shall:
1. For a patient who is under a court's jurisdiction, within an hour after determining that the patient's absence is unauthorized according to the criteria in subsection (H), notify the appropriate court or a person designated by the appropriate court;
2. Document the notification in subsection (I)(1) and the written log required in subsection (I)(3);
3. Maintain a written log of unauthorized absences for at least 12 months after the date of a patient's absence that includes the:
   a. Name of a patient absent without authorization;
   b. If applicable, name of the person notified as required in subsection (I)(1); and
   c. Date of the notification; and
4. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-304.

J. If a behavioral health inpatient facility has a physician or registered nurse practitioner on-call to comply with R9-10-306(J)(1), an administrator shall ensure that:
1. The on-call schedule is documented;
2. Personnel members are aware of:
   a. The location at which the on-call schedule is available to personnel members of the behavioral health inpatient facility,
   b. The process through which the on-call physician or registered nurse practitioner is contacted,
   c. The circumstances that would require the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility, and
   d. The process through which a request is made for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility;
3. A request for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility is documented, including:
   a. The time that a request for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility is made,
   b. The name of the individual making the request,
   c. The reason for the request,
   d. The name of the physician or registered nurse practitioner contacted and requested to come to the behavioral health in-patient facility, and
   e. The time the on-call physician or registered nurse practitioner arrives at the behavioral health inpatient facility in response to a request;
4. The documentation in subsections (J)(1) and (3) is maintained for at least 12 months after the last date on the documentation; and
5. Documentation related to the request is included in the medical record of the applicable patient.

Historical Note

New Section R9-10-303 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 661, effective May 1, 2021 (Supp. 21-2).

R9-10-304. Quality Management

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

Historical Note
New Section R9-10-304 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-305. Contracted Services
An administrator shall ensure that:
1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note
New Section R9-10-305 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-306. Personnel
A. An administrator shall ensure that:
1. A personnel member, an employee, or a student is at least 18 years old; and
2. A volunteer is at least 21 years old.

B. An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services or behavioral health services, and
   b. According to policies and procedures;

C. An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.

D. An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision, as defined in A.A.C. R4-6-101.

E. An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the behavioral health inpatient facility, and
2. As specified in R9-10-113.

F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the employee's job duties;
   c. The individual's completed orientation and in-service education as required by policies and procedures;
   d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   e. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-316;
   f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
   g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-303(C)(1)(e);
   h. First aid training, if required for the individual according to this Article or policies and procedures; and
   i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (D).

G. An administrator shall ensure that personnel records are:
1. Maintained:
   a. Throughout an individual's period of providing services in or for the behavioral health inpatient facility, and
   b. For at least 24 months after the last date the individual provided services in or for the behavioral health inpatient facility; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health inpatient facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

H. An administrator shall ensure that:
1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;

2. A personnel member completes orientation before providing behavioral health services or physical health services;
3. An individual's orientation is documented, to include:
   a. The individual's name,
   b. The date of the orientation, and
   c. The subject or topics covered in the orientation;
4. A clinical director develops, documents, and implements a plan to provide in-service education specific to the duties of a personnel member; and
5. A personnel member's in-service education is documented, to include:
   a. The personnel member's name,
   b. The date of the training, and
   c. The subject or topics covered in the training.

I. An administrator shall ensure that a behavioral health inpatient facility has a daily staffing schedule that:
1. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
2. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
3. Is maintained for at least 12 months after the last date on the daily staffing schedule.

J. An administrator shall ensure that:
1. A physician or registered nurse practitioner is present on the behavioral health inpatient facility's premises or on-call,
2. A registered nurse is present on the behavioral health inpatient facility's premises, and
3. A registered nurse who provides direction for the nursing services provided at the behavioral health inpatient facility is present at the behavioral health inpatient facility at least 40 hours every week.

Historical Note

New Section R9-10-306 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 26 A.A.R. 3041, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R9-10-307. Admission; Assessment

A. Except as provided in R9-10-315(E) or (F), an administrator shall ensure that:
1. A patient is admitted based upon the patient's presenting behavioral health issue and treatment needs and the behavioral health inpatient facility's ability and authority to provide physical health services, behavioral health services, and ancillary services consistent with the patient's treatment needs;
2. A patient is admitted on the order of a medical practitioner or clinical director;
3. A medical practitioner or clinical director, authorized by policies and procedures to accept a patient for admission, is available;
4. Except in an emergency or as provided in subsections (A)(6) and (7), general consent is obtained from a patient or, if applicable, the patient's representative before or at the time of admission;
5. The general consent obtained in subsection (A)(4) or the lack of consent in an emergency is documented in the patient's medical record;
6. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
7. General consent is not required from a patient receiving treatment according to A.R.S. § 36-512;
8. A medical practitioner performs a medical history and physical examination on a patient within 30 calendar days before admission or within 24 hours after admission and documents the medical history and physical examination in the patient's medical record within 24 hours after admission;
9. If a medical practitioner performs a medical history and physical examination on a patient before admission, the medical practitioner enters an interval note into the patient's medical record within seven calendar days after admission;
10. Except when a patient needs crisis services, a behavioral health assessment of a patient is completed to determine the acuity of the patient's behavioral health issue and to identify the behavioral health services needed by the patient before treatment for the patient is initiated and whenever the patient has a significant change in condition or experiences an event that affects treatment;
11. If the patient was admitted after a suicide attempt or exhibits suicidal ideation, the behavioral health assessment in subsection (A)(10) includes a suicide assessment;
12. If a behavioral health assessment in subsection (A)(10), including a suicide assessment in subsection (A)(11) if applicable, is conducted by a:
    a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient; or
    b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient;
13. When a patient is admitted, a registered nurse:
    a. Conducts a nursing assessment of a patient's medical condition and history;
    b. Determines whether the:
       i. Patient requires immediate physical health services, and
       ii. Patient's behavioral health issue may be related to the patient's medical condition and history;
    c. Determines the acuity of the patient's medical condition;
    d. Documents the patient's nursing assessment and the determinations required in subsection (A)(13)(b) and (c) in the patient's medical record; and
    e. Signs the patient's medical record;
14. A behavioral health assessment:

a. Documents the patient's:
   i. Presenting issue, including the acuity of the patient's presenting issue;
   ii. Substance abuse history;
   iii. Co-occurring disorder;
   iv. Legal history, including:
      (1) Custody,
      (2) Guardianship, and
      (3) Pending litigation;
   v. Court-ordered evaluation;
   vi. Court-ordered treatment;
   vii. Criminal justice record;
   viii. Family history;
   ix. Behavioral health treatment history;
   x. Symptoms reported by the patient; and
   xi. Referrals needed by the patient, if any; and
b. Includes:
   i. Recommendations for further assessment or examination of the patient's needs;
   ii. Recommendations for staffing levels or personnel member qualifications related to the patient's treatment to ensure patient health and safety;
   iii. For a patient who:
      (1) Is admitted to receive crisis services, the behavioral health services and physical health services that will be provided to the patient; or
      (2) Does not need crisis services, the behavioral health services or physical health services that will be provided to the patient until the patient's treatment plan is completed; and
   iv. The signature and date signed of the personnel member conducting the behavioral health assessment;

15. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
16. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
17. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
18. The request in subsection (A)(16) and the opportunity in subsection (A)(17) are documented in the patient's medical record;
19. For a patient who is admitted to receive crisis services, the patient's behavioral health assessment is documented in the patient's medical record within eight hours after admission;
20. Except as provided in subsection (A)(19), a patient's behavioral health assessment is documented in the patient's medical record within 24 hours after completing the assessment; and
21. If the information listed in subsection (A)(14) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained.

B. If the results of a suicide assessment required in subsection (A)(11) indicate that the patient could be a danger to self upon discharge, an administrator shall ensure that the information in R9-10-309(B)(2) is made available to the patient or the patient's representative as part of the opportunity for participation in the patient's behavioral health assessment required in subsection (A)(17).

Historical Note

New Section R9-10-307 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 661, effective May 1, 2021 (Supp. 21-2).

R9-10-308. Treatment Plan

A. Except for a patient admitted to receive crisis services or as provided in R9-10-315(E) or (F), an administrator shall ensure that a treatment plan is developed and implemented for a patient that:
1. Is based on the behavioral health assessment and on-going changes to the behavioral health assessment of the patient;
2. Is completed:
   a. By a behavioral health professional or by a behavioral health technician under the clinical oversight of a behavioral health professional, and
   b. Before the patient receives treatment;
3. Is documented in the patient's medical record within 24 hours after the patient first receives treatment;
4. Includes:
   a. The patient's presenting issue, including the acuity of the patient's presenting issue;
   b. The behavioral health services and physical health services to be provided to the patient;
   c. If the patient was admitted after a suicide attempt or who exhibits suicidal ideation:
      i. The results of the suicide assessment required in R9-10-307(11), and
      ii. Information specific to helping prevent a recurrence;
   d. The signature of the patient or the patient's representative and date signed, or documentation of the refusal to sign;
   e. The date when the patient's treatment plan will be reviewed;
   f. If a discharge date has been determined, the treatment needed after discharge; and
   g. The signature of the personnel member who developed the treatment plan and the date signed;
5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan identifies the acuity of the patient and meets the patient's treatment needs; and
6. Is reviewed and updated on an on-going basis:
   a. According to the review date specified in the treatment plan,
   b. When a treatment goal is accomplished or changes,
   c. When additional information that affects the patient's behavioral health assessment is identified, and

d. When a patient has a significant change in condition or experiences an event that affects treatment.

B. An administrator shall ensure that:
1. A request for participation in developing a patient's treatment plan is made to the patient or the patient's representative;
2. An opportunity for participation in developing the patient's treatment plan is provided to the patient or the patient's representative; and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.

C. If a patient who is admitted to receive crisis services remains admitted as a patient after the patient no longer needs crisis services, an administrator shall ensure that a treatment plan for the patient is:
1. Except for subsection (A)(3), completed according to the requirements in subsection (A); and
2. Documented in the patient's medical record within 24 hours after the patient no longer needs crisis services.

Historical Note

New Section R9-10-308 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 661, effective May 1, 2021 (Supp. 21-2).

R9-10-309. Discharge

A. Except as provided in R9-10-315(E) or (F), an administrator shall ensure that a discharge plan for a patient is:
1. Developed that:
   a. Identifies any specific needs of the patient after discharge;
   b. If the discharge date has been determined, includes the discharge date;
   c. Is completed before discharge occurs; and
   d. Includes a description of the level of care that may meet the patient's assessed and anticipated needs after discharge;
2. Documented in the patient's medical record within 48 hours after the discharge plan is completed; and
3. Provided to the patient or the patient's representative before the discharge occurs.

B. For a patient who was admitted after a suicide attempt or who exhibits suicidal ideation, in addition to the discharge planning requirements in subsection (A), an administrator shall ensure that:
1. The patient receives a suicide assessment; and
2. The patient or the patient's representative receives:
   a. The results of the suicide assessment;
   b. Information about the availability of age-appropriate, suicide crisis services, including contact information; and
   c. Information about and instructions on how to access the Department of Insurance and Financial Institution's website, available through difi.az.gov, developed in compliance with A.R.S. § 20-3503(B), including how to file an appeal of an insurance determination.

C. An administrator shall ensure that:
1. A request for participation in developing a patient's discharge plan is made to the patient or the patient's representative,
2. An opportunity for participation in developing the patient's discharge plan is provided to the patient or the patient's representative, and
3. The request in subsection (C)(1) and the opportunity in subsection (C)(2) are documented in the patient's medical record.

D. An administrator shall ensure that a patient is discharged from a behavioral health inpatient facility when the patient's treatment needs are not consistent with the services that the behavioral health inpatient facility is authorized and able to provide.

E. An administrator shall ensure that there is a documented discharge order by a medical practitioner or behavioral health professional before a patient is discharged unless the patient leaves the behavioral health inpatient facility against a medical practitioner's or behavioral health professional's advice.

F. An administrator shall ensure that, at the time of discharge, a patient receives:
1. A referral for treatment or ancillary services that the patient may need after discharge, if applicable; and
2. For a patient who was admitted after a suicide attempt or who exhibits suicidal ideation, specific information about or a referral to one of the following for ongoing or follow-up treatment related to suicide, including scheduling an appointment for the patient when practicable:
   a. Another health care institution;
   b. A medical practitioner or, for a patient going to another state after discharge, a similarly licensed individual in the other state; or
   c. A behavioral health professional certified or licensed under A.R.S. Title 32 to provide treatment related to suicide or, for a patient going to another state after discharge, a similarly certified or licensed individual in the other state.

G. If a patient is discharged to any location other than a health care institution, an administrator shall ensure that:
1. Discharge instructions are documented, and
2. The patient or the patient's representative is provided with a copy of the discharge instructions.

H. An administrator shall ensure that a discharge summary:
1. Is entered into the patient's medical record within 10 working days after a patient's discharge; and
2. Includes:
   a. The following information authenticated by a medical practitioner or behavioral health professional:
      i. The patient's presenting issue and other physical health and behavioral health issues identified in the patient's nursing assessment, behavioral health assessment, or treatment plan;
      ii. A summary of the treatment provided to the patient;
      iii. The patient's progress in meeting treatment goals, including treatment goals that were and were not achieved; and
      iv. The name, dosage, and frequency of each medication ordered for the patient by a medical practitioner at the behavioral health inpatient facility at the time of the patient's discharge;
   b. For a patient who was admitted after a suicide attempt or who exhibits suicidal ideation, the following information:

i. A description of the specific information about ongoing or follow-up treatment related to suicide provided to the patient or the patient's representative;
ii. Whether a referral was made for the patient according to subsection (F)(2) for ongoing or follow-up treatment related to suicide and, if so, information about the referral; and
iii. Whether an appointment was scheduled for the patient according to subsection (F)(2) for ongoing or follow-up treatment related to suicide and, if so, the date and time of the appointment; and

c. A description of the disposition of the patient's possessions, funds, or medications brought to the behavioral health inpatient facility by the patient.

I. An administrator shall ensure that a patient who is dependent upon a prescribed medication is offered detoxification services, opioid treatment, or a written referral to detoxification services or opioid treatment before the patient is discharged from the behavioral health inpatient facility if a medical practitioner for the behavioral health inpatient facility will not be prescribing the medication for the patient at or after discharge.

Historical Note
New Section R9-10-309 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 27 A.A.R. 661, effective May 1, 2021 (Supp. 21-2).

R9-10-310. Transport; Transfer

A. Except as provided in subsection (B), an administrator shall ensure that:
1. A personnel member coordinates the transport and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before and after the transport,
   b. Information from the patient's medical record is provided to a receiving health care institution,
   c. A personnel member explains risks and benefits of the transport to the patient or the patient's representative, and
   d. A personnel member communicates or documents why the personnel member did not communicate with an individual at a receiving health care institution; and
3. The patient's medical record includes documentation of:
   a. Communication or lack of communication with an individual at a receiving health care institution;
   b. The date and time of the transport;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transport.

B. Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a patient by the patient or the patient's representative,
3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
4. A transport to another licensed health care institution in an emergency.

C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before the transfer;
   b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
3. Documentation in the patient's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transfer.

Historical Note
Adopted as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 4, 1979 (Supp. 79-3). Amended effective January 28, 1980 (Supp. 80-1). Repealed effective February 4, 1981 (Supp. 81-1). New Section R9-10-310 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-311. Patient Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (D) are conspicuously posted on the premises;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (D); and
3. Policies and procedures include:
   a. How and when a patient or the patient's representative is informed of patient rights in subsection (D), and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Except as allowed under R9-10-316, restraint or seclusion;

i. Retaliation for submitting a complaint to the Department or another entity;
j. Misappropriation of personal and private property by the behavioral health inpatient facility's personnel members, employees, volunteers, or students;
k. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the patient's treatment needs, except as established in a fee agreement signed by the patient or the patient's representative; or
l. Treatment that involves the denial of:
i. Food,
ii. The opportunity to sleep, or
iii. The opportunity to use the toilet;

3. Except as provided in subsection (C), a patient is allowed to:
a. Associate with individuals of the patient's choice, receive visitors, and make telephone calls during the hours established by the behavioral health inpatient facility;
b. Have privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
c. Unless restricted by a court order, send and receive uncensored and unopened mail; and
4. Except as provided in R9-10-318, a patient or, if applicable, the patient's representative:
a. Except in an emergency, either consents to or refuses treatment;
b. May refuse or withdraw consent for treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5; is necessary to save the patient's life or physical health; or is provided according to A.R.S. § 36-512;
c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
d. Is informed of the following:
i. The policy on health care directives, and
ii. The patient complaint process; and
e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
i. Medical record, or
ii. Financial records.

C. If a medical director or clinical director determines that a patient's treatment requires the behavioral health inpatient facility to restrict the patient's ability to participate in an activity in subsection (B)(3), the medical director or clinical director shall:
1. Document a specific treatment purpose in the patient's medical record that justifies restricting the patient from the activity,
2. Inform the patient of the reason why the activity is being restricted, and
3. Inform the patient of the patient's right to file a complaint and the procedure for filing a complaint.

D. A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that:
a. Supports and respects the patient's individuality, choices, strengths, and abilities;
b. Supports the patient's personal liberty and only restricts the patient's personal liberty according to a court order, by the patient's or the patient's representative's general consent, or as permitted in this Chapter; and
c. Is provided in the least restrictive environment that meets the patient's treatment needs;
3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:
a. A patient may be photographed when admitted to a behavioral health inpatient facility for identification and administrative purposes;
b. For a patient receiving treatment according to A.R.S. Title 36, Chapter 37; or
c. For video recordings used for security purposes that are maintained only on a temporary basis;
4. Not to be prevented or impeded from exercising the patient's civil rights unless the patient has been adjudicated incompetent or a court of competent jurisdiction has found that the patient is not able to exercise a specific right or category of rights;
5. To review, upon written request, the patient's own medical record according to A.R.S. §§12-2293, 12-2294, and 12-2294.01;
6. To receive a referral to another health care institution if the behavioral health inpatient facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
7. To participate or have the patient's representative participate in the development of a treatment plan or decisions concerning treatment;
8. To participate or refuse to participate in research or experimental treatment; and
9. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

Historical Note

Section R9-10-311, formerly numbered as R9-10-211, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-311 repealed, new Section R9-10-311 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-311 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-312. Medical Records

A. An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;

3. An order is:
   a. Dated when the order is entered in the patient's medical record and includes the time of the order;
   b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to an individual:
   a. Authorized according to policies and procedures to access the patient's medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative, or
   c. As permitted by law; and
6. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a behavioral health inpatient facility maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
   a. The patient's name;
   b. The patient's address;
   c. The patient's date of birth; and
   d. Any known allergy, including medication allergies;
2. Medication information that includes:
   a. Documentation of medication ordered for the patient; and
   b. Documentation of medication administered to the patient that includes:
      i. The date and time of administration;
      ii. The name, strength, dosage, amount, and route of administration;
      iii. For a medication administered for pain on a PRN basis:
         (1) An assessment of the patient's pain before administering the medication, and
         (2) The effect of the medication administered;
      iv. For a psychotropic medication administered on a PRN basis:
         (1) An assessment of the patient's behavior before administering the psychotropic medication, and
         (2) The effect of the psychotropic medication administered;
      v. The identification and authentication of the individual administering the medication or providing assistance in the self-administration of the medication; and
      vi. Any adverse reaction the patient has to the medication;
3. If applicable, documented general consent and informed consent by the patient or the patient's representative;
4. If applicable, the name and contact information of the patient's representative and:
   a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
   b. If the patient's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. The patient's medical history and results of a physical examination or an interval note;
6. If the patient provides a health care directive, the health care directive signed by the patient or the patient's representative;
7. An admitting diagnosis or presenting symptoms;
8. The date of admission and, if applicable, the date of discharge;
9. The name of the admitting medical practitioner or behavioral health professional;
10. Orders;
11. The patient's nursing assessment and behavioral health assessment and any interval notes;
12. Treatment plans;
13. Documentation of behavioral health services and physical health services provided to the patient;
14. Progress notes;
15. If applicable, documentation of restraint or seclusion;
16. If applicable, documentation that evacuation from the behavioral health inpatient facility would cause harm to the patient;
17. The disposition of the patient after discharge;
18. The discharge plan;
19. The discharge summary; and
20. If applicable:
   a. A laboratory report,
   b. A radiologic report,
   c. A diagnostic report, and
   d. A consultation report.

Historical Note

Section R9-10-312, formerly numbered as R9-10-212, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-312 repealed, new Section R9-10-312 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-312 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-313. Transportation; Patient Outings

A. An administrator of a behavioral health inpatient facility that uses a vehicle owned or leased by the behavioral health inpatient facility to provide transportation to a patient shall ensure that:
1. The vehicle:

a. Is safe and in good repair,
b. Contains a first aid kit,
c. Contains drinking water sufficient to meet the needs of each patient present in the vehicle, and
d. Contains a working heating and air conditioning system;

2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
3. A driver of the vehicle:
   a. Is 21 years of age or older;
   b. Has a valid driver license;
   c. Operates the vehicle in a manner that does not endanger a patient in the vehicle;
   d. Does not leave in the vehicle an unattended:
      i. Child;
      ii. Patient who may be a threat to the health, safety, or welfare of the patient or another individual; or
      iii. Patient who is incapable of independent exit from the vehicle; and
   e. Ensures the safe and hazard-free loading and unloading of patients; and
4. Transportation safety is maintained as follows:
   a. An individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
   b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a patient's body.

B. An administrator shall ensure that an outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each patient participating in the outing.

C. An administrator shall ensure that:
1. At least two personnel members are present on an outing;
2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a patient on the outing;
3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-303(C)(1)(e) and first aid training;
4. Documentation is developed before an outing that includes:
   a. The name of each patient participating in the outing;
   b. A description of the outing;
   c. The date of the outing;
   d. The anticipated departure and return times;
   e. The name, address, and, if available, telephone number of the outing destination; and
   f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
6. Emergency information for a patient participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
   a. The patient's name;
   b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the patient during the anticipated duration of the outing;
   c. The patient's allergies; and
   d. The name and telephone number of a designated individual, to notify in case of an emergency, who is present on the behavioral health inpatient facility's premises.

Historical Note

Section R9-10-313, formerly numbered as R9-10-213, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-313 repealed, new Section R9-10-313 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-313 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-314. Physical Health Services

A. An administrator shall ensure that:
1. Medical services are provided under the direction of a physician or registered nurse practitioner;
2. Nursing services are provided:
   a. Under the direction of a registered nurse,
   b. According to an acuity plan developed for the behavioral health inpatient facility, and
   c. To meet the needs of a patient based on the patient's acuity; and
3. If a behavioral health inpatient facility is authorized to provide:
   a. Clinical laboratory services, as defined in R9-10-101, the behavioral health inpatient facility complies with the requirements for clinical laboratory services in R9-10-219; or
   b. Radiology services or diagnostic imaging services, the behavioral health inpatient facility complies with the requirements in R9-10-220.

B. An administrator shall ensure that, if a patient requires immediate medical services to ensure the patient's health and safety that the behavioral health inpatient facility is not authorized or not able to provide, a personnel member arranges for the patient to be transported to a hospital, another health care institution, or a health care provider where the medical services can be provided.

Historical Note

Section R9-10-314, formerly numbered as R9-10-214, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-314 repealed, new Section R9-10-314 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-314 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-315. Behavioral Health Services

A. An administrator shall ensure that:
1. Behavioral health services listed in the behavioral health inpatient facility's scope of services are provided to meet the needs of a patient;
2. When behavioral health services are:
   a. Listed in the behavioral health inpatient facility's scope of services, the behavioral health services are provided on the behavioral health inpatient facility's premises; and
   b. Provided in a setting or activity with more than one patient participating, before a patient participates, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical abuse or sexual abuse, of the patients participating are reviewed to ensure that the:
      i. Health and safety of each patient is protected, and
      ii. Treatment needs of each patient participating in the setting or activity are being met;
3. An acuity plan is developed, documented, and implemented for each unit in the behavioral health inpatient facility that:
   a. Includes:
      i. A method that establishes the types and numbers of personnel members that are required for each unit in the behavioral health inpatient facility to ensure patient health and safety, and
      ii. A policy and procedure stating the steps the behavioral health inpatient facility will take to obtain or assign the necessary personnel members to address patient acuity;
   b. Is used when making assignments for patient treatment; and
   c. Is reviewed and updated, as necessary, at least once every 12 months;
4. A patient is assigned to a unit in the behavioral health inpatient facility based, as applicable, on the patient's:
   a. Presenting issue,
   b. Substance abuse history,
   c. Behavioral health treatment history,
   d. Acuity, and
   e. Treatment needs; and
5. A patient does not share any space, participate in any activity or treatment, or verbally or physically interact with any other patient that, based on the other patient's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history, may present a threat to the patient's health and safety.

B. An administrator shall ensure that counseling is:
1. Offered as described in the behavioral health inpatient facility's scope of services,
2. Provided according to the frequency and number of hours identified in the patient's treatment plan, and
3. Provided by a behavioral health professional or a behavioral health technician.

C. An administrator shall ensure that each counseling session is documented in a patient's medical record to include:
1. The date of the counseling session;
2. The amount of time spent in the counseling session;
3. Whether the counseling was individual counseling, family counseling, or group counseling;
4. The treatment goals addressed in the counseling session; and
5. The signature of the personnel member who provided the counseling and the date signed.

D. An administrator of a behavioral health inpatient facility authorized to provide pre-petition screening shall ensure pre-petition screening is provided according to the pre-petition screening requirements in A.R.S. Title 36, Chapter 5.

E. An administrator of a behavioral health inpatient facility authorized to provide court-ordered evaluation shall ensure that court-ordered evaluation is provided according to the court-evaluation requirements in A.R.S. Title 36, Chapter 5.

F. Except as specified in subsection (G), an administrator is not required to comply with the following provisions in this Chapter for a patient receiving court-ordered evaluation:
1. Admission requirements in R9-10-307,
2. Patient assessment requirements in R9-10-307,
3. Treatment plan requirements in R9-10-308, and
4. Discharge requirements in R9-10-309.

G. For a patient receiving court-ordered evaluation who attempts suicide or exhibits suicidal ideation, an administrator shall ensure that the following requirements are met:
1. Patient assessment requirements in R9-10-307(10), (11), and (12);
2. Treatment plan requirements in R9-10-308(A)(4)(c); and
3. Discharge requirements in R9-10-309(B), (F)(2), and (H)(2)(b).

H. An administrator of a behavioral health inpatient facility authorized to provide court-ordered treatment shall ensure that court-ordered treatment is provided according to the court-ordered treatment requirements in A.R.S. Title 36, Chapter 5.

Historical Note

Section R9-10-315, formerly numbered as R9-10-215, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-315 repealed, new Section R9-10-315 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-315 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 661, effective May 1, 2021 (Supp. 21-2).

R9-10-316. Seclusion; Restraint

A. An administrator shall ensure that restraint is provided according to the requirements in subsection (C).

B. An administrator of a behavioral health inpatient facility authorized to provide seclusion shall ensure that:
1. Seclusion is provided according to the requirements in subsection (C);
2. If a patient is placed in seclusion, the room used for seclusion:
   a. Is approved for use as a seclusion room by the Department;
   b. Is not used as a patient's bedroom or a sleeping area;
   c. Allows full view of the patient in all areas of the room;

d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
e. Contains at least 60 square feet of floor space; and
f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
i. Consists of a mattress on a solid platform that is:
(1) Constructed of a durable, non-hazardous material; and
(2) Raised off of the floor;
ii. Does not have wire springs or a storage drawer; and
iii. Is securely anchored in place;

3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
a. A piece of equipment is available that:
i. Is commercially manufactured to safely and humanely restrain a patient's body;
ii. Provides support to the trunk and head of a patient's body;
iii. Provides restraint to the trunk of a patient's body;
iv. Is able to restrict movement of a patient's arms, legs, body, and head;
v. Allows a patient's body to recline; and
vi. Does not inflict harm on a patient's body; and
b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and

4. A seclusion room may be used for services or activities other than seclusion if:
a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
c. Policies and procedures:
i. Delineate which services or activities other than seclusion may be provided in the room,
ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before being used for seclusion.

C. An administrator shall ensure that:

1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a patient that:
a. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
i. The qualifications of a personnel member who can:
(1) Order the restraint or seclusion,
(2) Place a patient in the restraint or seclusion,
(3) Monitor a patient in the restraint or seclusion,
(4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
(5) Renew the order for restraint or seclusion;
ii. On-going training requirements for a personnel member who has direct patient contact while the patient is in a restraint or seclusion; and
iii. Criteria for monitoring and assessing a patient including:
(1) Frequencies of monitoring and assessment based on a patient's medical condition and risks associated with the specific restraint or seclusion;
(2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
(3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
(4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
(5) A process for meeting a patient's nutritional needs and elimination needs;
c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
d. Establish procedures for internal review of the use of restraint or seclusion;
and
e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;

2. An order for restraint or seclusion is:
a. Obtained from a physician or registered nurse practitioner, and
b. Not written as a standing order or on an as-needed basis;

3. Restraint or seclusion is:
a. Not used as a means of coercion, discipline, convenience, or retaliation;
b. Only used when all of the following conditions are met:
i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
iii. When less restrictive interventions have been determined to be ineffective; and
iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical harm to another individual; and
c. Discontinued at the earliest possible time;

4. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another indi-

vidual is imminent or the patient or another individual is being physically harmed, a personnel member:
a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
5. An order for restraint or seclusion includes:
a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
b. The date and time that the restraint or seclusion was ordered;
c. The specific restraint or seclusion ordered;
d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
e. The specific criteria for release from restraint or seclusion without an additional order; and
f. The maximum duration authorized for the restraint or seclusion;
6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
7. If an order for restraint or seclusion of a patient is not provided by the patient's attending physician, the patient's attending physician is notified as soon as possible;
8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:
a. Includes:
i. Techniques to identify medical practitioner, personnel member, and patient behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;
ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;
iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
b. Is provided by individuals qualified according to policies and procedures;
9. When a patient is placed in restraint or seclusion:
a. The restraint or seclusion is conducted according to policies and procedures;
b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
i. Chronological and developmental age;
ii. Size;
iii. Gender;
iv. Physical condition;
v. Medical condition;
vi. Psychiatric condition; and
vii. Personal history, including any history of physical or sexual abuse;
c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
d. The patient is monitored and assessed according to policies and procedures;
e. A physician or registered nurse assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
i. The patient's current behavior,
ii. The patient's reaction to the restraint or seclusion used,
iii. The patient's medical and behavioral condition, and
iv. Whether to continue or terminate the restraint or seclusion;
f. The patient is given the opportunity:
i. To eat during mealtime, and
ii. To use the toilet; and
g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
10. A medical practitioner or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
a. The emergency situation that required the patient to be restrained or put in seclusion;
b. The times the patient's restraint or seclusion actually began and ended;
c. The time of the assessment required in subsection (C)(9)(e);
d. The monitoring required in subsection (C)(9)(d);
e. The names of the medical practitioners and personnel members with direct patient contact while the patient was in the restraint or seclusion;
f. The times the patient was given the opportunity to eat or use the toilet according to subsection (C)(9)(f); and
g. The patient evaluation required in subsection (C)(12);

11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
    a. The specific criteria for release from restraint or seclusion without an additional order, and
    b. The maximum duration authorized for the restraint or seclusion; and
12. A patient is evaluated after restraint or seclusion is no longer being used for the patient.

Historical Note

Section R9-10-316, formerly numbered as R9-10-216, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-316 repealed, new Section R9-10-316 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-316 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-317. Behavioral Health Observation/Stabilization Services

A. An administrator of a behavioral health inpatient facility authorized to provide behavioral health observation/stabilization services shall comply with the requirements for behavioral health observation/stabilization services in R9-10-1012.

B. If a behavioral health inpatient facility is authorized to provide behavioral health observation/stabilization services to individuals under 18 years of age, an administrator shall ensure that, in addition to complying with the requirements in R9-10-1012, the behavioral health inpatient facility complies with the requirements for a patient under 18 years of age, personnel records, and physical plant in R9-10-318.

Historical Note

Section R9-10-317, formerly numbered as R9-10-221, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-317 repealed, new Section R9-10-317 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-317 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-318. Child and Adolescent Residential Treatment Services

A. An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services shall:

1. If abuse, neglect, or exploitation of a patient under 18 years of age is alleged or suspected to have occurred before the patient was accepted or while the patient is not on the premises and not receiving services from an employee or personnel member of the behavioral health inpatient facility, report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
2. If the administrator has a reasonable basis, according to A.R.S. § 13-3620, to believe that abuse, neglect, or exploitation of a patient under 18 years of age has occurred on the premises or while the patient is receiving services from an employee or a personnel member:
    a. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
    b. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
    c. Document:
        i. The suspected abuse, neglect, or exploitation;
        ii. Any action taken according to subsection (A)(2)(a); and
        iii. The report in subsection (A)(2)(b);
    d. Maintain the documentation in subsection (A)(2)(c) for at least 12 months after the date of the report in subsection (A)(2)(b);
    e. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (A)(2)(b):
        i. The dates, times, and description of the suspected abuse, neglect, or exploitation;
        ii. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
        iii. The names of witnesses to the suspected abuse, neglect, or exploitation; and
        iv. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
    f. Maintain a copy of the documented information required in subsection (A)(2)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated;
3. If a patient who is under 18 years of age is absent and the absence is unauthorized as determined according to the criteria in R9-10-303(H), within an hour after determining that the patient's absence is unauthorized, notify:
    a. Except as provided in subsection (A)(3)(b), the patient's parent or legal guardian; and
    b. For a patient who is under a court's jurisdiction, the appropriate court or a person designated by the appropriate court;
4. Document the notification in subsection (A)(3) in the patient's medical record and the written log required in R9-10-303(I)(3);
5. In addition to the personnel records requirements in R9-10-306(F), ensure that a personnel record for each employee, volunteer, and student contains documentation of the individual's compliance with the finger-printing requirements in A.R.S. § 36-425.03;
6. Ensure that the patient's representative for a patient who is under 18 years of age:
    a. Except in an emergency, either consents to or refuses treatment;
    b. May refuse or withdraw consent to treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01; is necessary to save the patient's

life or physical health; or is provided according to A.R.S. § 36-512;
c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
d. Is informed of the following:
i. The policy on health care directives, and
ii. The patient complaint process; and
e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
i. Medical record, or
ii. Financial records;
7. In addition to the restrictions provided in R9-10-311(C), ensure that a parent of a patient under 18 years of age is allowed to restrict the patient from:
a. Associating with individuals of the patient's choice, receiving visitors, and making telephone calls during the hours established by the behavioral health inpatient facility;
b. Having privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
c. Sending and receiving uncensored and unopened mail;
8. Establish, document, and implement policies and procedures to ensure that a patient is protected from the following from other patients at the behavioral health inpatient facility:
a. Threats,
b. Ridicule,
c. Verbal harassment,
d. Punishment, or
e. Abuse;
9. Ensure that:
a. The interior of the behavioral health inpatient facility has furnishings and decorations appropriate to the ages of the patients receiving services at the behavioral health inpatient facility;
b. A patient older than three years of age does not sleep in a crib;
c. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to patients in a quantity sufficient to meet each patient's needs and are appropriate to each patient's age, developmental level, and treatment needs; and
d. A patient's educational needs are addressed according to A.R.S. Title 15, Chapter 7, Article 4;
10. In addition to the requirements for seclusion or restraint in R9-10-316, ensure that:
a. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
i. Two continuous hours for a patient who is between the ages of nine and 17, or
ii. One continuous hour for a patient who is younger than nine; and
b. Requirements are established for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
11. Prohibit a patient under 18 years of age from possessing or using tobacco products on the premises.

B. An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services may continue to provide behavioral health services to a patient who is 18 years of age or older:
1. If the patient:
a. Was admitted to the behavioral health inpatient facility before the patient's 18th birthday,
b. Is not 21 years of age or older, and
c. Is completing high school or a high school equivalency diploma or participating in a job training program; or
2. Through the last calendar day of the month of the patient's 18th birthday.

Historical Note
Section R9-10-318, formerly numbered as R9-10-222, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-318 repealed, new Section R9-10-318 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-318 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-318 renumbered to R9-10-319; new Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 551, with an immediate effective date of March 3, 2020 (Supp. 20-1).

R9-10-319. Detoxification Services
An administrator of a behavioral health inpatient facility authorized to provide detoxification services shall ensure that:
1. Detoxification services are available;
2. Policies and procedures state:
a. Whether the behavioral health inpatient facility is authorized to provide involuntary, court-ordered alcohol treatment;
b. Whether the behavioral health inpatient facility includes a local alcoholism reception center, as defined in A.R.S. § 36-2021;
c. The types of substances for which the behavioral health inpatient facility provides detoxification services;
d. The detoxification process or processes used by the behavioral health inpatient facility; and
e. When an adjustable bed can be used by a patient and what actions are necessary, including supervision, to protect the patient's health and safety when the patient is in an adjustable bed; and
3. A physician or registered nurse practitioner with skills and knowledge in providing detoxification services is present at the behavioral health inpatient facility or on-call.

Historical Note
Section R9-10-319, formerly numbered as R9-10-223, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-319 repealed, new Section R9-10-319 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

New Section R9-10-319 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-319 renumbered to R9-10-320; new Section R9-10-319 renumbered from R9-10-318 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-320. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:
1. Include:
   a. A process for providing information to a patient about medication prescribed for the patient including:
      i. The prescribed medication's anticipated results,
      ii. The prescribed medication's potential adverse reactions,
      iii. The prescribed medication's potential side effects, and
      iv. Potential adverse reactions that could result from not taking the medication as prescribed;
   b. Procedures for preventing, responding to, and reporting:
      i. A medication error,
      ii. An adverse reaction to a medication, or
      iii. A medication overdose;
   c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs;
   d. Procedures for documenting medication administration and assistance in the self-administration of medication;
   e. Procedures for assisting a patient in obtaining medication; and
   f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. Specify a process for review through the quality management program of:
   a. A medication administration error, and
   b. An adverse reaction to a medication.

B. If a behavioral health inpatient facility provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
   a. Are reviewed and approved by a medical practitioner;
   b. Specify the individuals who may:
      i. Order medication, and
      ii. Administer medication;
   c. Ensure that medication is administered to a patient only as prescribed; and
   d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a patient is:
   a. Administered in compliance with an order, and
   b. Documented in the patient's medical record.

C. If a behavioral health inpatient facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A patient's medication is stored by the behavioral health inpatient facility;
2. The following assistance is provided to a patient:
   a. A reminder when it is time to take the medication;
   b. Opening the medication container for the patient;
   c. Observing the patient while the patient removes the medication from the container;
   d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
      i. The patient taking the medication is the individual stated on the medication container label,
      ii. The patient is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      iii. The patient is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
   e. Observing the patient while the patient takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
   a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
   b. Includes:
      i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
6. Assistance in the self-administration of medication provided to a patient:
   a. Is in compliance with an order, and
   b. Is documented in the patient's medical record.

D. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
2. A current toxicology reference guide is available for use by personnel members; and
3. If pharmaceutical services are provided on the premises:
   a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      i. Develop a drug formulary,
      ii. Update the drug formulary at least once every 12 months,
      iii. Develop medication usage and medication substitution policies and procedures, and

iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
b. The pharmaceutical services are provided under the direction of a pharmacist;
c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
d. A copy of the pharmacy license is provided to the Department upon request.

E. When medication is stored at a behavioral health inpatient facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
c. A medication recall and notification of patients who received recalled medication; and
d. Storing, inventorying, and dispensing controlled substances.

F. An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the behavioral health inpatient facility's clinical director.

Historical Note

Section R9-10-320, formerly numbered as R9-10-231, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-320 repealed, new Section R9-10-320 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-320 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-320 renumbered to R9-10-321; new Section R9-10-320 renumbered from R9-10-319 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-321. Food Services

A. An administrator shall ensure that:
1. The behavioral health inpatient facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the behavioral health inpatient facility's food establishment license or permit is maintained;
3. If a behavioral health inpatient facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health inpatient facility:
a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health inpatient facility; and
b. The behavioral health inpatient facility is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
4. A registered dietitian is employed full-time, part-time, or as a consultant; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the patients.

B. A registered dietitian or director of food services shall ensure that:
1. A food menu:
a. Is prepared at least one week in advance,
b. Includes the foods to be served each day,
c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
e. Is maintained for at least 60 calendar days after the last day included in the food menu;
2. Meals and snacks provided by the behavioral health inpatient facility are served according to posted menus;
3. Meals and snacks for each day are planned using:
a. The applicable guidelines in http://www.health.gov/dietaryguidelines/2015, and
b. Preferences for meals and snacks obtained from patients;
4. A patient is provided:
a. A diet that meets the patient's nutritional needs as specified in the patient's assessment or treatment plan;
b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
i. A patient group agrees; and
ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
6. Water is available and accessible to patients.

C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Food is prepared:
a. Using methods that conserve nutritional value, flavor, and appearance; and
b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;

4. Potentially hazardous food is maintained as follows:
   a. Foods requiring refrigeration are maintained at 41° F or below; and
   b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      vi. Leftovers are reheated to a temperature of at least 165° F;
5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
6. Frozen foods are stored at a temperature of 0° F or below; and
7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

Historical Note

Section R9-10-321, formerly numbered as R9-10-232, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-321 repealed, new Section R9-10-321 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-321 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-321 renumbered to R9-10-322; new Section R9-10-321 renumbered from R9-10-320 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-322. Emergency and Safety Standards

A. An administrator shall ensure that a behavioral health inpatient facility has:
1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, that are in working order; or
2. An alternative method to ensure a patient's safety, documented and approved by the local jurisdiction.

B. An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
   a. When, how, and where patients will be relocated;
   b. How a patient's medical record will be available to individuals providing services to the patient during a disaster;
   c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
   d. A plan for obtaining food and water for individuals present in the behavioral health inpatient facility or the behavioral health inpatient facility's relocation site during a disaster;
2. The disaster plan required in subsection (B)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (B)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, employee, volunteer, or student participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and patients:
   a. Is conducted at least once every six months; and
   b. Includes all individuals on the premises except for:
      i. A patient whose medical record contains documentation that evacuation from the behavioral health inpatient facility would cause harm to the patient, and
      ii. Sufficient personnel members to ensure the health and safety of patients not evacuated according to subsection (B)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and patients to evacuate to a designated area;
   c. If applicable:
      i. An identification of patients needing assistance for evacuation, and
      ii. An identification of patients who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health inpatient facility.

C. An administrator shall:
1. Obtain a fire inspection conducted according to the timeframe established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

Historical Note

Section R9-10-322, formerly numbered as R9-10-233, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979

(Supp. 79-3). Former Section R9-10-322 repealed, new Section R9-10-322 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-322 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-322 renumbered to R9-10-323; new Section R9-10-322 renumbered from R9-10-321 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-323. Environmental Standards

A. An administrator shall ensure that:
1. The premises and equipment are:
   a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
   b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
4. Equipment used at the behavioral health inpatient facility is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
6. Garbage and refuse are:
   a. In areas used for food storage, food preparation, or food service, stored in covered containers lined with plastic bags;
   b. In areas not used for food storage, food preparation, or food service, stored:
      i. According to the requirements in subsection (6)(a), or
      ii. In a paper-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
   c. Removed from the premises at least once a week;
7. Heating and cooling systems maintain the behavioral health inpatient facility at a temperature between 70° F and 84° F;
8. Common areas:
   a. Are lighted to assure the safety of patients, and
   b. Have lighting sufficient to allow personnel members to monitor patient activity;
9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health inpatient facility used by patients;
10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
11. Soiled linen and soiled clothing stored by the behavioral health inpatient facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
12. Oxygen containers are secured in an upright position;
13. Poisonous or toxic materials stored by the behavioral health inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
14. Combustible or flammable liquids and hazardous materials stored by a behavioral health inpatient facility are stored in the original labeled containers or safety containers in a locked area inaccessible to patients;
15. If pets or animals are allowed in the behavioral health inpatient facility, pets or animals are:
   a. Controlled to prevent endangering the patients and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
16. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is maintained for at least 12 months after the date of the test; and
17. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a behavioral health inpatient facility; and
2. Except as provided in R9-10-318(A)(11), smoking tobacco products may be permitted on the premises outside a behavioral health inpatient facility if:
   a. Signs designating smoking areas are conspicuously posted, and
   b. Smoking is prohibited in areas where combustible materials are stored or in use.

C. If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-303(C)(1)(e) is present in the pool area when a patient is in the pool area, and
2. At least two personnel members are present in the pool area when two or more patients are in the pool area.

Historical Note

Section R9-10-323, formerly numbered as R9-10-234, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-323 repealed, new Section R9-10-323 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-323 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-323 renumbered to R9-10-324; new Section R9-10-323 renumbered from R9-10-322 and amended by

exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-324. Physical Plant Standards

A. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the behavioral health inpatient facility's scope of services, and
2. An individual accepted as a patient by the behavioral health inpatient facility.

B. An administrator shall ensure that:
1. A behavioral health inpatient facility has a:
   a. Waiting area with seating for patients and visitors;
   b. Room that provides privacy for a patient to receive treatment or visitors; and
   c. Common area and a dining area that:
      i. Are not converted, partitioned, or otherwise used as a sleeping area; and
      ii. Contain furniture and materials to accommodate the recreational and socialization needs of the patients and other individuals in the behavioral health inpatient facility;
2. A bathroom is available for use by visitors during the behavioral health inpatient facility's hours of operation and:
   a. Provides privacy; and
   b. Contains:
      i. A working sink with running water,
      ii. A working toilet that flushes and has a seat,
      iii. Toilet tissue,
      iv. Soap for hand washing,
      v. Paper towels or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A window that opens or another means of ventilation;
3. For every six patients, there is at least one working toilet that flushes and has a seat and one sink with running water;
4. For every eight patients, there is at least one working bathtub or shower with a slip-resistant surface;
5. A patient bathroom complies with the following:
   a. Provides privacy when in use;
   b. Contains:
      i. A shatterproof mirror, unless the patient's treatment plan requires otherwise;
      ii. A window that opens or another means of ventilation; and
      iii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
   c. Has plumbing, piping, ductwork, or other potentially hazardous elements concealed above a ceiling;
   d. If the bathroom or shower area has a door, the door swings outward to allow for staff emergency access;
   e. If grab bars for the toilet and tub or shower or other assistive devices are identified in the patient's treatment plan, has grab bars or other assistive devices to provide for patient safety;
   f. If a grab bar is provided, has the space between the grab bar and the wall filled to prevent a cord being tied around the grab bar;
   g. Does not contain a towel bar, a shower curtain rod, or a lever handle that is not a specifically designed anti-ligature lever handle;
   h. Has tamper-resistant lighting fixtures, sprinkler heads, and electrical outlets; and
   i. For a bathroom with a sprinkler head where a patient is not supervised while the patient is in the bathroom, has a sprinkler head that is recessed or designed to minimize patient access;
6. If a patient bathroom door locks from the inside, an employee has a key and access to the bathroom;
7. Each patient is provided a bedroom for sleeping;
8. A patient bedroom complies with the following:
   a. Is not used as a common area;
   b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of a patient occupying the bedroom;
   c. Contains a door that opens into a hallway, common area, or outdoors and, except as provided in subsection (E), another means of egress;
   d. Is constructed and furnished to provide unimpeded access to the door;
   e. Has window or door covers that provide patient privacy;
   f. Has floor to ceiling walls:
   g. Is a:
      i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
      ii. Shared bedroom that:
         (1) Is shared by no more than four patients;
         (2) Contains, except as provided in subsection (B)(9), at least 60 square feet of floor space, not including a closet, for each patient occupying the bedroom; and
         (3) Provides sufficient space between beds to ensure that a patient has unobstructed access to the bedroom door;
   h. Contains for each patient occupying the bedroom:
      i. A bed that is: at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens that is not a threat to health and safety; and
      ii. Individual storage space for personnel effects and clothing such as shelves, a dresser, or chest of drawers;
   i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each patient;
   j. Has sufficient lighting for a patient occupying the bedroom to read; and
   k. If applicable, has a drawer pull that is recessed to eliminate the possibility of use as a tie-off point;
9. If a behavioral health inpatient facility licensed before November 1, 2003 was approved for 50 square feet of floor space for each patient in a bedroom, ensure that the bedroom contains at least 50 square feet for each patient not including the closet;
10. In a patient bathroom or a patient bedroom:
   a. The ceiling is secured from access or at least 9 feet in height; and
   b. A ventilation grille is:
      i. Secured and has perforations that are too small to use as a tie-off point, or
      ii. Of sufficient height to prevent patient access;

11. For a door located in an area of the behavioral health inpatient facility that is accessible to patients:
    a. A door closing device, if used on a patient bedroom door, is mounted on the public side of the door;
    b. A door's hinges are designed to minimize points for hanging;
    c. Except for a door lever handle that contains specifically designed anti-ligature hardware, a door lever handle points downward when in the latched or unlatched position; and
    d. Hardware has tamper-resistant fasteners; and
12. A window located in an area of the behavioral health inpatient facility that is accessible to patients is fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.

C. An administrator of a licensed behavioral health inpatient facility may submit a request, in a Department-provided format, for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) that includes:
1. The rule citation for the specific plant requirement,
2. The current physical plant condition that does not comply with the physical plant requirement,
3. How the current physical plant condition will be changed to comply with the physical plant requirement,
4. Estimated completion date of the identified physical plant change, and
5. Specific actions taken to ensure the health and safety of a patient until the physical plant requirement is met.

D. When the Department receives a request for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) submitted according to subsection (C), the Department may approve the request for up to 24 months after the effective date of these rules based on:
1. The behavioral health inpatient facility's scope of services,
2. The expected patient acuity based on the behavioral health inpatient facility's scope of services,
3. The specific physical plant requirement in the request, and
4. The threat to patients' health and safety.

E. A bedroom in a behavioral health inpatient facility is not required to have a second means of egress if:
1. An administrator ensures that policies and procedures are established, documented, and implemented that provide for the safe evacuation of a patient in the bedroom based on the patient's physical and mental limitations and the location of the bedroom; or
2. The building where the bedroom is located has a fire alarm system and a sprinkler system required in R9-10-322(A)(1).

F. If a swimming pool is located on the premises, an administrator shall ensure that:
1. The swimming pool is enclosed by a wall or fence that:
    a. Is at least five feet in height as measured on the exterior of the wall or fence;
    b. Has no vertical openings greater that four inches across;
    c. Has no horizontal openings, except as described in subsection (F)(1)(e);
    d. Is not chain-link;
    e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    f. Has a self-closing, self-latching gate that:
        i. Opens away from the swimming pool,
        ii. Has a latch located at least 54 inches from the ground, and
        iii. Is locked when the swimming pool is not in use; and
2. A life preserver or shepherd's crook is available and accessible in the pool area.

G. An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

Historical Note

Section R9-10-324, formerly numbered as R9-10-235, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-324 repealed, new Section R9-10-324 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-324 renumbered from R9-10-323 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-325. Repealed

Historical Note

Section R9-10-325, formerly numbered as R9-10-236, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-325 repealed, new Section R9-10-325 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-326. Repealed

Historical Note

Section R9-10-326, formerly numbered as R9-10-237, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-326 repealed, new Section R9-10-326 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-327. Repealed

Historical Note

Section R9-10-327, formerly numbered as R9-10-241, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-327 repealed, new Section R9-10-327 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-328. Repealed

Historical Note

Section R9-10-328, formerly numbered as R9-10-242, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-328 repealed, new Section R9-10-328 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-329. Repealed

Historical Note

Section R9-10-329, formerly numbered as R9-10-243, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-329 repealed, new Section R9-10-329 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-330. Repealed

Historical Note

Section R9-10-330, formerly numbered as R9-10-244, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-330 repealed, new Section R9-10-330 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-331. Repealed

Historical Note

Section R9-10-331, formerly numbered as R9-10-245, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-331 repealed, new Section R9-10-331 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-332. Repealed

Historical Note

Section R9-10-332, formerly numbered as R9-10-246, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-332 repealed, new Section R9-10-332 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-333. Repealed

Historical Note

Section R9-10-333, formerly numbered as R9-10-247, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-333 repealed, new Section R9-10-333 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-334. Repealed

Historical Note

Section R9-10-334, formerly numbered as R9-10-249, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Repealed effective February 4, 1981 (Supp. 81-1).

R9-10-335. Repealed

Historical Note

Section R9-10-335, formerly numbered as R9-10-250, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Repealed effective February 4, 1981 (Supp. 81-1).

ARTICLE 4. NURSING CARE INSTITUTIONS

Article 4, consisting of Sections R9-10-411 through R9-10-438, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Administrator" has the same meaning as in A.R.S. § 36-446.
2. "Care plan" means a documented description of physical health services and behavioral health services expected to be provided to a resident, based on the resident's comprehensive assessment, that includes measurable objectives and the methods for meeting the objectives.
3. "Direct care" means medical services, nursing services, or social services provided to a resident.
4. "Director of nursing" means an individual who is responsible for the nursing services provided in a nursing care institution.
5. "Highest practicable" means a resident's optimal level of functioning and well-being based on the resident's current functional status and potential for improvement as determined by the resident's comprehensive assessment.
6. "Intermittent" means not on a regular basis.
7. "Nursing care institution services" means medical services, nursing services, behavioral care, health-related services, ancillary services, social services, and environmental services provided to a resident.
8. "Resident group" means residents or residents' family members who:
   a. Plan and participate in resident activities, or
   b. Meet to discuss nursing care institution issues and policies.
9. "Secured" means the use of a method, device, or structure that:
   a. Prevents a resident from leaving an area of the nursing care institution's premises, or
   b. Alerts a personnel member of a resident's departure from the nursing care institution.
10. "Social services" means assistance provided to or activities provided for a resident to maintain or improve the resident's physical, mental, and psychosocial capabilities.

Authorizing Statutes

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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-421. Construction or modification of a health care institution

A. A license application for a health care institution shall include, on a form provided by the department, a notarized attestation from an architect registered pursuant to title 32, chapter 1 that verifies the architectural plans and specifications meet or exceed standards adopted by the department. These plans and specifications shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended. The application shall include the name and address of each owner and lessee of any agricultural land that is regulated pursuant to section 3-365.

B. Construction or modification of a licensed health care institution shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended.

C. An applicant shall comply with all state statutes and rules and local codes and ordinances required for the health care institution's construction.

D. A health care institution or its facility shall not be licensed if it is located on property that is less than four hundred feet from agricultural land that is regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the health care institution or facility may be licensed and located within the affected buffer zone. The agreement may include any stipulations regarding the health care institution or facility, including conditions for future expansion of the health care institution or facility and changes in the operational status of the health care institution or facility that will result in a breach of the agreement. This subsection does not apply to the issuance of a license for a health care institution located in the same location for which a health care institution license was previously issued.

E. Notwithstanding any law to the contrary, a health care institution that was licensed as a level 1 psychiatric acute behavioral health facility-inpatient facility as of January 1, 2012 and that is not certified under title XIX of the social security act shall be licensed as a hospital and is not required to comply with the physical plant standards for a general hospital, rural general hospital or special hospital prescribed by the department.

F. An adult behavioral health therapeutic home is not required to comply with the building codes or zoning standards for a health care institution prescribed by the department.

G. The Arizona pioneers' home is not required to comply with subsection A of this section and the physical plant standards for a health care institution prescribed by the department.

H. A nursing-supported group home is not required to comply with the zoning standards for a health care institution prescribed by the department.

I. For the purposes of this section, health care institution does not include a home health agency or a hospice service agency.

36-502. Powers and duties of the director of AHCCCS; rules; expenditure limitation

A. The director shall make rules that include standards for agencies other than the state hospital when providing services and shall prescribe forms as may be necessary for the proper administration and enforcement of this chapter. The rules shall be applicable to patients admitted to or treated in agencies, other than the state hospital, as set forth in this chapter and shall provide for periodic inspections of such agencies.

B. The director shall make rules concerning the admission of patients and the transfer of patients between mental health treatment agencies other than the state hospital. A patient undergoing court-ordered treatment may be transferred from one mental health treatment agency to another in accordance with the rules of the director, subject to the approval of the court.

C. The director may make rules concerning leaves, visits and absences of patients from evaluation agencies and mental health treatment agencies other than the state hospital.

D. The total amount of state monies that may be spent in any fiscal year by the administration for mental health services pursuant to this chapter may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 7, 8, 10, 12, 14, 16, 17 & 22

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 5, 2023

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

FROM: Council Staff

DATE: June 15, 2023

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6, Article 7, 8, 10, 12, 14, 16, 17 & 22

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 6, Articles 7, 8, 10, 12, 14, 16, 17, and 22. Those articles relate to the following:

- Article 7 - Licensing Provisions and Procedures
- Article 8 - Prohibited Practices, Penalties
- Article 10 - Long-Term Care Insurance
- Article 12 - HIV/AIDS: Prohibited and Required Practices
- Article 14 - Insurance Holding Company
- Article 16 - Credit for Reinsurance
- Article 17 - Examinations
- Article 22 - Military Personnel

In the previous 5YRR for these rules, which was approved by the Council in July 2018, the Department proposed the following changes to the rules:

- Article 7 - Licensing Provisions and Procedures

    - The Department proposed to review rule R20-6-708 and eliminate any provisions that are duplicative of the requirements of Title 41 which already apply to the Department. The Department proposed to revise Table A to correct any inconsistent use of terms, incorrect statutory references and to reflect the current license types issued by the Department.
    - The Department indicates it engaged in a rulemaking in 2022 to pursue the proposed course of action in its 2018 report.
- Article 8 - Prohibited Practices, Penalties
    - In its 2013 report, the Department proposed to revise R20-6-801 to comply with current rule writing standards. In the 2018 report, The Department indicates it did not prioritize this rulemaking due to a lack of resources to perform rule writing tasks.
    - In the current report, The Department indicates it has placed this rule on its 2023 Regulatory Agenda for the Insurance Division. The Department states that on March 1, 2023, it made a request to the Office of the Governor pursuant to A.R.S. § 41-1039(A) for written permission to open a Docket and publish a Notice of Proposed Rulemaking on this rule.
- Article 10 - Long-Term Care Insurance
    - No proposed changes.
- Article 12 - HIV/AIDS: Prohibited and Required Practices
    - No proposed changes.
- Article 14 - Insurance Holding Company
    - No proposed changes.
- Article 16 - Credit for Reinsurance
    - No proposed changes.
    - However, the Department indicates, in response to statutory changes made to Title 20 of the Arizona Revised Statutes in 2021 by the Legislature (Laws 2021, Ch. 357) and changes made by the National Association of Insurance Commissioners to the correlate Model Regulation, the Department engaged in a rulemaking in 2021.
- Article 17 - Examinations
    - No proposed changes.
- Article 22 - Military Personnel
    - The Department proposed to correct the reference to the Model Regulation from June 2007 to July 2007, correct the address of the Department after the Department relocated in June, 2018, and correct the address for the NAIC Publications Department.
    - The Department states it made the decision to, instead of incorporating the National Association of Insurance Commissioners' Model Regulation ("Model Regulation") by reference, recite the entire Model Regulation into the Article which eliminated the changes suggested in the Department's 2018 five-year review report. These rule revisions became effective in May 2022.

Proposed Action

In the current report, the Department proposes to take the following actions:

- Article 7 - Licensing Provisions and Procedures
    - No proposed changes.
- Article 8 - Prohibited Practices, Penalties
    - The Department proposes to revise R20-6-801 to comply with current rule writing standards. The Department states that on March 1, 2023, it made a request to the Office of the Governor pursuant to A.R.S. § 41-1039(A) for written permission to open a Docket and publish a Notice of Proposed Rulemaking on this rule. If the Governor's Office grants permission to publish the rulemaking, the Department proposes to complete the rulemaking by July, 2023.
- Article 10 - Long-Term Care Insurance
    - The Department indicates it has discovered an error in the title of Appendix B which should read: "Long-term Care Insurance Potential Rate Increase Disclosure Form." As of the submission of this report, the Department states it has prepared a Notice of Docket Opening and Notice of Proposed Rulemaking which it has submitted to the Governor's Office to obtain permission to publish pursuant to A.R.S. § 41-1039.
    - The Department also states it recently discovered that the Disclosure Statement contained in Appendix A differs slightly from the language of the Model Regulation. However, the Department states, because the regulated community does not appear to have any issues with the errant language, and because the language in the current disclosure is not lacking consumer protection, the Department has no current plans to adopt the language.
- Article 12 - HIV/AIDS: Prohibited and Required Practices
    - No proposed changes.
- Article 14 - Insurance Holding Company
    - The Department indicates the Legislature enacted amendments to the Arizona Holding Company Act (Laws 2023, Ch. 45), which adopt changes made by the National Association of Insurance Commissioners (NAIC) to the Holding Company Model Law. In response, the Department states it prepared a rulemaking to adopt correlative changes to this Article from the NAIC Holding Company Model Regulation. The Department indicates it has submitted a request to the Governor's Office for permission to open a Docket and to publish a Notice of Proposed Rulemaking. Council staff followed up with the Department and they indicate they anticipate submitting a rulemaking to the Council in August 2023.
- Article 16 - Credit for Reinsurance
    - No proposed changes.
- Article 17 - Examinations
    - No proposed changes.
- Article 22 - Military Personnel
    - No proposed changes.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department 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 reviewed the rules in Articles 7, 8, 10, 12, 14, 16, and 22 and did not find any significant economic impact different from the projected economic impact for the rule or from when the rule was initially promulgated. The Department indicates that the rules in Article 17 are procedural in nature and do not impact the economy. Further, the Department states that many of the impacts on insures in Article 17 are a result of statutory requirements rather than the rules. Stakeholders include the Department and any person or entity subject to the jurisdiction of the Department under A.R.S. Title 20.

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 the benefits of the rules outweigh, within this state, the costs of the rules and impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received written criticisms related to rule R20-6-1013. Specifically, Genworth Life Insurance Company (Genworth) filed a Petition with the Department pursuant to A.R.S. 41-1033(A) on February 1, 2021, requesting that the Department immediately cease and permanently discontinue its practice of using what it calls the "Fictional Premium Approach" and for R20-6-1013 to be repealed in the event that subsection (C) of that Section requires or permits the application of the Fictional Premium Approach.

The Department rejected Genworth's Petition finding that it had properly promulgated the rule and that the rulemaking was authorized. Genworth appealed the Department's rejection to the Council pursuant to A.R.S. § 41-1033(E), but subsequently withdrew its appeal.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently enforced as written.

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

The Department indicates the rules are not more stringent than corresponding federal law. The Department indicates, in 2017, the U.S. Department of Treasury and the Office of the U.S. Trade Representative of the European Union entered into a memorandum of understanding to allow U.S. insurers to enter into reinsurance agreements with European reinsurers (the "EU Covered Agreement"). As a result, the National Association of Insurance Commissioners (NAIC) amended its Model Law and Regulation to reflect the provisions of the EU Covered Agreement. The Department indicates the rules in Article 16, as amended in 2022, adopted those changes.

The Department states the Covered Agreement does not limit the ability of any U.S. authorities to enforce federal laws (the Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Home Owners' Loan Act (12 U.S.C. 1461 et seq.), the International Banking Act (12 U.S.C. 3101 et seq.), the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.)) or other related laws or regulations. As such, the rules are not more stringent than corresponding federal laws.

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 Department indicates the rules were all adopted prior to July 29, 2010 and the rules in Articles 8, 10, 14, 16, and 22 do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to rules in Title 20, Chapter 6, Articles 7, 8, 10, 12, 14, 16, 17, and 22. The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. However, the Department is proposing several amendments to the rules in the following articles:

- Article 8 - Prohibited Practices, Penalties
    - The Department proposes to revise R20-6-801 to comply with current rule writing standards. The Department states that on March 1, 2023, it made a request to the Office of the Governor pursuant to A.R.S. § 41-1039(A) for written permission to

open a Docket and publish a Notice of Proposed Rulemaking on this rule. If the Governor's Office grants permission to publish the rulemaking, the Department proposes to complete the rulemaking by July, 2023.

- Article 10 - Long-Term Care Insurance
    - The Department indicates it has discovered an error in the title of Appendix B which should read: "Long-term Care Insurance Potential Rate Increase Disclosure Form." As of the submission of this report, the Department states it has prepared a Notice of Docket Opening and Notice of Proposed Rulemaking which it has submitted to the Governor's Office to obtain permission to publish pursuant to A.R.S. § 41-1039.
    - The Department also states it recently discovered that the Disclosure Statement contained in Appendix A differs slightly from the language of the Model Regulation. However, the Department states, because the regulated community does not appear to have any issues with the errant language, and because the language in the current disclosure is not lacking consumer protection, the Department has no current plans to adopt the language.
- Article 14 - Insurance Holding Company
    - The Department indicates the Legislature enacted amendments to the Arizona Holding Company Act (Laws 2023, Ch. 45), which adopt changes made by the National Association of Insurance Commissioners (NAIC) to the Holding Company Model Law. In response, the Department states it prepared a rulemaking to adopt correlative changes to this Article from the NAIC Holding Company Model Regulation. The Department indicates it has submitted a request to the Governor's Office for permission to open a Docket and to publish a Notice of Proposed Rulemaking. Council staff followed up with the Department and they indicate they anticipate submitting a rulemaking to the Council in August 2023.

Council staff recommends approval of this report.

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie M. Hobbs, Governor
Barbara D. Richardson, Director

May 18, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department")
Title 20, Chapter 6, Articles 7 (Licensing Provisions and Procedures), 8 (Prohibited Practices and Penalties), 10 (Long-Term Care Insurance), 12 (HIV/AIDS Prohibited and Required Practices), 14 (Insurance Holding Company), 16 (Credit for Reinsurance), 17 (Examinations), and 22 (Military Personnel)
Five Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department") which is due by May 31, 2023 for the following Articles in Title 20, Chapter 6:

- Article 7. Licensing Provisions and Procedures
- Article 8. Prohibited Practices, Penalties
- Article 10. Long-Term Care Insurance
- Article 12. HIV/AIDS: Prohibited and Required Practices
- Article 14. Insurance Holding Company
- Article 16. Credit for Reinsurance
- Article 17. Examinations
- Article 22. Military Personnel

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Jon Savary

Jon Savary
Deputy Director
Arizona Department of Insurance and Financial Institutions, Insurance Division

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 7. Licensing Provisions and Procedures

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 41-1073

2. The objective of each rule:

Rule	Objective
R20-6-708	Licensing Time-frames. The purpose and objective of this rule is to establish definitions for the Article and to set forth the requirements for the administrative completeness and the substantive review time frames and requirements for compliance with those time-frames.
Table A	Licensing Time-frames Table. This table lists licenses issued by the Insurance Division of the Department and the time-frames for an applicant to obtain those licenses.

3. Are the rules effective in achieving their objectives? **Yes _X__ No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X__ No ___**

5. Are the rules enforced as written? **Yes _X__ No ___**

6. Are the rules clear, concise, and understandable? **Yes _X__ No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it recently promulgated (29 A.A.R. 612, February 24, 2023).

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?

Previous Course of Action (2018):

The Department should review the rule, R20-6-708 and eliminate any provisions that are duplicative of the requirements of Title 41 which already apply to the Department. The Department should revise Table A to correct any inconsistent use of terms, incorrect statutory references and to reflect the current license types issued by the Department. No action is planned for the 2018 calendar year.

The Department plans to include this rulemaking in its 2020 Regulatory Agenda and will target an early second quarter date of April, 2020.

Response to Item 10:

The Department engaged in a rulemaking in 2022 to pursue the proposed course of action in its 2018 report.

Notice of Rulemaking Docket Opening: 28 A.A.R. 3508, November 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3483, November 11, 2022

Notice of Final Rulemaking: 29 A.A.R. 612, February 24, 2023

The effective date of the Department's revisions is April 10, 2023.

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 rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the revisions to the rule and table clarify what time-frames an applicant can expect when applying for a license with the Department.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No __

Not applicable.

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 Department adopted Section R20-6-708 (1980) and Table A (1999) prior to July 29, 2010.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 8. Prohibited Practices, Penalties

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-461(C)

2. The objective of each rule:

Rule	Objective
R20-6-801	Unfair Claim Settlement Practices. The objective of R20-6-801 is to set forth the minimum standards for the investigation and disposition of claims arising under specified policies issued under ARS Title 20. The various provisions of this rule are intended to define procedures and practices that constitute unfair claims practices. This rule is a modified version of a National Association of Insurance Commissioners (NAIC) Model Regulation. This rule has a correlate statute: ARS § 20-461, Unfair Claims Settlement Practices.

3. Are the rules effective in achieving their objectives? **Yes _X__ No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X__ No ___**

5. Are the rules enforced as written? **Yes _X__ No ___**

6. Are the rules clear, concise, and understandable? **Yes _X__ No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any significant economic impact in the last five-year period. No economic impact statement is available from 1982 when the rule was initially promulgated. However, the impact of the rule

is to allow the Department to carry out its mandate regarding investigations and disposition of claims arising out of policies issued under State law. The rule addresses wrong-doing and protects claimants by imposing standards on insurers for fair investigation and disposition of claims. The rule works in conjunction with A.R.S. § 20-461.

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?

Previous Course of Action (2018):

In its 2013 report, the Department proposed to revise R20-6-801 to comply with current rule writing standards. The Department has not prioritized this rulemaking due to a lack of resources to perform rule writing tasks. No action is planned for the 2018 calendar year. The Department plans to include this rulemaking on its 2019 Regulatory Agenda and will target a third quarter date of August, 2019.

Response to Item 10:

The Department has placed this rule on its 2023 Regulatory Agenda for the Insurance Division. On March 1, 2023, the Department made a request to the Office of the Governor pursuant to A.R.S. § 41-1039(A) for written permission to open a Docket and publish a Notice of Proposed Rulemaking on this rule.

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' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the rule augment's the Department's Unfair Claim Settlements Law found at A.R.S. § 20-461 and fulfills the mandate of the Legislature to follow, to the extent appropriate, the national association of insurance commissioners unfair claims settlement practices model regulation. A.R.S. § 20-461(C).

12. Are the rules more stringent than corresponding federal laws? Yes ___ No __

Not applicable.

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 Department adopted Section R20-6-801 in 1982. The rule augments the Arizona Unfair Claim

Settlements Law (A.R.S. § 20-461). It does not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

If the Governor's Office grants permission to publish the rulemaking, the Department proposes to complete the rulemaking by July, 2023.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 10. Long-Term Care Insurance

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-1691.02

2. The objective of each rule:

Rule	Objective
R20-6-1001	**Applicability and Scope.** The objective of this rule is to define the products and issuers to whom the regulations apply. The correlate statute is ARS § 20-1691.01.
R20-6-1002	**Definitions.** This rule establishes definitions for terms used in Article 10. The correlate statute to this rule is ARS § 20-1691.
R20-6-1003	**Policy Terms.** This rule sets forth terms that are prohibited from use in long-term care policies unless the term is specifically defined in the policy and contains the requirements specified in the listed definition for the term. This rule also sets forth terms that are required for inclusion in a long-term care policy.
R20-6-1004	**Required Policy Provisions.** This rule establishes provisions that must be present in each long-term care policy. This rule also addresses premium increases, electronic enrollment for group policies and minimum standards for home health and community care benefits. The correlate statute is ARS § 20-1691.03.
R20-6-1005	**Unintentional Lapse.** This rule establishes procedures in the event of an unintentional lapse by the insured and the requirement for a reinstatement provision.
R20-6-1006	**Inflation Protection.** This rule establishes that an inflation increase option be offered on all long-term care policies except those that are part of life insurance policies. This rule also requires that a graphic comparison of the policy benefit levels with and without inflation increase be included with the outline of coverage.
R20-6-1007	**Required Disclosure Provisions.** This rule establishes required disclosure provisions in long-term care policies including disclosure of tax consequences to the insured.
R20-6-1008	**Required Disclosure of Rating Practices to Consumers.** This rule establishes the information that an insurer must provide at the time of application, enrollment or delivery

	of the policy and prescribes the forms to be used. This rule also establishes when an insured must be notified of a premium rate increase.
R20-6-1009	**Initial Filing Requirements.** This rule defines the requirements for an actuarial certification and actuarial memorandum due at the time an insurer files a policy form.
R20-6-1010	**Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements.** This rule establishes requirements for application forms and addresses requirements for solicitations, and replacement of policies. This rule also prohibits a preexisting exclusion in replacement policies and establishes reporting requirements and rate certification requirements.
R20-6-1011	**Prohibition Against Post-claims Underwriting.** This rule prohibits post-claims underwriting, establishes the disclosures to be included on application forms and long-term care insurance policies and that a copy of the completed application be delivered to the insured no later than at the time of policy delivery. This rule also establishes that insurers submit a long-term care rescission report to the Department each year.
R20-6-1012	**Reserve Standards.** This rule establishes reserve standards for long-term care insurance policies and riders.
R20-6-1013	**Loss Ratio.** This rule establishes loss ratio standards for long-term care insurance policies issued prior to May 10, 2005.
R20-6-1014	**Premium Rate Schedule Increases.** This rule applies to long-term care policies and certificates issued after May 10, 2005 and before November 10, 2017. This rule sets requirements for premium rate schedule increases.
R20-6-1015	**Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings.** This rule applies to long-term policies or certificates issued after November 10, 2017. This rule sets requirements for premium rate schedule increases. This rule includes a different formula for determining premium rate schedule increases which takes into consideration the accumulated value of historic expected claims.
R20-6-1016	**Filing Requirements for Group Policies.** This rule establishes form filing requirements for group long-term care policies for out-of-state policies and for associations.
R20-6-1017	**Standards for Marketing.** This rule establishes long-term care insurance marketing standards and prohibitions.
R20-6-1018	**Suitability.** This rule contains suitability standards for the purchase of long-term care insurance.

R20-6-1019	**Nonforfeiture Benefit Requirement.** This rule establishes the requirements an insurer must meet in order to offer a nonforfeiture benefit including contingent benefit upon lapse. The correlate statute is ARS § 20-1691.11.
R20-6-1020	**Standards for Benefit Triggers.** This rule contains the requirements for benefit triggers.
R20-6-1021	**Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts.** This rule contains the requirements for additional benefit triggers for qualified long-term care insurance contracts. Qualified long-term care insurance contracts are defined at ARS § 20-1691(13).
R20-6-1022	**Standard Format Outline of Coverage.** This rule contains the standard format for the outline of coverage required by ARS § 20-1691.06.
R20-6-1023	**Requirement to Deliver Shopper's Guide.** This rule contains the requirement for delivery of a director-approved shopper's guide to prospective purchasers of long-term care insurance.
R20-6-1024	**Availability of New Health Care Services or Providers.** This rule requires insurers to notify policyholders of the availability of new long-term care policies that provide coverage for new long-term care services or providers not previously available and the methods for making the new coverage available.
R20-6-1025	**Right to Reduce Coverage and Lower Premiums.** This rule requires every long-term care insurance policy to include a provision that allows the policyholder to lower premiums by reducing coverage. This rule applies to policies written after November 10, 2017.
R20-6-1026	**Instructions for Appendices.** This rule clarifies that information designated as a "Drafting Instruction" is not required to be included as part of a form.
Appendix A	**Long-term Care Insurance Personal Worksheet.** This worksheet is intended as an aid to help potential insureds decide about whether to purchase a particular policy. Required by R20-6-1008 - Required Disclosure of Rating Practices to Consumers, subsection (F) and R20-6-1018 – Suitability, subsection (D).
Appendix B	**Long-term Care Insurance Potential Race [sic] Increase Disclosure Form.** This form provides information to an applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase. Required by R20-6-1008 - Required Disclosure of Rating Practices to Consumers, subsection (F).
Appendix C	**Notice to Applicant Regarding Replacement of Individual Health or Long-term Care Insurance.** This notice informs a consumer about the factors to be considered when replacing an individual health or long-term care insurance existing policy. Required by R20-6-1010 - Requirements for Application Forms and Replacement Coverage;

	Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements, subsections (D) and (E). Insurers can opt to present either Appendix C or D to a consumer.
Appendix D	**Notice to Applicant Regarding Replacement of Health or Long-term Care Insurance.** This notice informs a consumer about the factors to be considered when replacing an individual health or long-term care insurance existing policy. Required by R20-6-1010 - Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements, subsections (D) and (E). Insurers can opt to present either Appendix C or D to a consumer.
Appendix E	**Long-Term Care Insurance Replacement and Lapse Reporting Form.** Department form for an insurer to report, on a statewide basis, information regarding long-term care insurance policy replacements and lapses. Required by R20-6-1010 - Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements, subsection (I)(2).
Appendix F	**Long-term Care Insurance Claims Denial Reporting Form.** Department form for an insurer to report all long-term care claim denials under in-force long-term care insurance policies. Required by R20-6-1010 - Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements, subsection (I)(2).
Appendix G	**Rescission Reporting From for Long-term Policies.** Department form for an insurer to report all rescissions of long-term care insurance policies or certificates. Required by R20-6-1011 - Prohibition Against Post-claims Underwriting, subsection (E).
Appendix H	**Things You Should Know Before You Buy Long-term Care Insurance.** This notice informs a consumer about things they should know before purchasing long-term care insurance. Required by R20-6-1018 – Suitability, subsection (I) in addition to Appendix A.
Appendix I	**Long-term Care Insurance Suitability Letter.** This form letter is from an insurer to an applicant regarding the personal worksheet completed by the consumer. Required by R20-6-1018 – Suitability, subsection (J).
Appendix J	**Long-term Care Insurance Outline of Coverage.** This report by an insurer informs a consumer about important features of their policy. Referenced by R20-6-1007 - Required Disclosure Provisions, subsection (E) and required by R20-6-1022 - Standard Format Outline of Coverage, subsection (C).

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X__ No ___**

5. **Are the rules enforced as written?** **Yes _X__ No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes _X__ No __**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
Genworth Life Insurance Company ("Genworth")	On February 1, 2021, Genworth filed a Petition with the Department pursuant to A.R.S. 41-1033(A) requesting that the Department immediately cease and permanently discontinue its practice of using what it calls the "Fictional Premium Approach" and for R20-6-1013 to be repealed in the event that subsection (C) of that Section requires or permits the application of the Fictional Premium Approach.	The Department rejected Genworth's Petition finding that it had properly promulgated the rule and that the rulemaking was authorized. Genworth appealed the Department's rejection to the Council pursuant to A.R.S. § 41-1033(E) but subsequently withdrew its appeal.

8. **Economic, small business, and consumer impact comparisons:**

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for this rulemaking.

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?**

Previous Course of Action (2018):

Because the rules were updated in 2017, the Department has no plans to amend this Article in the next five years unless an error is discovered that would require a rulemaking.

Response to Item 10:

The Department has discovered an error in the title of Appendix B which should read: "Long-term Care Insurance Potential Rate Increase Disclosure Form."

As of the submission of this report, the Department has prepared a Notice of Docket Opening and Notice of Proposed Rulemaking which it has submitted to the Governor's Office to obtain permission to publish pursuant to A.R.S. § 41-1039.

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' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the Article substantially adopts the current National Association of Insurance Commissioners (NAIC) Model Regulation on Long-Term Care Insurance. The NAIC Model Regulation is promulgated with input from long-term care insurers.

12. Are the rules more stringent than corresponding federal laws? Yes ___No __

Not applicable.

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 in this Article were initially adopted in 1992. This article addresses long-term care insurance policies and does not address any regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department updated most of the rules and appendices in this Article in 2017 which substantially reflect the current NAIC Model Regulation. However, it recently discovered that the Disclosure Statement contained in Appendix A differs slightly from the language of the Model Regulation. Because the regulated community does not appear to have any issues with the errant language, and because the language in the current disclosure is not lacking consumer protection, the Department has no current plans to adopt the language.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 12. HIV/AIDS: Prohibited and Required Practices

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-448.01(J)

2. The objective of each rule:

Rule	Objective
R20-6-1201	**Definitions.** This rule establishes the definitions used in this Article.
R20-6-1202	**Applications for Insurance.** This rule establishes the requirements and limitations on questions related to HIV/AIDS in applications for life and health insurance.
R20-6-1203	**Testing for HIV; Consent Form.** This rule establishes requirements and limitations on an insurer's ability to test for HIV/AIDS in connection with an application for life or health insurance, including a requirement for written consent.
R20-6-1204	**Release of Confidential HIV-related Information; Release Form.** This rule establishes the confidentiality requirements for the treatment of HIV-related information.
R20-6-1205	**Benefits; Prohibited Practices.** This rule establishes that life and health insurance plans shall provide the same benefits for HIV, AIDS, and AIDS-related conditions as they provide for all other diseases.

3. Are the rules effective in achieving their objectives? **Yes _X__ No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X__ No ___**

5. Are the rules enforced as written? **Yes _X__ No ___**

6. Are the rules clear, concise, and understandable? **Yes _X__ No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any significant economic impact upon insurers, small businesses or consumers as a result of the adoption of these rules in 1994.

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?

In the 2018 five-year-review report, the Department did not recommend any course of action for this Article.

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' benefits outweigh, within this State, the costs of the rule and impose 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 only identified impact has been to the Department's staff time to fulfill its mandate under the rules, including reviewing the confidentiality documents required to be filed with the Department.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No __

Not applicable.

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 Department adopted this Article in 1994.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 14. Insurance Holding Company

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-481.22

2. The objective of each rule:

Rule	Objective
R20-6-1401	**Definitions.** This rule establishes definitions applicable to filings that are prescribed by the Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) and Article 14 of the Department's rules.
R20-6-1402	**Acquisition of Control – Statement Filing.** This rule and Appendices A and E prescribe the contents of a tender offer statement in a uniform format to enable the Director to evaluate acquisition of control applications pursuant to A.R.S. § 20-481.02.
R20-6-1403	**Annual Registration of Insurers – Statement Filing.** This rule and Appendix B prescribe the contents of the registration statement that an insurer which is part of a holding company must file pursuant to A.R.S. § 20-481.09.
R20-6-1404	**Summary of Registration – Statement Filing.** This rule and Appendix C prescribe the contents of the summary of registration statement that an insurer which is part of a holding company must file pursuant to A.R.S. § 20-481.09.
R20-6-1405	**Alternative and Consolidated Registration.** This rule permits affiliated insurers that are members of a common insurance holding company system to file consolidated registration statements.
R20-6-1406	**Disclaimers and Termination of Registration.** This rule establishes the required contents of a disclaimer of affiliation or a termination of registration filing.
R20-6-1407	**Transactions Subject to Prior Notices – Notice Filing.** This rule and Appendix D prescribe the contents of the notice of a proposed transaction between an insurer and an affiliate that must be filed pursuant to A.R.S. § 20-481.12.
R20-6-1408	**Enterprise Risk Report.** This rule and Appendix F prescribe the filing of an enterprise risk report pursuant to A.R.S. § 20-481.10.

R20-6-1409	**Extraordinary Dividends and Other Distributions.** This rule establishes the contents that are required for prior approval requests for payment of extraordinary distributions to shareholders and the contents required for disclosure of payment of ordinary distributions to shareholders.
R20-6-1410	**Adequacy of Surplus.** This rule establishes additional factors the Director may consider in addition to A.R.S. §§ 20-481.01 and 20-481.24 when determining the adequacy of surplus.
Appendix A	**Form A – Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer.** This statement provides information to the Department about a proposed acquisition of control of or merger with a domestic insurer. Required by R20-6-1402 – Acquisition of Control – Statement Filing.
Appendix B	**Form B – Insurance Holding Company System Annual Registration Statement.** This annual report provides information to the Department about insurance holding company systems. Required by R20-6-1403 – Annual Registration of Insurers – Statement Filing.
Appendix C	**Form C – Summary of Registration Statement.** This report alerts the Department to changes from the holding company's prior annual registration statement. Required by R20-6-1404.
Appendix D	**Form D – Prior Notice of a Transaction.** This notice informs the Department about proposed transactions within an insurance holding company system. Required by R20-6-1407 – Transactions Subject to Prior Notice – Notice Filing.
Appendix E	**Form E – Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing Business in this State or by a Domestic Insurer.** This notification provides information to the Department regarding a proposed merger or acquisition. Required by R20-6-1402 – Acquisition of Control – Statement Filing.
Appendix F	**Form F – Enterprise Risk Report.** This report provides information to the Department about areas that could produce enterprise risk within an insurance holding company system. Required by R20-6-1408 – Enterprise Risk Report.
Appendix G	**Instructions on Forms A, B, C, D, E and F.** Instructions on completing the appendices.

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X__ No ___**

5. **Are the rules enforced as written?** **Yes _X__ No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ____ No _X_**

8. **Economic, small business, and consumer impact comparisons:**

The Department revised this Article to comply with changes made to the Arizona Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) in 2015. Because the Legislature exempted the Department from Title 41 for the rulemaking, the Department did not prepare an Economic Impact Statement.

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the original rulemaking. This Article does not impact small businesses.

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?**

Because the Department updated the Article in 2015, the Department did not recommend any amendments in its 2018 five-year review report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the Article substantially adopts the current National Association of Insurance Commissioners (NAIC) Model Regulation on Holding Companies. The NAIC Model Regulation is promulgated with input from insurers.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___No __**

Not applicable.

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 in this Article were initially adopted in 1993. This article addresses financial

requirements for insurance holding company systems and does not address any regulatory permit, license, or agency authorization.

14. Proposed course of action

Recently, the Legislature enacted amendments to the Arizona Holding Company Act (Laws 2023, Ch. 45) which adopt changes made by the National Association of Insurance Commissioners (NAIC) to the Holding Company Model Law. In response, the Department prepared a rulemaking to adopt correlative changes to this Article from the NAIC Holding Company Model Regulation. The Department has submitted a request to the Governor's Office for permission to open a Docket and to publish a Notice of Proposed Rulemaking.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 16. Credit for Reinsurance

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-3604

2. The objective of each rule:

Rule	Objective
	Part A. Credit for Reinsurance
R20-6-A1601	**Credit for Reinsurance – Reinsurer Licensed in Arizona.** This rule requires the Director to allow credit for reinsurance when the assuming insurer is licensed in Arizona on any date when the credit is claimed pursuant to A.R.S. § 20-3602(C).
R20-6-A1602	**Credit for Reinsurance – Accredited Reinsurers.** This rule requires the Director to allow credit for reinsurance when the assuming insurer is accredited by the Director as a reinsurer pursuant to A.R.S. § 20-3602(D).
R20-6-A1603	**Credit for Reinsurance – Reinsurer Domiciled in Another State.** This rule requires the Director to allow credit for reinsurance when the assuming insurer is domiciled in a state with substantially similar standards pursuant to A.R.S. § 20-3602(E).
R20-6-A1604	**Credit for Reinsurance – Reinsurers Maintaining Trust Funds.** This rule requires the Director to allow credit for reinsurance when the assuming insurer maintains a trust fund pursuant to A.R.S. § 20-3602(F).
R20-6-A1605	**Credit for Reinsurance – Certified Reinsurers.** This rule requires the Director to allow credit for reinsurance when the assuming insurer has been certified as a reinsurer pursuant to A.R.S. § 20-3602(G).
R20-6-A1606	**Credit for Reinsurance – Reciprocal Jurisdictions; Credit for Reinsurance Required by Law.** This rule requires the Director to allow credit for reinsurance when the assuming insurer is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction pursuant to A.R.S. §§ 20-3602(H), (I), (J), (K), (L) and (R). This rule also requires the Director to allow credit for reinsurance when not meeting the

	requirements of A.R.S. §§ 20-3602(C) through (G) but only as to certain risks pursuant to A.R.S. § 20-3602(M).
R20-6-A1607	**Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections R20-6-A1601 through R20-6-A1606.** This rule requires the Director to allow a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of A.R.S. § 20-3602 pursuant to A.R.S. § 20-3603.
R20-6-A1608	**Trust Agreements Qualified under Section R20-6-A1607; Letters of Credit Qualified under R20-6-A1607**. This rule establishes the required conditions of a trust account allowed under Section R20-6-A1607. This rule also establishes the required conditions of a letter of credit allowed under Section R20-6-A1607.
R20-6-A1609	**Other Security; Reinsurance Contract; Contracts Affected.** This rule allows a ceding insurer to take credit for unencumbered funds withheld by the ceding insurer under its exclusive control. The rule also establishes required provisions for a qualifying reinsurance agreement. And this rule establishes that all new and renewal reinsurance transactions must conform to the requirements of the Article to receive credit.
Exhibit A	**Form AR-1, Certificate of Assuming Insurer.** This form constitutes an agreement that an assuming insurer will comply with certain requirements. Required by Sections R20-6-A1602 (Credit for Reinsurance – Accredited Reinsurers), R20-6-A1603 (Credit for Reinsurance – Reinsurer Domiciled in Another State) and R20-6-A1604 (Credit for Reinsurance – Reinsurer Maintaining Trust Funds).
Exhibit B	**Form CR-1, Certificate of Certified Reinsurer.** This form constitutes an agreement that a certified reinsurer will comply with certain requirements. Required by Section R20-6-A1605 (Credit for Reinsurance – Certified Reinsurers).
Exhibit C	**Form CR-F Instructions.** This form contains instructions for an insurer to create a spreadsheet report required by the Department under Section R20-6-A1605 (Credit for Reinsurance – Certified Reinsurers).
Exhibit D	**Form CR-S Instructions.** This form contains instructions for an insurer to create a spreadsheet report required by the Department under Section R20-6-A1605 (Credit for Reinsurance – Certified Reinsurers).
Exhibit E	**Form RJ-1, Certificate of Reinsurer Domiciled in a Reciprocal Jurisdiction.** This form constitutes an agreement that an assuming insurer domiciled in a reciprocal jurisdiction will comply with certain requirements. Required by Section R20-6-A1606 (Credit for Reinsurance – Reciprocal Jurisdictions; Credit for Reinsurance Required by Law).
	Part B. Term and Universal Life Insurance Reserve Financing

R20-6-B1601	**Applicability; Exemptions; Definitions; Severability; Prohibition Against Avoidance.** This rule identifies which reinsurance treaties are subject to Part A and Part B of the Article, what types of reinsurance arrangements are exempt from Part B, definitions for Part B, and a prohibition to insurers against avoidance of the application of Part B.
R20-6-B1602	**The Actuarial Method.** This rule establishes that the actuarial method required to establish the required level of primary security for each reinsurance treaty subject to Part B shall be VM-20, applied according to the provisions of the rule.
R20-6-B1603	**Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.** This rule establishes the requirements to be met, in addition to other requirements imposed by law or rule, to allow credit for reinsurance for ceded liabilities pertaining to certain covered policies; the requirements on inception date; and an opportunity for remediation before the due date of the quarterly or annual statement.

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X__ No ___**

5. **Are the rules enforced as written?** **Yes _X__ No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___No _X_**

8. **Economic, small business, and consumer impact comparison:**

The Department engaged in a rulemaking of this Article which became effective on April 9, 2022 (28 A.A.R. 493, March 4, 2022). At that time the Department submitted an Economic Impact Statement. The rulemaking does not apply to small businesses. It only impacts insurers seeking to claim a credit for insurance they cede to qualified reinsurers. The Department is not aware of any impact to consumers.

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?**

Previous Course of Action (2018):

In the 2018 five-year-review report, the Department recommended no changes.

Response to Item 10:

In response to statutory changes made to Title 20, A.R.S. in 2021 by the Legislature (Laws 2021, Ch. 357) and changes made by the National Association of Insurance Commissioners to the correlate Model Regulation, the Department engaged in a rulemaking in 2021:
Notice of Rulemaking Docket Opening: 27 A.A.R. 1497, September 17, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 1465, September 17, 2021
Notice of Final Rulemaking: 28 A.A.R. 493, March 4, 2022
The effective date of the Department's revisions is April 9, 2022.

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' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the revisions to the Article expand qualifying reinsurers to those in reciprocal jurisdictions.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

In 2017, the U.S. Department of Treasury and the Office of the U.S. Trade Representative of the European Union entered into a memorandum of understanding to allow U.S. insurers to enter into reinsurance agreements with European reinsurers (the "EU Covered Agreement"). As a result, the National Association of Insurance Commissioners (NAIC) amended its Model Law and Regulation to reflect the provisions of the EU Covered Agreement. The rules, as amended in 2022, adopted those changes.
The Covered Agreement does not limit the ability of any U.S. authorities to enforce federal laws (the Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Home Owners' Loan Act (12 U.S.C. 1461 et seq.), the International Banking Act (12 U.S.C. 3101 et seq.), the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.)) or other related laws or regulations.
The rules are not more stringent than corresponding 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:

Not applicable. The Department adopted the original rules in this Article prior to July 29, 2010. Although the Department adopted Part B after July 29, 2010, it does not address the issuance of a regulatory permit, license or

agency authorization. Instead it addresses reinsurance transactions.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 17. Examinations

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-156

2. The objective of each rule:

Rule	Objective
R20-6-1701	**Definitions.** This rule establishes definitions for "company," "examination," and "examiner" which support the remainder of Article 17.
R20-6-1702	**Authority, Scope, and Scheduling of Examinations.** This rule establishes who shall examine the financial condition of a company, how often a company shall be examined and under what conditions the Director may accept an examination report prepared by another state in lieu of an examination performed under Article 17.
R20-6-1703	**Conduct of Examinations.** This rule establishes how examiners are appointed to perform examinations, how examiners are instructed as to the scope of the examination, the Director's authority to terminate or suspend examinations, and the Director's authority to disclose the content of examination reports.
R20-6-1704	**Examination Reports.** This rule establishes the information to be contained in examination reports, time guidelines for an examiner to submit an examination report to the Department, when the company must submit a response to the examination report to the Department, when the Director must review the report, and the Director's option to either file or reject the report.

3. Are the rules effective in achieving their objectives? **Yes _X__** **No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X__** **No ___**

5. Are the rules enforced as written? **Yes _X__** **No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No _X_**

8. **Economic, small business, and consumer impact comparison:**

These rules are procedural in nature and do not impact the economy. Many of the impacts on insurers are a result of statutory requirements rather than the rules. The economic impact to the insurers and the Department depends on the complexity of the examination and the seriousness of the issues raised by the examination. The Department incurs costs for staff to engage contract examiners to conduct its examinations, to provide continuous oversight and direction to contract examiners during the course of an examination, and to review final deliverables provided by the contract examiners such as Draft Reports of Examination, Letters to Management, Management Representation Letters, and Summary Review Memorandums. The rules allow the Department to carry out its mandate to examine insurers.

Insurers are not small businesses. And the Department does not anticipate any impact to consumers.

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?**

In 2018, the Department recommended that the rules remain unchanged. The Department has not conducted any rulemaking involving this Article since the last 5-year review.

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' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___ No __**

Not applicable.

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 Department adopted this Article prior to July 29, 2010.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions –

Insurance Division

Article 22. Military Personnel

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. §§ 20-106, 20-142

2. The objective of each rule:

Rule	Objective
R20-6-2201	**Military Sales Practices.** This Section incorporates the entire 2007 National Association of Insurance Commissioners' (NAIC) Military Sales Practices Model Regulation ("Model Regulation"). After passage of the Military Personnel Financial Protection Act, Congress required that the states, through the NAIC, work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on military installations. States were then required to report to Congress their progress on adoption of the NAIC standards.

3. Are the rules effective in achieving their objectives? **Yes _X__ No ___**

4. Are the rules consistent with other rules and statutes? **Yes _X__ No ___**

5. Are the rules enforced as written? **Yes _X__ No ___**

6. Are the rules clear, concise, and understandable? **Yes _X__ No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___No _X_**

8. Economic, small business, and consumer impact comparison:

The Department engaged in a rulemaking of this Article which became effective on May 7, 2022 (28 A.A.R. 687, April 1, 2022). At that time the Department submitted an Economic Impact Statement. The rulemaking does not

apply to small businesses. It only impacts insurers seeking to solicit or sell a life insurance product, including annuities, to an active duty service member. The Department is not aware of any impact to consumers who are not active duty service members.

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?

Previous Course of Action (2018):

The Department should make the following minor changes to the rule:

a. Correct the reference to the Model Regulation from June 2007 to July 2007;
b. Correct the address of the Department after the Department relocates in June, 2018; and
c. Correct the address for the NAIC Publications Department.

The Department has no plans to make these changes during calendar year 2018.

The Department plans to include this rulemaking in its 2019 Regulatory Agenda with a first quarter target date of March, 2019.

Response to Item 10:

The Department made the decision to, instead of incorporating the National Association of Insurance Commissioners' Model Regulation ("Model Regulation") by reference, recite the entire Model Regulation into the Article which eliminated the changes suggested in the Department's 2018 five-year review report.

The Model Regulation has not changed since 2007.

Accordingly, the Department engaged in a rulemaking in 2021:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1544, September 24, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1523, September 24, 2021

Notice of Final Rulemaking: 28 A.A.R. 687, April 1, 2022

The effective date of the Department's revisions is May 7, 2022.

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 rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the revisions to the Article are not revisions to the original rulemaking. The replacement of an incorporation by reference of the Model Regulation with the actual language of the model

regulation into the Article makes access to the regulation easier for both the regulated parties and consumers. The Department submitted an Economic Impact Statement with its Notice of Final Rulemaking in 2022.

12. Are the rules more stringent than corresponding federal laws? Yes ___No __

Not applicable. The rule references various Federal laws and tracks or incorporates relevant Department of Defense solicitation regulations. The rule is not more stringent than corresponding 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:

Not applicable. The Department adopted the original rules in this Article prior to July 29, 2010. In addition, the rule does not address the issuance of a regulatory permit, license or agency authorization. Instead it addresses selling or soliciting life insurance products to military personnel.

14. Proposed course of action

The Department proposes no action on this Article at this time.

invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

K. Effective date. This rule shall become effective upon filing with the Secretary of State and shall apply to all individual disability policy form and rate filings submitted on and after said date.

Historical Note

Adopted effective July 14, 1981 (Supp. 81-1). R20-6-607 recodified from R4-14-607 (Supp. 95-1). Amended by final rulemaking at 24 A.A.R. 103, effective February 17, 2018 (Supp. 17-4).

ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES

R20-6-701. Repealed

Historical Note

Former General Rule 56-1; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-701 recodified from R4-14-701 (Supp. 95-1).

R20-6-702. Expired

Historical Note

Former General Rule 56-2. R20-6-702 recodified from R4-14-702 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-703. Expired

Historical Note

Former General Rule 61-6. R20-6-703 recodified from R4-14-703 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-704. Expired

Historical Note

Former General Rule 6-19. R20-6-704 recodified from R4-14-704 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-705. Expired

Historical Note

Former General Rule 66-13. R20-6-705 recodified from R4-14-705 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-706. Expired

Historical Note

Former General Rule 69-15; Repealed effective February 22, 1977 (Supp. 77-1). New Section R4-14-706 adopted effective November 5, 1980 (Supp. 80-5). R20-6-706 recodified from R4-14-706 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-707. Expired

Historical Note

Former General Rule 69-18; Amended effective March 17, 1981 (Supp. 81-2). R20-6-707 recodified from R4-14-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-708. Licensing Time-frames

A. Definitions. The definitions in A.R.S. § 41-1072 and the following definitions apply to this Article.

1. "Department" means the Insurance Division of the Department of Insurance and Financial Institutions.
2. "License" has the meaning prescribed in A.R.S. § 41-1001(13).

B. The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review.

C. Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing whether the application is complete or deficient.

1. If the application is deficient, the Department shall issue a notice of deficiency to the applicant which shall include a comprehensive list of the specific deficiencies. If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives an adequate response from the applicant.
2. The Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
3. If an applicant does not adequately respond to each specified deficiency in a notice of deficiency issued under subsection (C)(1) within 60 days after the date of a notice of deficiency, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.

D. Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.

1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives an adequate response from the applicant.
2. The Department is not precluded from issuing supplemental requests by mutual agreement for additional information, during the substantive review.
3. If an applicant does not adequately respond to each component or item of information required in a comprehensive written request or a supplemental request for additional information within 60 days after the date of a comprehensive written request, or within 60 days after the date of the supplemental request for additional information, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.

E. Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide to the applicant a written notice that complies with the provisions of A.R.S. § 41-1076.

F. In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.

Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C. (Supp. 76-1). Repealed effective January 8, 1980 (Supp. 80-1). R20-6-708 recodified from R4-14-708 (Supp. 95-1). Amended effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 29 A.A.R. 612 (February 24, 2023), effective April 10, 2023 (Supp. 23-1).

Table A. Licensing Time-frames

License	Relevant A.R.S.	Administrative Completeness	Substantive Review	Overall Time-frame
Insurance				
Captive Insurer	§ 20-1098.01	150	30*	180
Certificate of Authority	§ 20-216	210	90*	300
Certificate of Exemption	§ 20-401.05	92	30	122
Health Care Services Organization	§ 20-1052	210	90	300
Hospital, Medical, Dental, and Optometric Service Corporation	§ 20-825	210	90	300
Life Care Provider Permit	§ 20-1803	60*	30*	90
Life Settlement Provider	§ 20-3202	60	60	120
Mechanical Reimbursement Reinsurer	§ 20-1096.04	210	90	300
Prepaid Dental Plan Organization	§ 20-1004	210	90	300
Prepaid Legal Insurer*	§ 20-1097.02	45	15	60*
Qualifying Surplus Lines Insurer	§ 20-413	45	30	75
Reinsurance Intermediary	§ 20-486.01	120	60	180
Insurance Professional				
Adjuster	§ 20-321.01	60	60	120
Bail Bond Agent	§ 20-340.01	60	60	120
Certified Application Counselor	§ 20-336.04	60	60	120
Life Settlement Broker	§ 20-3202	60	60	120
Limited Travel Agent	§ 20-3553	60	60	120
Navigator	§ 20-336.03	60	60	120
Nonresident Insurance Producer (Agent/Broker)	§ 20-287	60	60	120
Portable Electronics Insurance Adjuster	§ 20-321.01	60	60	120
Portable Electronics Insurance Vendor	§ 20-1693.01	60	60	120
Rental Car Agent	§ 20-331	60	60	120
Resident Insurance Producer (Agent/Broker)	§ 20-285	60	60	120
Risk Management Consultant	§ 20-331.01	60	60	120
Self-service Storage Agents	§ 20-332	60	60	120
Surplus Lines Broker	§ 20-411	60	60	120
Temporary License	§ 20-294	60	60	120
Title Insurance Agent	§ 20-1580	60	60	120
Variable Contract Agent	§ 20-2662	60	60	120
Other				
Rating Organization*	§ 20-361	30	30	60*
Rate Service Organization	§ 20-389	60	60	120
Third Party Administrator	§ 20-485.12	45	45	90
Senior Residential Entrance Fee Contracts: Provider Registration	§ 44-6952	60	60	120
Service Company	§ 20-1095.01	30	30	60
Utilization Review Agent	§ 20-2505	30	90	120
Risk Retention Groups				
Risk Retention Group (Foreign)	§ 20-2403	60	0	60
Risk Purchasing Groups	§ 20-2407	30	30	60

* Statutory time-frames

Historical Note

Table A adopted effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4). Table A amended by final rulemaking at 29 A.A.R. 612 (February 24, 2023), effective April 10, 2023 (Supp. 23-1).

R20-6-709. Repealed

Historical Note

Former General Rule 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-709 recodified from R4-14-709 (Supp. 95-1).

ARTICLE 8. PROHIBITED PRACTICES, PENALTIES

R20-6-801. Unfair Claims Settlement Practices

A. Applicability. This rule applies to all persons and to all insurance policies, insurance contracts and subscription contracts except policies of Worker's Compensation and title insurance. This rule is not exclusive, and other acts not herein specified, may also be deemed to be a violation of A.R.S. § 20-461, The Unfair Claims Settlement Practices Act.

B. Definitions

1. "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.
2. "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.
3. "Director" means the Director of Insurance of the State of Arizona.
4. "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency of loss covered by such policy or contract.
5. "Insurance policy or insurance contract" has the meaning of A.R.S. § 20-103.
6. "Insurer" has the meaning of A.R.S. § 20-106(C).
7. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
8. "Notification of claim" means any notification, whether in writing or other means, acceptable under the terms of any insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
9. "Person" has the meaning of A.R.S. § 20-105.
10. "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.
11. "Worker's compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.

C. File and record documentation. The insurer's claim files shall be subject to examination by the Director or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

D. Misrepresentation of policy provisions

1. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
2. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.
3. No insurer shall deny a claim on the basis that the claimant has failed to exhibit the damaged property to the insurer, unless the insurer has requested the claimant to exhibit the property and the claimant has refused without a sound basis therefor.
4. No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.
5. No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
6. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language that releases the insurer or its insured from its total liability.

E. Failure to acknowledge pertinent communications

1. Every insurer, upon receiving notification of a claim shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
2. Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry.
3. An appropriate reply shall be made within 10 working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.
4. Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within 10 working days of notification of a claim shall constitute compliance with subsection (E)(1).

F. Standards for prompt investigation of claims. Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless such investigation cannot reasonably be completed within such time.

G. Standards for prompt, fair and equitable settlements applicable to all insurers

1. Notice of acceptance of denial of claim.
   a. Within fifteen working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.
   b. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall also notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the inves-

tigation remains incomplete, the insurer shall, 45 days from the date of the initial notification and every 45 days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

c. Where there is a reasonable basis supported by specific information available for review by the Director for suspecting that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of subsections (G)(1)(a) and (b). Provided, however, that the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

2. If a claim is denied for reasons other than those described in subsections (G)(1)(a), and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.
3. Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others, except as may otherwise be provided by policy provisions.
4. Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's right. Such notice shall be given to first party claimants 30 days and to third party claimants 60 days before the date on which such time limit may expire.
5. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

H. Standards for prompt, fair and equitable settlements applicable to automobile insurance

1. When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:
   a. The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.
   b. The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:
      i. The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.
      ii. One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.
   c. When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections (H)(1)(a) and (b), the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.
2. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy or insurance contract.
3. Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.
4. Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.
5. If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.
6. When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.
7. When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.
8. The insurer shall not use as a basis for cash settlement with a first party claimant an amount which is less than the amount which the insurer would pay if the repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

I. Severability. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons and circumstances shall not be affected.

J. Effective date. This rule shall become effective 90 days from the date of filing with the Secretary of State.

Historical Note

Adopted effective January 12, 1982 (Supp. 81-5). R20-6-801 recodified from R4-14-801 (Supp. 95-1). The refer-

ence to subsections as "subparagraphs" in this Section has been updated to current Chapter style (Supp. 22-1).

R20-6-802. Emergency Expired

Historical Note

Emergency rule adopted effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule readopted without change effective September 5, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. R20-6-802 recodified from R4-14-802 (Supp. 95-1).

ARTICLE 9. TERMINATION OR DISSOLUTION

R20-6-901. Reserved

ARTICLE 10. LONG-TERM CARE INSURANCE

R20-6-1001. Applicability and Scope

Except as otherwise specifically provided, this Article applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care, delivered or issued for delivery in this state by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health care service organizations and all similar organizations.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1001 recodified from R4-14-1001 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1002. Definitions

The definitions in A.R.S. § 20-1691 and the following definitions apply in this Article.

A. "Benefit trigger," for purposes of a tax-qualified long-term care insurance contract, as defined in Section 7702B(b) of the Internal Revenue Code of 1968, as amended, "benefit trigger" shall include a determination by a licensed health care practitioner that an insured is a chronically ill individual.

B. "Exceptional increase" means only those rate increases that an insurer has filed as exceptional and that the Director determines the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state; or due to increased and unexpected utilization that affects the majority of insurers of similar products.

1. Except as provided in Sections R20-6-1014 and R20-6-1015, exceptional increases are subject to the same requirements as other premium rate schedule increases.
2. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase.
3. The Director may also determine whether there are any potential offsets to higher claims costs.

C. "Incidental," as used in R20-6-1014(L) and R20-6-1015(L), means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy, with value measured as of the date of issue.

D. "Licensed health care professional" means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.

E. "Long-term care benefit classification" means one of the following:

1. Institutional long-term care – benefits only;
2. Non-institutional long-term care – benefits only; or
3. Comprehensive long-term care benefits.

F. "Managed care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, use of specific provider networks, or a combination of these methods.

G. "Personal information" has the same meaning prescribed in A.R.S. § 20-2102(19).

H. "Privileged information" has the same meaning prescribed in A.R.S. § 20-2102(22).

I. "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

J. "Similar policy forms" means all long-term care insurance policies and certificates that are issued by a particular insurer and that have the same long-term care benefit classification as a policy form being reviewed.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1002 recodified from R4-14-1002 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1003. Policy Terms

A. A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

1. "Activities of daily living" means eating, toileting, transferring, bathing, dressing, or continence.
2. "Acute condition" means that an individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, to maintain the individual's health status.
3. "Adult day care" means a program of social and health-related services for six or more individuals, that is provided during the day in a community group setting, for the purpose of supporting frail, impaired, elderly, or other disabled adults who can benefit from the services and care in a setting outside the home.
4. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
5. "Bathing" means washing oneself by sponge bath, or in a tub or shower, and includes the act of getting in and out of the tub or shower.
6. "Chronically ill individual" has the meaning prescribed for this term by A.R.S. § 20-1691(3) and Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended.
   a. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:
      i. Being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to loss of functional capacity; or
      ii. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

b. The term "chronically ill individual" does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.

7. "Cognitive impairment" means a deficiency in a person's:
   a. Short or long-term memory;
   b. Orientation as to person, place, or time;
   c. Deductive or abstract reasoning; or
   d. Judgment as it relates to safety awareness.
8. "Continence" means the ability to maintain control of bowel and bladder function, or when unable to maintain control, the ability to perform associated personal hygiene, such as caring for a catheter or colostomy bag.
9. "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.
10. "Eating" means feeding oneself by getting food into the body from a receptacle such as a plate, cup, or table, or by a feeding tube or intravenously.
11. "Guaranteed renewable" means the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that the insurer may revise rates on a class basis.
12. "Hands-on assistance" means physical help to an individual who could not perform an activity of daily living without help from another individual, and includes minimal, moderate, or maximal help.
13. "Home health services" means the services described at A.R.S. § 36-151.
14. "Level premium" means that an insurer does not have any right to change the premium, even at renewal.
15. "Licensed health care practitioner" has the same meaning as A.R.S. § 20-1691(7).
16. "Maintenance or personal care services" has the same meaning as A.R.S. § 20-1691(10).
17. "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
18. "Noncancellable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally cancel or make any change in any provision of the insurance or in the premium rate.
19. "Personal care" means the provision of hands-on assistance to help an individual with activities of daily living in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
20. "Qualified long-term care services" has the meaning prescribed for this term under A.R.S. § 20-1691(14) and means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventative, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.
21. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing tasks associated with personal hygiene.
22. "Transferring" means moving into or out of a bed, chair, or wheelchair.

B. Any long-term care policy delivered or issued for delivery in this state shall include the following policy terms and provisions as specified in this subsection:

1. "Home care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
2. "Intermediate care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
3. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
4. "Skilled nursing care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is delivered.
5. Service providers, including "skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility" and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1003 recodified from R4-14-1003 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1004. Required Policy Provisions

A. Renewability

1. An individual long-term care insurance policy shall contain a renewability provision which shall be either "guaranteed renewable" or "noncancellable." The renewability provision shall be appropriately captioned, shall appear on the first page of the policy, and shall state that the coverage is guaranteed renewable or noncancellable. This requirement does not apply to a long-term care insurance policy that is part of or combined with a life insurance policy that does not contain a renewability provision and that reserves the right not to renew solely to the policyholder.
2. An insurer shall not use the terms "guaranteed renewable" and "noncancellable" in any individual long-term care insurance policy without further explanatory lan-

guage according to the disclosure requirements of this Article.

3. A qualified long-term care insurance policy shall have the guaranteed renewability provisions specified in Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended, in the policy.
4. A long-term care insurance policy or certificate shall include a statement that premium rates are subject to change, unless the policy does not afford the insurer the right to raise premiums.

B. Limitations and Exclusions

1. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."
2. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility not prohibited by A.R.S. §§ 20-1691.03 and 20-1691.05 shall describe the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."
3. A policy shall not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
   a. Preexisting conditions or disease;
   b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of the benefits on the basis of Alzheimer's Disease;
   c. Alcoholism and drug addiction;
   d. Illness, treatment or medical condition arising out of:
      i. War, declared or undeclared, or act of war;
      ii. Participation in a felony, riot or insurrection;
      iii. Service in the armed forces or auxiliary units;
      iv. Suicide, attempted suicide, or intentionally self-inflicted injury; or
      v. Aviation, if non-fare-paying passenger;
   e. Treatment provided in a government facility, unless otherwise required by law;
   f. Services for which benefits are available under Medicare or other governmental program, except Medicaid;
   g. Any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law;
   h. Services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
   i. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or
   j. In the case of a qualified long-term care insurance policy, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be reimbursable but for the application of a deductible or coinsurance amount;
4. Subsection (B) does not prohibit exclusions and limitations by type of provider or territorial limitations. No long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:
   a. When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or
   b. When the state other than the state of policy issue licenses, certifies or registers the provider under another name.
5. "State of policy issue" means the state in which the insurer issued the individual policy or certificate.

C. Extension of benefits. A long-term care insurance policy shall provide that termination of long-term care insurance is without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. An insurer may limit this extension of benefits period to the duration of the benefit period, if any, or to payment of the maximum benefits and the insurer may still apply any policy waiting period and all other applicable provisions of the policy.

D. Reinstatement. A long-term care insurance policy shall include a provision for reinstatement of coverage if a lapse occurs if the insurer receives proof that the insured was cognitively impaired or had a loss of functional capacity before expiration of the grace period in the policy. The option to reinstate shall be available to the insured for at least five months after the date of termination and shall allow for the collection of past due premiums, as appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for these conditions set forth in the original long-term care policy.

E. Continuation or conversion.

1. A group long-term care insurance policy shall provide covered individuals with a basis for continuation or conversion of coverage as specified in this subsection.
2. The policy shall include a provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, subject only to the continued timely payment of premiums when due. A group policy that restricts provision of benefits and services to, or has incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits and, in doing so, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.
3. The policy shall include a provision that an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuation of the group policy in its entirety or with respect to an insured class, who has been continuously insured under the group policy (and any group policy which it replaced) for at least six months immediately prior to termination, is entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.
4. A converted policy shall be an individual policy of long-term care insurance providing benefits identical to or ben-

efits that the Director determines to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity, and other plan elements.

5. An insurer may require an individual seeking a conversion policy to make a written application for the converted policy and pay the first premium due, if any, as directed by the insurer not later than 31 days after termination of coverage under the group policy. The insurer shall issue the converted policy effective on the day following the termination of coverage under the group policy. The converted policy shall be renewable annually.
6. Unless the group policy from which conversion is made replaced previous group coverage, the insurer shall calculate the premium for the converted policy on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
7. An insurer is required to provide continuation of coverage or issuance of a converted policy as provided in this subsection, unless:
   a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
   b. The terminating coverage is replaced not later than 31 days after termination, by group coverage that:
      i. Is effective on the day following the termination of coverage;
      ii. Provides benefits identical to or benefits the Director determines to be substantially equivalent to or in excess of those provided by the terminating coverage; and
      iii. Has a premium calculated in a manner consistent with the requirements of subsection (E)(6).
8. Notwithstanding any other provision of this Section, a converted policy that an insurer issues to an individual who at the time of conversion is covered by another long-term care insurance policy providing benefits on the basis of incurred expenses, may contain a provision that reduces benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. An insurer may include this provision in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in payable benefits.
9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.
10. Notwithstanding any other provision of this Section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, is entitled to continuation of coverage under the group policy if the qualifying relationship terminates by death or dissolution of marriage.

F. Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and
2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

G. Premium Increases.

1. An insurer shall not increase the premium charged to an insured because of:
   a. The increasing age of the insured at ages beyond 65, or
   b. The duration of coverage under the policy.
2. Purchase of additional coverage is not considered a premium rate increase, however, for the calculation required under R20-6-1019, an insurer shall add to and consider the portion of the premium attributable to the additional coverage as part of the initial annual premium.
3. A reduction in benefits is not considered a premium change, however, for the calculation required under R20-6-1019, an insurer shall base the initial annual premium on the reduced benefits.

H. Electronic enrollment for group policies.

1. For coverage offered to a group defined in A.R.S. § 20-1691(5)(a), any requirement that an insurer or insurance producer obtain an insured's signature is satisfied if:
   a. The group policyholder or insurer obtains the insured's consent by telephonic or electronic enrollment, and provides the enrollee with verification of enrollment information within five business days of enrollment; and
   b. The telephonic or electronic enrollment process has necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records, and the confidentiality of individually identifiable and privileged information.
2. If the Director requests, the insurer shall make available records showing the insurer's ability to confirm enrollment and coverage amounts.

I. Minimum standards for home health and community care benefits.

1. If an insurer issues a long-term care insurance policy or certificate that provides benefits for home-health or community care, the policy or certificate shall not limit or exclude benefits by any of the following:
   a. Requiring that the insured would need skilled care in a skilled nursing facility if home health services are not provided;
   b. Requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health services are covered;

c. Requiring that eligible services be provided by a registered nurse or licensed practical nurse;
d. Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of licensure or certification;
e. Requiring that the insured or claimant have an acute condition before home health services are covered;
f. Limiting benefits to services provided by Medicare-certified agencies or providers;
g. Excluding coverage for personal care services provided by a home health aide;
h. Requiring that home health care services be provided at a level of certification or licensure greater than that required by the eligible service; or
i. Excluding coverage for adult day care services.

2. If a long-term care insurance policy provides benefits for home health or community care services, it shall provide home health or community care coverage that equals a dollar amount equivalent to at least one-half of one year's missing home benefit coverage available at the time covered home health or community care services are being received. This requirement does not apply to policies or certificates issued to residents of continuing care retirement communities.
3. An insurer may apply home health care coverage to non-home health care benefits in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

J. Appeals. Policy shall include a clear description of the process for appealing and resolving benefit determinations.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1004 recodified from R4-14-1004 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1005. Unintentional Lapse

A. An insured may designate in writing at least one person to receive notice of lapse or termination of a long-term care insurance policy for nonpayment of premium, in addition to the insured. Designation shall not constitute acceptance of any liability by the third-party notice recipient for services provided to the insured.

B. An insurer shall not issue an individual long-term care insurance policy or certificate until the applicant has provided either a written designation of at least one person, in addition to the applicant, who shall receive notice of lapse or termination of the policy or certificate for nonpayment of premium, with the person's full name and home address, or the applicant's written waiver, dated and signed, indicating that the applicant chooses not to designate a notice recipient.

C. The insurer shall use a form for written designation or waiver that provides space clearly delineated for the designation. The insurer shall include the following language on the form for waiver of the right to name a designated recipient: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that this notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

D. At least once every two years, an insurer shall notify the insured of the right to change the person designated to receive notice in subsection (A). An insured may add, delete, or change a designated recipient or change a designated recipient at any time by notifying the insurer in writing, and providing the name and home address for the new designated recipient or the designated recipient to be deleted.

E. If the insured pays premiums for the long-term care insurance policy or certificate through a payroll or pension deduction plan, the insurer is not required to comply with the requirements in subsections (A) through (D) until 60 days after the insured is no longer on the payment plan.

F. An individual long-term care insurance policy shall not lapse or be terminated for nonpayment of premium unless the insurer gives the insured and any recipient designated under subsections (A) through (D) written notice at least 30 days before the effective date of termination or lapse, by first class mail, postage prepaid, at the address provided by the insured for purposes of receiving notice of lapse or termination. An insurer shall not give notice until 30 days after the date on which a premium is due and unpaid. Notice is deemed given five days after the date of mailing.

G. Reinstatement. In addition to the requirement in subsections (A) through (D), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of a lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate. Reinstatement after termination for other than unintentional lapse shall be governed by A.R.S. § 20-1348.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1005 recodified from R4-14-1005 (Supp. 95-1). Section R20-6-1005 renumbered to R20-6-1006; new Section R20-6-1005 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1006. Inflation Protection

A. An insurer shall not offer a long-term care insurance policy unless the insurer offers to the policyholder, at the time of purchase, in addition to any other inflation protection, the option to purchase a policy with an inflation protection provision that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. The terms of the required provision shall be no less favorable than one of the following:

1. A provision that provides for annual increases in benefit levels compounding annually at a rate of not less than 5%;
2. A provision that guarantees an insured the right to periodically increase benefit levels without providing evidence

of insurability or health status, if the insured did not decline the option for the previous period. The increased benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning from the purchase of the existing benefit and extending until the year in which the offer is made; or

3. A provision for coverage of a specified percentage of actual or reasonable charges that is not subject to a maximum specified indemnity amount or limit.

B. If the policy is issued to a group, the insurer shall extend the offer required by subsection (A) to the group policyholder; except, if the policy is issued under A.R.S. § 20-1691.04(C) to a group, other than to a continuing care retirement community, the insurer shall make the offer to each proposed certificateholder.

C. An insurer is not required to make the offer in subsection (A) for life insurance policies or riders with accelerated long-term care benefits.

D. An insurer shall include the information listed in this subsection in or with the outline of coverage.

1. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.
2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall provide a revised schedule of attained-age premiums. An insurer may use a reasonable hypothetical or a graphic demonstration for this disclosure.

E. Inflation-protection benefit increases shall continue without regard to an insured's age, claim status, claim history, or length of time the person has been insured under the policy.

F. An insurer's offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The insurer shall disclose in the offer in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

G. An insurer shall include in a long-term care insurance policy inflation protection as provided in subsection (A)(1) unless the insurer obtains a rejection of inflation protection signed by the insured as required in subsection (H). The rejection may be either on the application form or on a separate form.

H. A rejection of inflation protection is deemed part of an application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I reviewed Plans [insert description of plans], and I reject inflation protection."

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1006 recodified from R4-14-1006 (Supp. 95-1). R20-6-1006 renumbered to R20-6-1007; new Section R20-5-1006 renumbered from R20-6-1005 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1007. Required Disclosure Provisions

A. Riders and endorsements. Except for riders or endorsements by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, if an insurer adds a rider or endorsement to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy, the insurer shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall require the signed written agreement of the insured unless the increased benefits or coverage are required by law. If the insurer charges a separate additional premium for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

B. Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall define the terms and explain them in its accompanying outline of coverage.

C. Disclosure of tax consequences. For life insurance policies that provide an accelerated benefit for long-term care, an insurer shall provide a disclosure statement at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax adviser. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

D. Benefit triggers. A long-term care insurance policy shall use activities of daily living and cognitive impairment to measure an insured's need for long-term care. The long-term care insurance policy shall describe these terms and provisions in a separate paragraph in the policy labeled "Eligibility for the Payment of Benefits" that includes and explains:

1. Any additional benefit triggers,
2. Benefit triggers that result in payment of different benefit levels, and
3. Any requirement that an attending physician or other specified person certify a certain level of functional dependency for the insured to be eligible for benefits.

E. A long-term care insurance contract shall contain a disclosure statement in the policy and in the outline of coverage indicating whether it is intended to be a qualified long-term care insurance contract as specified in the outline of coverage in Appendix J, paragraph 3. The contract shall also include a Specification Page which shall include the benefits, amounts, durations, the premium rate including all optional benefits selected by the insured, and any other benefit data applicable to the insured.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1007 recodified from R4-14-1007 (Supp. 95-1). Former Section R20-6-1007 renumbered to R20-6-1010; new Section R20-6-1007 renumbered from R20-6-1006 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1008. Required Disclosure of Rating Practices to Consumers

A. This Section applies as follows:
1. Except as provided in subsection (A)(2), this Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005.
2. For certificates issued under an in-force, long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the provisions of this Section apply on the first policy anniversary that occurs on or after November 10, 2005.

B. Unless a policy is one for which an insurer cannot increase the applicable premium rate or rate schedule, the insurer shall provide the information listed in this subsection to the applicant at the time of application or enrollment. If the method of application does not allow for delivery at that time, the insurer shall provide the information to the applicant no later than at the time of delivery of the policy or certificate.
1. A statement that the policy may be subject to rate increases in the future.
2. An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option if a premium rate revision occurs.
3. The premium rate or rate schedules applicable to the applicant that will be in effect until the insurer makes a request for an increase.
4. A general explanation for applying premium rate or rate schedule adjustments that includes:
   a. A description of when premium rate or rate-schedule adjustments will be effective (e.g., next anniversary date, next billing date); and
   b. The insurer's right to a revised premium rate or rate schedule as provided in subsection (B)(3) if the premium rate or rate schedule is changed.
5. Information regarding each premium rate increase on this policy form or similar policy form over the past 10 years for this state or any other state that, at a minimum, identifies:
   a. The policy forms for which premium rates have been increased;
   b. The calendar years when the form was available for purchase; and
   c. The amount or percent of each increase, which may be expressed as a percentage of the premium rate before the increase, or as minimum and maximum percentages if the rate increase is variable by rating characteristics.
6. The insurer may, in a fair manner, provide explanatory information related to the rate increases in addition to the information required under subsection (B)(5).

C. An insurer may exclude from the disclosure required under subsection (B)(5), premium rate increases applicable to:
1. Blocks of business acquired from other nonaffiliated insurers, and
2. Policies acquired from other nonaffiliated insurers if the increases occurred before the acquisition.

D. If an acquiring insurer files for a rate increase on a long-term care insurance policy form or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the January 10, 2005, or the end of a 24-month period following the acquisition of the policies or block of policies, the acquiring insurer may exclude that rate increase from the disclosure required under subsection (B)(5). However, the nonaffiliated insurer that sells the policy form or a block of policy forms shall include that rate increase in the disclosure required under subsection (B)(5). If the acquiring insurer files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by subsection (B)(5), including disclosure of the earlier rate increase.

E. Unless the method of application does not allow an insured to sign an acknowledgement that the insurer made the disclosures required under subsection (B) at the time of application, the applicant shall sign an acknowledgement of disclosure at that time. Otherwise, the applicant shall sign a disclosure acknowledgement no later than at the time of delivery of the policy or certificate.

F. An insurer shall use the forms in Appendix A and Appendix B to comply with the requirements of subsections (B) through (E). The text and format of an insurer's forms shall be substantially similar to the text and format of Appendices A and B.

G. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days before the effective date of the increase. The notice shall include the information required by subsection (B).

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1008 recodified from R4-14-1008 (Supp. 95-1). Former Section R20-6-1008 renumbered to R20-6-1011; new Section R20-6-1008 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1009. Initial Filing Requirements

A. This Section applies to any long-term care policy issued in this state on or after May 10, 2005.

B. At the time of making a filing under A.R.S. § 20-1691.08, an insurer shall provide to the Director a copy of the disclosure documents required under R20-6-1008 and an actuarial certification that includes the following:
1. The initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
2. The policy design and coverage provided have been reviewed and taken into consideration;
3. The underwriting and claims adjudication processes have been reviewed and taken into consideration;
4. The premiums contain at least the minimum margin for moderately adverse experience as defined in subsection (4)(a) or the specification of and justification for a lower margin as required by subsection (4)(b).
   a. A composite margin shall not be less than 10% of lifetime claims.
   b. A composite margin that is less than 10% may be justified in uncommon circumstances. The proposed amount, full justification of the proposed amount and methods to monitor developing experience that would be the basis for withdrawal of approval for such lower margins must be submitted.
   c. A composite margin lower than otherwise considered appropriate for the stand-alone long-term care policy may be justified for long-term care benefits provided through a life policy or an annuity contract.

Such lower composite margin, if utilized, shall be justified by appropriate actuarial demonstration addressing margins and volatility when considering the entirety of the product.

d. A greater margin may be appropriate in circumstances where the company has less credible experience to support its assumptions used to determine the premium rates.

5. A statement that the premium rate schedule:
   a. Is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits, or
   b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences; and
6. A statement that reserve requirements have been reviewed and considered. Support for this statement shall include:
   a. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held; and
   b. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship.

C. An actuarial memorandum shall be included that is signed by a member of the Academy of Actuaries and that addresses and supports each specific item required as part of the actuarial certification and provides at least the following:
1. An explanation of the review performed by the actuary prior to making the statements in subsections (B)(2) and (B)(3);
2. A complete description of pricing assumptions;
3. Sources and levels of margins incorporated into the gross premiums that are the basis for the statement in subsection (B)(1) of the actuarial certification and an explanation of the analysis and testing performed in determining the sufficiency of the margins. The actuary shall clearly describe deviations in margins between ages, sexes, plans or states. Deviations in margins required to be described are other than those produced utilizing generally accepted actuarial methods for smoothing and interpolating gross premium scales; and
4. A demonstration that the gross premiums include the minimum composite margin specified in subsection (B)(4).

D. In any review of the actuarial certification and actuarial memorandum, the Director may request review by an actuary with experience in long-term care pricing who is independent of the insurer. In the event the Director asks for additional information as a result of any review, the period in A.R.S. § 20-1691.08 does not include the period during which the insurer is preparing the requested information.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1009 recodified from R4-14-1009 (Supp. 95-1). Section R20-6-1009 renumbered to R20-6-1012; new Section R20-6-1009 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1010. Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements

A. An insurer's application form for a long-term care insurance policy shall include the questions listed in this Section to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other health or long-term care policy or certificate presently in force. An insurer may include the questions in a supplementary application or other form to be signed by the applicant and insurance producer, except where the coverage is sold without an insurance producer. For a replacement policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the insurer may modify the questions only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificateholder has been notified of the replacement.
1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?
2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?
   a. If so, with which company?
   b. If that policy lapsed, when did it lapse?
3. Are you covered by Medicaid?
4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

B. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan the applicant selects.

C. An insurance producer shall list any other health insurance policies the insurance producer has sold to the applicant, including:
1. Policies that are still in force, and
2. Policies sold in the past five years that are no longer in force.

D. Solicitations Other than Direct Response. On determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its insurance producer; shall furnish the applicant, before issuing or delivering the individual long-term care insurance policy, a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage. The insurer shall:
1. Give one copy of the notice to the applicant, and
2. Keep an additional copy signed by the applicant.

E. Direct Response Solicitations. Insurers using direct response solicitation methods as defined in A.R.S. § 20-1661 shall deliver a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage to the applicant upon issuance of the policy.

F. If replacement is intended, the replacing insurer shall send the existing insurer written notice of the proposed replacement within five working days from the date the replacing insurer receives the application or issues the policy, whichever is sooner. The notice shall identify the existing policy by name of

the insurer and the insured, and policy number or insured's address including zip code.

G. A life insurance policy that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Title 20, Chapter 6, Article 1.1. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with the requirements of this Section and with A.R.S. Title 20, Chapter 6, Article 1.1.

H. Prohibition against preexisting conditions and probationary periods in replacement policies or certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits if similar exclusions are satisfied under the original policy.

I. Reporting requirements.

1. An insurer shall maintain the following records for each insurance producer:
   a. The amount of the insurance producer's replacement sales as a percent of the insurance producer's total annual sales, and
   b. The amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.
2. No later than June 30 of each year, on the forms specified in Appendix E and Appendix F, an insurer shall report the following information for the preceding calendar year to the Department:
   a. The 10% of its insurance producers licensed in Arizona with the greatest percentages of lapses and replacements as measured by subsection (I)(1);
   b. The number of lapsed policies as a percent of the total annual sales and as a percent of the insurer's total number of policies in force as of the end of the preceding calendar year;
   c. The number of replacement policies sold as a percent of the insurer's total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and
   d. For qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.

J. In subsection (I):

1. "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.
2. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.
3. "Policy" means only long-term care insurance.
4. "Report" means on a statewide basis.

K. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance. Reports required under this Section shall be filed with the Director.

L. Annual rate certification requirements. This subsection applies to any long-term care policy issued in Arizona on or after November 10, 2017. The following annual submission requirements apply subsequent to initial rate filings for individual long-term care insurance policies made under this Section:

1. An actuarial certification prepared, dated and signed by a member of the American Academy of Actuaries which contains a statement of the sufficiency of the current premium rate schedule, including:
   a. For the rate schedules currently marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated or a statement that margins for moderately adverse experience may no longer be sufficient. For a statement that margins for moderately adverse experience may no longer be sufficient, the insurer shall provide to the Director, within 60 days of the date the actuarial certification is submitted to the Director, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience so that the ultimate premium rate schedule would be reasonably expected to be sustainable over the future life of the form with no future premium increases anticipated. Failure to submit a plan of action to the Director within 60 days or to comply with the time frame stated in the plan of action constitutes grounds for the Director to withdraw or modify approval of the form for future sales pursuant to A.R.S. § 20-1691.08.
   b. For the rate schedules that are no longer marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions or that the premium rate schedule may no longer be sufficient. If the premium rate schedule is no longer sufficient, the insurer shall provide to the Director, within 60 days of the date the actuarial certification is submitted to the Director, a plan of action, including time frame, for the re-establishment of adequate margins for moderately adverse experience;
2. A description of the review performed that led to the statement; and
3. An actuarial memorandum dated and signed by a member of the American Academy of Actuaries who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:
   a. A detailed explanation of the data sources and review performed by the actuary prior to making the statement in subsection (L)(1),
   b. A complete description of experience assumptions and their relationship to the initial pricing assumptions,
   c. A description of the credibility of the experience data, and
   d. An explanation of the analysis and testing performed in determining the current presence of margins.
4. The actuarial certification required pursuant to subsection (L)(1) must be based on calendar year data and submitted annually starting in the second year following the year in which the initial rate schedules are first used. The actuar-

ial memorandum required pursuant to subsection (L)(3) must be submitted at least once every three years with the certification.

Historical Note
Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1010 recodified from R4-14-1010 (Supp. 95-1). R20-6-1010 renumbered to R20-6-1013; new Section R20-6-1010 renumbered from R20-6-1007 and amended by final by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1011. Prohibition Against Post-claims Underwriting

A. An application for a long-term care insurance policy or certificate that is not guaranteed issue shall meet the requirements of this Section.
1. The application shall contain clear and unambiguous questions designed to ascertain the applicant's health condition.
   a. If the application has a question asking whether the applicant has had medication prescribed by a physician, the application shall also ask the applicant to list the prescribed medication.
   b. If the insurer knew or reasonably should have known that the medications listed in the application are related to a medical condition for which coverage would otherwise be denied, the insurer shall not rescind the policy or certificate for that condition.
2. The application shall include the following language which shall be set out conspicuously and in close conjunction with the applicant's signature block: "**Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.**"
3. The policy or certificate shall contain, at the time of delivery, the following language, or language substantially similar to the following, set out conspicuously: "**Caution: The issuance of this long-term care insurance [policy] [certificate] is based on your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].**"

B. Before issuing a long-term care insurance policy or certificate that is not guaranteed issue to an applicant age 80 or older, the insurer shall obtain one of the following:
1. A report of a physical examination,
2. An assessment of functional capacity,
3. An attending physician's statement, or
4. Copies of medical records.

C. The insurer or its insurance producer shall deliver a copy of the completed application or enrollment form, as applicable, to the insured no later than at the time of delivery of the policy or certificate unless the insurer gave a copy to the applicant it at the time of application.

D. An insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and country-wide, except those which the insured voluntarily effectuated.

E. On or before March 31 of each year, an insurer shall report the following information to the Director for the preceding calendar year, using the form prescribed in Appendix G:
1. Insurer name, address, phone number;
2. As to each rescission except those voluntarily effectuated by the insured:
   a. Policy form number,
   b. Policy and certificate number,
   c. Name of the insured,
   d. Date of policy issuance,
   e. Date claim submitted,
   f. Date of rescission, and
   g. Detailed reason for rescission; and
3. Signature, name and title of the preparer, and date prepared.

Historical Note
Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1011 recodified from R4-14-1011 (Supp. 95-1). R20-6-1011 renumbered to R20-6-1014; new Section R20-6-1011 renumbered from R20-6-1008 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1012. Reserve Standards

A. If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders, an insurer shall determine policy reserves for long-time care benefits under A.R.S. § 20-510. An insurer shall also establish claim reserves for a policy or rider in claim status.

B. An insurer shall base reserves for policies and riders under subsection (A) on the multiple decrement model using all relevant decrements except for voluntary termination rates. An insurer may use single decrement approximations if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The insurer, when calculating reserves, may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. The insurer shall not set the reserves for the long-term care benefit and the life insurance benefit to be less than the reserves for the life insurance benefit assuming no long-term care benefit.

C. In the development and calculation of reserves for policies and riders subject to this Section, an insurer shall give due regard to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which impact projected claim costs including the following:
1. Definition of insured events,
2. Covered long-term care facilities,
3. Existence of home convalescence care coverage,
4. Definition of facilities,
5. Existence or absence of barriers to eligibility,
6. Premium waiver provision,
7. Renewability,
8. Ability to raise premiums,
9. Marketing method,
10. Underwriting procedures,
11. Claims adjustment procedures,
12. Waiting period,
13. Maximum benefit,
14. Availability of eligible facilities,
15. Margins in claim costs,
16. Optional nature of benefit,
17. Delay in eligibility for benefit,

18. Inflation protection provisions,
19. Guaranteed insurability option, and
20. Other similar or comparable factors affecting risk.

D. A member of the American Academy of Actuaries shall certify an insurer's use of any applicable valuation morbidity table as appropriate as a statutory valuation table.

E. When long-term care benefits are provided other than as described in subsection (A), an insurer shall determine reserves under A.R.S. § 20-508.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1012 recodified from R4-14-1012 (Supp. 95-1). R20-6-1012 renumbered to R20-6-1016; new Section R20-6-1012 renumbered from R20-6-1009 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section repealed; new Section renumbered from R20-6-1013 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1013. Loss Ratio

A. This Section applies to policies and certificates issued any time prior to May 10, 2005.

B. Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles, and high maximum limits.

C. A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.

D. Subsections (B) and (C) do not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is deemed to provide reasonable benefits in relation to premiums paid if the policy complies with all of the following:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. The portion of the policy that provides life insurance benefits complies with the nonforfeiture requirements of A.R.S. § 20-1231;
3. The policy complies with the disclosure requirements of A.R.S. § 20-1691.06(A) through (E);
4. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes the following information:
   a. A description of the basis on which the long-term care rates were determined;
   b. A description of the basis for the reserves;
   c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
   d. A description and a table of each actuarial assumption used; for expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;
   e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
   f. The estimated average annual premium per policy and the average issue age;
   g. A statement as to whether underwriting is performed, including:
      i. Time of underwriting;
      ii. A description of the type of underwriting used, such as medical underwriting or functional assessment underwriting; and
      iii. For a group policy, whether an enrollee's dependents are subject to underwriting; and
   h. A description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1013 recodified from R4-14-1013 (Supp. 95-1). Section R20-6-1013 renumbered to R20-6-1017; new Section R20-6-1013 renumbered from R20-6-1010 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1013 renumbered to R20-6-1012; new Section R20-6-1013 renumbered from R20-6-1014 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1014. Premium Rate Schedule Increase

A. This Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005 and prior to November 10, 2017.

B. An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 60 days before issuing notice to its policyholders. The notice to the Director shall include:

1. Information required by R20-6-1008;
2. Certification by a qualified actuary that:
   a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
   b. The premium rate filing complies with the provisions of this Section; and
   c. The insurer may request a premium rate schedule increase less than what is required under this Section

and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.

3. An actuarial memorandum justifying the rate schedule change request that includes:
   a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:
      i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
      ii. Annual values for the five years preceding and the three years following the valuation date, provided separately;
      iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase; and
      iv. A demonstration of compliance with subsection (C).
   b. For exceptional increases, the actuarial memorandum shall also include:
      i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
      ii. If the Director determines under Section R20-6-1002(B)(3) that offsets may exist, the insurer shall use appropriate net projected experience;
   c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
   d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
   e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices;
   f. Composite rates reflecting projections of new certificates in the event it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase; and
   g. A demonstration that actual and projected costs exceed costs anticipated at the time of the initial pricing under moderately adverse experience and that the composite margin specified in R20-6-1009(B)(4) is projected to be exhausted;
4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and
5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:
1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;
2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
   a. The accumulated value of the initial earned premium times 58%;
   b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
   c. The present value of future projected initial earned premiums times 58%; and
   d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) shall also include 70% for exceptional rate increase amounts; and
4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).

D. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder in lieu of filing with the Director.

E. If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (B)(3)(a), for the Director's approval every five years following the end of the required period in subsection (D). For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.

F. If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (B)(3)(f), if applicable.

G. If the majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:
1. A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the

potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the conditions in subsections (H) through (J); and

2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (C) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in subsections (C)(2)(a) and (C)(2)(c).

H. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms,
2. The rate increase is not an exceptional increase, and
3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.

I. If the Director finds excess lapsation under subsection (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer is subject to the Director's approval. The offer shall:

1. Be based on actuarially sound principles, but not on attained age;
2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
3. Allow the insured the option of retaining the existing coverage.

J. The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:

1. The maximum rate increase determined based on the combined experience; and
2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus 10%.

K. If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (H) through (J), prohibit the insurer from the following:

1. Filing and marketing comparable coverage for a period of up to five years, and
2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

L. Subsections (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
   a. A.R.S. Title 20, Chapter 6, Article 1.2; and
   b. A.R.S. Title 20, Chapter 16, Article 2;
5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
   a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
   b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
   c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
   d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
   e. The estimated average annual premium per policy and the average issue age;
   f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
      i. Whether underwriting is used, and if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
      ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
   g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

M. Subsections (F) and (H) through (J) shall not apply to group insurance as defined in A.R.S. § 20-1691(6) where:

1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1014 recodified from R4-14-1014 (Supp. 95-1). Section repealed; R20-6-1014 renumbered from R20-6-1011 and

amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1014 renumbered to R20-6-1013; new Section R20-6-1014 renumbered from R20-6-1015 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1015. Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings

A. This Section applies to any long-term care policy or certificate issued in this state on or after November 10, 2017.

B. An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 60 days before issuing notice to its policyholders. The notice to the Director shall include:
1. Information required by R20-6-1008;
2. Certification by a qualified actuary that:
   a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
   b. The premium rate filing complies with the provisions of this Section; and
   c. The insurer may request a premium rate schedule increase less than what is required under this Section and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.
3. An actuarial memorandum justifying the rate schedule change request that includes:
   a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:
      i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
      ii. Annual values for the five years preceding and the three years following the valuation date, provided separately;
      iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase; and
      iv. A demonstration of compliance with subsection (C).
   b. For exceptional increases, the actuarial memorandum shall also include:
      i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
      ii. If the Director determines under Section R20-6-1002(B)(3) that offsets may exist, the insurer shall use appropriate net projected experience;
   c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
   d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
   e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices;
   f. Composite rates reflecting projections of new certificates in the event it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase; and
   g. A demonstration that actual and projected costs exceed costs anticipated at the time of the initial pricing under moderately adverse experience and that the composite margin specified in R20-6-1009(B)(4) is projected to be exhausted.
4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and
5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:
1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
2. The insurer shall calculate premium rate increases such that the sum of the lesser of either the accumulated value of the actual incurred claims (without the inclusion of active life reserves) or the accumulated value of historic expected claims (without the inclusion of active life reserves) plus the present value of the future expected incurred claims (projected without the inclusion of active life reserves) will not be less than the sum of the following:
   a. The accumulated value of the initial earned premium times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience;
   b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
   c. The present value of future projected initial earned premiums times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience; and
   d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. Historic expected claims shall be calculated based on the original filing assumptions assumed until new assumptions are filed as part of a rate increase. New assumptions shall be used for all periods beyond each requested effective date of a rate increase. Historic expected claims are calculated for each calendar year based on the in-force at the beginning of the calendar year. Historic expected claims shall include margins for moderately adverse experience; either amounts included in the claims that were used to determine the lifetime loss ratio consistent with the original filing or as modified in any rate increase filing;

4. In the event that a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) will also include 70% for exceptional rate increase amounts; and
5. All present and accumulated values used to determine rate increases, including the lifetime loss ration consistent with the original filing reflecting margins for moderately adverse experience, shall use the maximum valuation interest rate for contract reserves as specified in A.R.S. § 20-508. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the reporting period beyond three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (M), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the Director.

E. If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (B)(3)(a), for the Director's approval every five years following the end of the required period in subsection (D). For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.

F. If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (B)(3)(f), if applicable.

G. If the majority of policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file a plan, subject to approval by the Director, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. Otherwise, the Director may impose the conditions in subsections (H) through (J).

H. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;
2. The rate increase is not an exceptional increase; and
3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.

I. If the Director finds excess lapsation under subsection (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer is subject to the Director's approval. The offer shall:

1. Be based on actuarially sound principles, but not on attained age; and
2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
3. Allow the insured the option of retaining the existing coverage.

J. The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:

1. The maximum rate increase determined based on the combined experience; and
2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus 10%.

K. If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (H) through (J), prohibit the insurer from the following:

1. Filing and marketing comparable coverage for a period of up to five years; and
2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

L. Subsections (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
   a. A.R.S. Title 20, Chapter 6, Article 1.2; and
   b. A.R.S. Title 20, Chapter 16, Article 2.
5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
   a. Description of the bases on which the actuary determined the long-term care rates and the reserves;

b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
e. The estimated average annual premium per policy and the average issue age;
f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
i. Whether underwriting is used, and if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

M. Subsections (F) and (H) through (J) shall not apply to group insurance as defined in A.R.S. § 20-1691(6) where:
1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1015 recodified from R4-14-1015 (Supp. 95-1). Section R20-6-1015 renumbered to R20-6-1022; new Section R20-6-1015 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1015 renumbered to R20-6-1014; new Section R20-6-1015 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1016. Filing Requirements for Group Policies

A. Out-of-State Policies. Before an insurer or similar organization may offer group long-term care insurance to a resident of this state under A.R.S. § 20-1691.02(D), the insurer or organization shall file with the Director evidence that a state with statutory or regulatory long-term care insurance requirements substantially similar to those of this state has approved the group policy or certificate for use in that state.

B. Associations. For long-term policies marketed or issued to associations, the insurer or organization shall file with the insurance department the policy, certificate, and corresponding outline of coverage.

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1016 recodified from R4-14-1016 (Supp. 95-1). Section R20-6-1016 renumbered to R20-6-1023; new Section R20-6-1016 renumbered from R20-6-1012 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

R20-6-1017. Standards for Marketing

A. Every insurer marketing long-term care insurance coverage in this state, directly or through an insurance producer shall:
1. Establish marketing procedures to assure that any comparison of policies by its insurance producers is fair and accurate, and that excessive insurance is not sold or issued;
2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following language: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations;"
3. Provide the applicant with copies of the disclosure forms in Appendices A and B;
4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance;
5. Provide an explanation of contingent benefit upon lapse as provided for in R20-6-1019(D)(3);
6. Provide written notice to an applicant or prospective policyholder or certificateholder advising of this state's senior insurance counseling program (SHIP), and the name, address, and phone number for the SHIP, at the time of solicitation; and
7. Establish auditable procedures for verifying compliance with this subsection (A).

B. In addition to the practices prohibited in A.R.S. § 20-441 et seq., the following acts and practices are prohibited:
1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
3. Cold lead advertising. Making use directly or indirectly or any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
4. Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

C. An insurer shall not market or issue a long-term care policy or certificate to an association unless the insurer files the information required under R20-6-1016(B) and annually certifies that the association has complied with the requirements of this Section.

Historical Note

New Section R20-5-1017 renumbered from R20-6-1013 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final

exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1018. Suitability

A. This Section does not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer or other person marketing long-term care insurance, including an insurance producer or managing general agent, (the "issuer") shall:
1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant,
2. Train its insurance producers in the use of its suitability standards, and
3. Maintain a copy of its suitability standards and make them available for inspection upon the Director's request.

C. To determine whether an applicant meets an issuer's suitability standards, the insurance producer and issuer shall develop procedures that take the following into consideration:
1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
3. The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

D. The issuer shall make reasonable efforts to obtain the information set out in subsection (C), including giving the applicant the "Long-Term Care Insurance Personal Worksheet" prescribed in Appendix A, to complete before or at the time of application. The issuer shall use a personal worksheet that contains, at a minimum, the information contained in Appendix A, in substantially the same text and format, in not less than 12 point type. The issuer may ask the applicant to provide additional information to comply with its suitability standards. An issuer shall file a copy of its personal worksheet with the Director.

E. An issuer shall not consider an applicant for coverage until the issuer has received the applicant's completed personal worksheet, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

F. No one shall sell or disseminate information obtained through the personal worksheet outside the issuer that obtains the worksheet.

G. The issuer shall use its suitability standards to determine whether issuance of long-term care insurance coverage to a particular applicant is appropriate.

H. An insurance producer shall use the suitability standards developed by the issuer in marketing long-term care insurance.

I. When giving an applicant a personal worksheet, the issuer shall also provide the applicant with a disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance." The form shall be in substantially the same format and text contained in Appendix H, in not less than 12 point type.

J. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter that is substantially similar to Appendix I. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent to purchase the long-term care policy. The issuer shall have either the applicant's returned Appendix I letter or a record of the alternative method of verification as part of the applicant's file.

K. The issuer shall report annually to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter as prescribed in subsection (J).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1019. Nonforfeiture Benefit Requirement

A. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of A.R.S. § 20-1691.11, an insurer shall meet the following requirements:
1. A policy or certificate offered with nonforfeiture benefits shall have the same coverage elements, eligibility, benefit triggers and benefit length as a policy or certificate issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (E); and
2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

C. If the offer required to be made under A.R.S. § 20-1691.11 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section. Even if the non-forfeiture benefit offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in subsection (D)(4) shall still apply.

D. Contingent Benefit Upon Lapse.
1. If a prospective policyholder rejects the offer of a nonforfeiture benefit, the insurer shall provide the contingent benefit upon lapse described in this Section for individual and group policies without the nonforfeiture benefit, issued after January 10, 2005.
2. If a group policyholder elects to make the nonforfeiture benefit an option to a certificateholder, the certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.
3. The contingent benefit on lapse is triggered when:
   a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
   b. The policy or certificate lapses within 120 days of the due date of the increased premium.
   c. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase		
Issue Age		**Percent Increase Over Initial Premium**
29 and under		200%

30-34		190%
35-39		170%
40-44		150%
45-49		130%
50-54		110%
55-59		90%
60		70%
61		66%
62		62%
63		58%
64		54%
65		50%
66		48%
67		46%
68		44%
69		42%
70		40%
71		38%
72		36%
73		34%
74		32%
75		30%
76		28%
77		26%
78		24%
79		22%
80		20%
81		19%
82		18%
83		17%
84		16%
85		15%
86		14%
87		13%
88		12%
89		11%
90 and over		10%

4. A contingent benefit on lapse is also triggered for policies with a fixed or limited premium paying period when:
   a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
   b. The policy or certificate lapses within 120 days of the due date of the increased premium; and
   c. The ratio in subsection (D)(6)(b) is 40% or more.
   d. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase on policies with a fixed or limited premium paying period

Issue Age		**Percent Increase Over Initial Premium**
Under 65		50%
65-80		30%
Over 80		10%

   e. This provision shall be in addition to the contingent benefit provided by subsection (D)(3) and where both are triggered, the benefit provided shall be at the option of the insured.
5. On or before the effective date of a substantial premium increase as defined in subsection (D)(3), an insurer shall:
   a. Offer the insured the option of reducing policy benefits under the current coverage consistent with the requirements of R20-6-1025 so that required premium payments are not increased;
   b. Offer to convert the coverage to a paid-up status with a shortened benefit period according to the terms of subsection (E), which the insured may elect at any time during the 120-day period referenced in subsection (D)(3); and
   c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (D)(3) is deemed to be the election of the offer to convert under subsection (5)(b) unless the automatic option in subsection (D)(6)(c) applies.
6. On or before the effective date of a substantial premium increase on policies with a fixed or limited premium paying period as defined in subsection (D)(4), an insurer shall:
   a. Offer the insured the option of reducing policy benefits under the current coverage consistent with the requirements of R20-6-1025 so that required premium payments are not increased;
   b. Offer to convert the coverage to paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. The insured may elect this option at any time during the 120-day period referenced in subsection (D)(4); and
   c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (D)(4) is deemed to be the election of the offer to convert under subsection (D)(6)(b) if the ratio is 40% or more.
7. For any long-term care policy issued on or after November 10, 2017, that an insurer issued at least 20 years prior to the effective date of a substantial premium increase, the insurer shall use a rate increase value of 0% in place of all values in the above tables.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subsection (D)(3) but not subsection (D)(4), mean any of the following:
1. Attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least 1% per year before age 50, and at least 3% per year beyond age 50.
2. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of

lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection (E)(3).

3. The standard nonforfeiture credit equals 100% of the sum of all premiums paid, including the premiums paid before any change in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. The minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (F).
4. When the nonforfeiture benefit begins.
   a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years, and thereafter.
   b. Notwithstanding subsection (E)(4)(a), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:
      i. The end of the tenth year following the policy or certificate issue date, or
      ii. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.
5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium-paying status and in the paid-up status shall not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium-paying status.

G. There shall be no difference in the minimum nonforfeiture benefits for group and individual policies.

H. The requirements in this Section are effective on or after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (H)(2) and (H)(3), this Section applies to any long-term care policy issued in this state on or after January 10, 2005.
2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a group long-term care insurance policy as defined in A.R.S. § 20-1691(5)(a), that was in force on January 10, 2005.
3. The provisions of this Section that apply to fixed or limited premium paying period policies shall only apply to policies issued on or after November 10, 2017.

I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of R20-6-1013, R20-6-1014 or R20-6-1015, whichever is applicable, treating the policy as a whole.

J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (D)(3) or (D)(4), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium the insured paid when first buying the policy from the original insurer.

K. An insurer shall offer a nonforfeiture benefit for a qualified long-term care insurance contract that is a level premium contract and the benefit shall meet the following requirements:
1. The nonforfeiture provision shall be separately captioned using the term "nonforfeiture benefit" or a substantially similar caption;
2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the insurer may adjust the amount of the benefit initially granted only as needed to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the Director under to A.R.S. § 20-1691.08 for the same contract form; and
3. The nonforfeiture provision shall provide at least one of the following:
   a. Reduced paid-up premiums,
   b. Extended term insurance,
   c. Shortened benefit period, or
   d. Other similar offerings that the Director has approved.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1020. Standards for Benefit Triggers

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Except as otherwise provided in R20-6-1021, eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

B. Activities of daily living shall include at least the following as defined in R20-6-1003(A)(1) and in the policy:
1. Bathing,
2. Continence,
3. Dressing,
4. Eating,
5. Toileting, and
6. Transferring.

C. An insurer may use additional activities of daily living to trigger covered benefits if the activities are defined in the policy.

D. An insurer may use additional provisions to determine when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements in subsections (A), (B) and (C).

E. For purposes of this Section the determination of a deficiency shall not be more restrictive than:
1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
2. If the deficiency is due to the presence of a cognitive impairment, requiring supervision or verbal cueing by another person to protect the insured or others.

F. Licensed or certified professionals, such as physicians, nurses or social workers, shall perform assessments of activities of daily living and cognitive impairment.

G. The requirements in this Section are effective on and after November 10, 2005 and shall apply as follows:

1. Except as provided in subsection (G)(2), the provisions of this Section apply to a long-term care policy issued in this state on or after January 10, 2005.
2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), which policy was in force on January 10, 2005.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1021. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts

A. A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided under a plan of care prescribed by a licensed health care practitioner, which is not subject to approval or modification by the insurer.

B. A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

C. Licensed health care practitioners shall perform the certified determinations regarding activities of daily living and cognitive impairment required under subsection (B).

D. Certified determinations required under subsection (B) may be performed at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certified determination may not be rescinded and additional certified determinations may not be performed until after the expiration of the 90-day period.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1022. Standard Format Outline of Coverage

A. The outline of coverage prescribed in A.R.S. § 20-1691.06 shall be a free-standing document, using no smaller than 10 point type, and shall contain no advertising or promotional material.

B. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that give prominence equivalent to capitalization or underscoring.

C. An insurer shall use the text and sequence of text in the standard format outline of coverage prescribed in Appendix J, unless otherwise specifically indicated.

Historical Note
New Section R20-6-1022 renumbered from R20-6-1015 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

R20-6-1023. Requirement to Deliver Shopper's Guide

A. All prospective applicants of a long-term care insurance policy or certificate shall receive a long-term care insurance shopper's guide approved by the Director. This requirement may be satisfied by delivery of the current edition of the long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners.
1. In the case of insurance producer solicitation, an insurance producer shall deliver the shopper's guide before presenting an application or enrollment form.
2. In the case of direct response solicitations, the insurer shall provide the shopper's guide with any application or enrollment form.

B. A prospective applicant for a life insurance policy or rider containing accelerated long-term care benefits is not required to receive the guide described in subsection (A), but shall receive the policy summary required under A.R.S. § 20-1691.06.

Historical Note
New Section R20-6-1023 renumbered from R20-6-1016 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1024. Availability of New Health Care Services or Providers

A. An insurer shall notify policyholders of the availability of a new long-term policy series that provides coverage for new long-term care services or heath care providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date the new policy series is made available for sale in this state.

B. Notwithstanding subsection (A), notification is not required for any policy issued prior to the effective date of this Section or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

C. The insurer shall make the new coverage available in one of the following ways:
1. By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age:
2. By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;
3. By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or
4. By an alternative program developed by the insurer that meets the intent of this Section if the program is filed with and approved by the Director.

D. An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited dis-

tribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

E. Policies issued pursuant to this Section shall be considered exchanges and not replacements. These exchanges shall not be subject to R20-6-1010(A), (C) through (G) and R20-6-1018 and are not subject to the reporting requirements of R20-6-1010(I)(1), (I)(2)(a) through (I)(2)(c).

F. Where an employer, labor organization, professional, trade or occupational association offers the policy, the required notification in subsection (A) shall be made to the offering entity. However, if the policy is issued to a group defined in A.R.S. § 20-1691(5), the notification shall be to each certificateholder.

G. Nothing in this Section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium, to add such new services or providers.

H. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

I. This Section shall become effective on or after November 10, 2017.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1024 renumbered to R20-6-1026; new Section R20-6-1024 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1025. Right to Reduce Coverage and Lower Premiums

A. Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:
1. Reducing the maximum benefit; or
2. Reducing the daily, weekly or monthly benefit amount.

B. The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.

C. In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.

D. The provision in subsection (A) shall include a description of the process for requesting and implementing a reduction in coverage.

E. The premium for the reduced coverage shall:
1. Be based on the same age and underwriting class used to determine the premium for the coverage currently in force, and
2. Be consistent with the approved rate table.

F. The issuer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

G. If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by R20-6-1005(F).

H. This Section does not apply to life insurance policies or riders containing accelerated long-term benefits.

I. The requirements of subsections (A) through (H) shall apply to any long-term care policy issued in this state on or after November 10, 2017.

J. A premium increase notice required by R20-6-1008(G) shall include:
1. An offer to reduce policy benefits provided by the current coverage consistent with the requirements of this Section;
2. A disclosure stating that all options available to the policyholder may not be of equal value; and
3. In the case of a partnership policy, a disclosure that some benefit reduction options may result in a loss in partnership status that may reduce policyholder protections.

K. The requirements of subsection (J) shall apply to any rate increase implemented in this state on or after November 10, 2017.

Historical Note

New Section R20-6-1025 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

R20-6-1026. Instructions for Appendices

Information that is designated as a "Drafting Instruction" in a form appended to this Article is not required to be included as part of the form. Any person using the form shall abide by the instructions when drafting, preparing, or completing the form.

Historical Note

New Section R20-6-1026 renumbered from R20-6-1024 by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix A. Long-term Care Insurance Personal Worksheet

Long-term Care Insurance Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers_____

The premium for the coverage you are considering will be [$_____ per month, or $_____ per year,] [a one-time single premium of $_____.]

Type of Policy (noncancellable/guaranteed renewable): _____

The Company's Right to Increase Premiums: _____
[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History
The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

(Drafting Instruction: A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.)

Questions Related to Your Income

How will you pay each year's premium?
☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

[☐ Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 50%?]

(Drafting Instruction: The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.)

What is your annual income? (check one) ☐Under $10,000 ☐$[10-20,000] ☐$[20-30,000] ☐$[30-50,000] ☐Over $50,000

(Drafting Instruction: The issuer may choose the numbers to put in the brackets to fit its suitability standards.)

How do you expect your income to change over the next 10 years? (check one)
☐ No change ☐ Increase ☐ Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one) ☐ Yes ☐ No
If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?
☐From my Income ☐From my Savings/Investments ☐My Family will Pay

The national average annual cost of care in [insert year] was [insert $ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert $ amount] if costs increase 5% annually.

(Drafting Instruction: The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.)

What elimination period are you considering? Number of days _____Approximate cost $_____for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

☐From my Income ☐From my Savings/Investments ☐My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)
☐ Under $20,000 ☐ $20,000-$30,000 ☐ $30,000-$50,000 ☐ Over $50,000

How do you expect your assets to change over the next ten years? (check one)
☐ Stay about the same ☐ Increase ☐ Decrease

If you are buying this policy to protect your assets and your assets are less than $30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

☐ The answers to the questions above describe my financial situation. **or** ☐ I choose not to complete this information. (Check one.)
☐ I acknowledge that the carrier and/or its insurance provider (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] **I understand the above disclosures. I understand that the rates for this policy may increase in the future.** (This box must be checked).

Signed:_____ _____
(Applicant) (Date)

[❒ I explained to the applicant the importance of completing this information.

Signed:_____ _____
(Insurance Producer) (Date)

Insurance Producer's Printed Name: _____]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My insurance provider has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: _____ _____
(Applicant) (Date)

(Drafting Instruction: Choose the appropriate sentences depending on whether this is a direct mail or insurance producer sale.)
The company may contact you to verify your answers.

(Drafting Instruction: When the Long-term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the document may be removed.)

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix A renumbered to Appendix C; new Appendix A made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix B. Long-term Care Insurance Potential Race Increase Disclosure Form

Instructions:
This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

Long-term Care Insurance
Potential Rate Increase Disclosure Form

1. **[Premium Rate] [Premium Rate Schedules]**: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [approved] for an increase [is][are] [on the application][$_____])
2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy**.
3. **Rate Schedule Adjustments**:
   The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____.
4. **Potential Rate Revisions**:
   This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

- ☐ Pay the increased premium and continue your policy in force as is.
- ☐ Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- ☐ Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- ☐ Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

***Contingent Nonforfeiture**
If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:
You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you have paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

- You bought the policy at age 65 and paid the $1,000 annual premium for 10 years, so you have paid a total of $10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or $500 for a new annual premium of $1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are $10,000 (provided you have a least $10,000 of benefits remaining under your policy.)

Contingent Nonforfeiture
Cumulative Premium Increase over Initial Premium
That qualifies for Contingent Nonforfeiture

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%

61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix B renumbered to Appendix D; new Appendix B made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix C. Notice to Applicant Regarding Replacement of Individual Health or Long-term Care Insurance

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL HEALTH OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under your new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all of the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____
(Signature of Insurance Producer or Other Representative)

(Typed Name and Address of Insurance Producer)

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). New Appendix C renumbered from Appendix A and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix D. Notice to Applicant Regarding Replacement of Health or Long-term Care Insurance

NOTICE TO APPLICANT REGARDING REPLACEMENT OF HEALTH OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with the long-term care insurance policy being delivered and issued by [company name] Insurance Company. Your new policy gives you thirty (30) days to decide, without cost, whether you want to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its insurance producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly, Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

Historical Note

New Appendix D renumbered from Appendix B and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix E. Long-Term Care Insurance Replacement and Lapse Reporting Form

Long-term Care Insurance
Replacement and Lapse Reporting Form

For the State of_____
For the Reporting Year of_____

Company Name: _____ Due: June 30 annually
Company Address:_____ Company NAIC Number: _____
Contact Person: _____ Phone Number: (____)_____

Instructions
The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Every insurer shall maintain the following records for each insurance producer: (1) the amount of long-term care insurance replacement sales as a percent of the insurance producer's total annual sales and (2) the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales. The tables below should be used to report the 10% of the insurer's insurance producers with the greatest percentages of replacements and lapses.

Listing of the 10% of Insurance Producers with the Greatest Percentage of Replacements

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Replaced By This Insurance Producer	Number of Replacements as % of Number of Policies Sold By This Insurance Producer

Listing of the 10% of Insurance Producers with the Greatest Percentage of Lapses

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Lapsed By This Insurance Producer	Number of Lapses As % of Number Sold By This Insurance Producer

Company Totals
Percentage of Replacement Policies Sold to Total Annual Sales ____%
Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) ____%
Percentage of Lapsed Policies to Total Annual Sales _____%
Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) _____%

Historical Note
New Appendix E made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix F. Long-term Care Insurance Claims Denial Reporting Form

Long-term Care Insurance
Claims Denial Reporting Form

For the State of_____
For the Reporting Year of_____

Company Name:_____ Due: June 30 annually
Company Address: _____
_____
Company NAIC Number: _____
Contact Person: _____Phone Number: _____
Line of Business: Individual Group

Instructions
The purpose of this form is to report all long-term care claim denials under in-force long-term care insurance policies. Indicate the manner of reporting by checking one of the boxes below:

☐ Per Claimant - counts each individual who makes one or a series of claim requests
☐ Per Transaction - counts each claim payment request

"Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition. It does not include a request for payment that is in excess of the applicable contractual limits.

Inforce Data

	State Data	**Nationwide Data[1]**
Total Number of Inforce Policies [Certificates] as of December 31st		

Claims & Denial Data

		State Data	**Nationwide Data[1]**
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied due to:		
8	• Long-Term Care Services Not Covered under the Policy[2]		
9	• Provider/Facility Not Qualified under the Policy[3]		
10	• Benefit Eligibility Criteria Not Met[4]		
11	• Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

Historical Note

New Appendix F made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix G. Rescission Reporting Form for Long-term Policies

RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES

FOR THE STATE OF _____
FOR THE REPORTING YEAR _____

Company Name_____
Address:_____
_____
Phone Number:_____
Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission:
_____
_____
_____

_____
Signature

_____
Name and Title (please type)

_____
Date

Historical Note
New Appendix G made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

Appendix H. Things You Should Know Before You Buy Long-term Care Insurance

Things You Should Know Before You Buy Long-term Care Insurance

Long-Term Care Insurance	• A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
	• [**WARNING!** You should **not** buy this insurance policy unless you can afford to pay the premiums every year. You are making a multi-year financial commitment.] [Remember that the company can increase premiums in the future.]

(Drafting Instruction: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.)

	• The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.
Medicare	• Medicare does **not** pay for most long-term care.
Medicaid	• Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.
	• Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
	• When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
	• Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.
Shopper's Guide	• Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.
Counseling	• Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.
Facilities	• Some long-term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move into a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments. and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

Historical Note

New Appendix H made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix I. Long-term Care Insurance Suitability Letter

Long-term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

(**Drafting Instruction:** Choose the paragraph that applies.)

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

☐ **Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Drafting Instruction: Delete the phrase in brackets if the applicant did not answer the questions about income.

☐ **No.** I have decided not to buy a policy at this time.

_____ _____

APPLICANT'S SIGNATURE DATE

Please return to [issuer] at [address] by [date].

Historical Note

New Appendix I made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

Appendix J. Long-term Care Insurance Outline of Coverage

[COMPANY NAME]
[ADDRESS - CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE
[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. FEDERAL TAX CONSEQUENCES
   This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.
   OR
   Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE].is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.
4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED
   (a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:
      (1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.
      (2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.
   (b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]
   (c) [Describe waiver of premium provisions or state that there are not such provisions;]
5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.
   [In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]
6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
   (a) [Provide a brief description of the right to return - “free look” provision of the policy.]
   (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]
7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer’s Guide available from the insurance company.
   (a) [For insurance producers] Neither [insert company name] nor its [agents or insurance producers] represent Medicare, the federal government or any state government.
   (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute-care unit of a hospital, such as in a nursing home, in the community or in the home.
   This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]
9. BENEFITS PROVIDED BY THIS POLICY.
   (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]
   (b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]
(d) Eligibility for Payment of Benefits
[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.]
[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.
[Describe:
(a) Preexisting conditions;
(b) Non-eligible facilities and providers;
(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
(d) Exclusions and exceptions;
(e) Limitations.]
[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:
(a) That the benefit level will not increase over time;
(b) Any automatic benefit adjustment provisions;
(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
(e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]
12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]
13. PREMIUM.
[(a)State the total annual premium for the policy;
(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]
14. ADDITIONAL FEATURES.
[(a)Indicate if medical underwriting is used;
(b)Describe other important features.]
15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Historical Note

New Appendix J renumbered from Appendix C and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE

R20-6-1101. Incorporation by Reference and Modifications

A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, August 2016 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and available from the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.

B. The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
   a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
   b. "Commissioner" means the Director of the Arizona Department of Insurance.
   c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
   d. "Regulation" means Article.
2. Section 3(A)(2) reads:
   (2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.
3. Section 8(A)(7)(c) reads:
   c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.
4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix C. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix C repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix D. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix D repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix E. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix E repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix F. Repealed

Historical Note

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES

R20-6-1201. Definitions

A. "AIDS" means Acquired Immune Deficiency Syndrome.

B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.

C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.

D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

R20-6-1202. Applications for Insurance

A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:

1. The sexual orientation of an applicant;
2. An applicant's receipt of transfusions of blood or blood products; or
3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.

B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

R20-6-1203. Testing for HIV; Consent Form

A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result consists of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturers' directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

B. If an applicant is requested to take an HIV-related test in connection with an application for a life or disability insurance policy or a health care plan, the insurer shall reveal the use of such test to the applicant and shall obtain the written consent of the applicant prior to the administration of such test. The insurer shall allow the applicant up to 10 days within which to decide whether or not to sign the consent form, and no adverse underwriting decision may be made on the basis of the applicant's delay during this time period. Insurers need not provide pretest counseling to applicants but shall advise applicants of the availability of counseling in accordance with subsection (C) of this rule.

C. The written consent form, which shall be approved by the Director in advance of its use, shall contain the following information:

1. Purpose of the consent form. The form shall contain a clear disclosure that the test to be performed is a test for the presence of HIV antibodies, antigens, or the virus, and that underwriting decisions will be based on the results of such test. The form shall further provide notice of a period of not less than 10 days during which the applicant may decide whether or not to sign the form, along with a disclosure that the applicant's refusal to be tested may be used as a reason to deny coverage.
2. Information on HIV. The form shall provide clear, concise, and accurate information on how the disease is spread and what behavior places persons at risk of contracting the virus.
3. Pretest counseling considerations. The written consent form shall contain information advising the applicant that counseling is recommended by many public health organizations and that the applicant may obtain such counseling at the applicant's own expense. The form shall contain current information as provided by the Department regarding the availability in Arizona of free confidential or anonymous counseling through county health departments and through other governmental or government-funded agencies.
4. Disclosure of test results. The form shall advise the applicant that all test results shall be treated confidentially and that results shall be released only to the applicant and the named insurer or upon the applicant's written consent or as otherwise required or allowed by law, including but not limited to the release of information to the Department of Health Services as provided by law.
5. Meaning of positive test results. The form shall advise the applicant of the type of test (including but not limited to antibody, antigen, or viral culture) to be used, and that a positive test result indicates that the applicant has been infected with HIV but does not necessarily have AIDS. The form shall explain that a positive test result will adversely affect the application for insurance.
6. Consent. The consent form shall contain an attestation to be signed by the applicant or, if the applicant lacks legal capacity to consent, a person authorized pursuant to law to consent on behalf of the applicant, that he or she has read and understands the written consent form and voluntarily consents to the performance of a test for HIV and to the disclosure of the test results as described in the consent form. The applicant or the applicant's legal representative shall have the right to request and receive a copy of the written consent form. A photocopy of the form shall be as valid as the original.
7. Optional release of information to personal physician. In addition to the release of information to the insurer provided in the consent form, the applicant may, at the applicant's option, consent to the release of information to the applicant's personal physician. The form shall provide for such release to be separately signed and dated by the applicant, or if the applicant lacks legal capacity to consent, by a person authorized pursuant to law to consent on behalf of the applicant.
8. Time period during which release of information is effective. The consent form shall specify the time period during which any and all release provisions of the consent form shall be effective, but in no case shall such time period exceed 180 days from the date the consent form is signed by the applicant or the applicant's legal representative. No HIV-related information shall be released to any person after the expiration of that time period unless the insurer obtains the express written consent, pursuant to R20-6-1204, of the applicant or, if the applicant lacks legal capacity to consent, by a person authorized by law to consent on behalf of the applicant.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1203 recodified from R4-14-1203 (Supp. 95-1).

R20-6-1204. Release of Confidential HIV-related Information; Release Form

A. Except as required by law or authorized pursuant to a written consent to be tested, an insurer shall not disclose confidential HIV-related information to any person unless a written release form is executed by the applicant or, if the applicant lacks legal capacity to consent to such release, by a person authorized by law to consent to the release of information on behalf of the applicant. The applicant or the applicant's legal representative shall be entitled to receive a copy of the release. A photocopy shall be as valid as the original.

B. Such written release form shall contain the following information:
1. The name and address of the person to whom the information shall be disclosed;
2. The specific purpose for which disclosure is to be made; and
3. The time period during which the written release is to be effective but in no case shall such time period exceed 180 days from the date the release is signed by the applicant or the applicant's legal representative;
4. The signature of the applicant or of the person authorized by law to consent to such release, and the date the release form was signed.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1204 recodified from R4-14-1204 (Supp. 95-1).

R20-6-1205. Benefits; Prohibited Practices

A. Life and disability insurance policies or health care plans that provide benefits for prescription drugs shall provide benefits for any and all drugs and pharmaceutical forms of treatment for HIV and/or AIDS approved by the Food and Drug Administration pursuant to 21 U.S.C. Chapter 9 or licensed by the Food and Drug Administration pursuant to 42 U.S.C. Chapter 6A, including but not limited to Zidovudine, formerly Azidothymidine ("AZT"), Didanosine (ddI) and Zalcitabine (ddC), to the same extent as other prescription drugs and treatments.

B. Insurers shall provide benefits for HIV, AIDS, and AIDS-related conditions in the same manner and to the same extent as those benefits provided for all other diseases.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1205 recodified from R4-14-1205 (Supp. 95-1).

ARTICLE 13. MENTAL HEALTH PARITY

R20-6-1301. Definitions

The definitions in A.R.S. § 20-3501 and the following definitions apply to this Article:

"Arizona Mental Health Parity Act" means the statutes found at A.R.S. §§ 20-3501 through 20-3505.

"Coverage unit" has the meaning prescribed at 45 CFR § 146.136(a) "Coverage unit."

c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
a. Other factor applying NQTL to MH/SUD benefit.
b. Other factor applying NQTL to Med/Surg benefit.
c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

Historical Note
New Exhibit A made by final rulemaking at 28 A.A.R. 1824 (July 29, 2022), effective September 4, 2022 (Supp. 22-3).

ARTICLE 14. INSURANCE HOLDING COMPANY

R20-6-1401. Definitions

A. "The Act" means the Insurance Holding Company Systems Act, A.R.S. §§ 20-481 through 20-481.32.

B. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

C. "Ultimate controlling person" means that person which is not controlled by any other person.

D. Unless the context otherwise requires, other terms found in these regulations and in A.R.S. § 20-481 are used as defined in the Act. Other nomenclature or terminology is according to Title 20, A.R.S. or industry usage if not defined by Title 20, A.R.S.

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1401 recodified from R4-14-1401 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1402. Acquisition of Control – Statement Filing

A. A person required to file a statement pursuant to A.R.S. § 20-481.02 shall furnish the required information on Form A, attached hereto as Appendix A and on Form E, attached hereto as Appendix E, and described in subsections (D) and (E) of this Section.

B. The applicant shall promptly advise the Director of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Director's disposition of the application.

C. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of A.R.S. § 20-481.02(G), the name of the domestic insurer on the cover page should be indicated as follows: "[ABC Insurance Company), a subsidiary of [XYZ Holding Company]." Where a A.R.S. § 20-481.02(G) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

D. If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to A.R.S. § 20-481.02(A), that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to A.R.S. § 20-481.25(C).

E. Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to A.R.S. § 20-481.25, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of A.R.S. § 20-481.25 as set forth in A.R.S. § 20-481.25(B).

F. In addition to the information required by Form E, the Director may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1402 recodified from R4-14-1402 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1403. Annual Registration of Insurers – Statement Filing

A. An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 shall furnish the required information on Form B, attached hereto as Appendix B, in accordance with the instructions contained in Appendix G.

B. Amendments to Form B shall be filed in the Form B format with only those items which are being amended reported. Each such amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the amendment and not the date of the original filings.

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1403 recodified from R4-14-1403 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1404. Summary of Registration – Statement Filing

An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 is also required to furnish information required on Form C, attached hereto as Appendix C.

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1404 recodified from R4-14-1404 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1405. Alternative and Consolidated Registrations

A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under A.R.S. § 20-481.09. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

1. The statement or report contains substantially similar information required to be furnished on Form B; and
2. The filing insurer is the principal insurance company in the insurance holding company system.

B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

C. With the prior approval of the Director, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection (A) above.

D. Any insurer may take advantage of the provisions of A.R.S. §§ 20-481.15 or 20-481.16 without obtaining the prior approval of the Director. The Director, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1405 recodified from R4-14-1405 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1406. Disclaimers and Termination of Registration

A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person, hereinafter referred to in this rule as the "subject," shall contain the following information:

1. The number of authorized, issued and outstanding voting securities of the subject;
2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
4. A statement explaining why the person should not be considered to control the subject.

B. A request for termination of registration shall be deemed to have been granted unless the director, within 30 days after receipt of the request, notifies the registrant otherwise.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1406 recodified from R4-14-1406 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1407. Transactions Subject to Prior Notice - Notice Filing

A. An insurer required to give notice of a proposed transaction pursuant to A.R.S. § 20-481.12 shall furnish the required information on Form D, attached hereto as Appendix D, in accordance with the instructions in Appendix G.

B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

1. Identify the person providing services and the nature of such services;
2. Set forth the methods to allocate costs;
3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
6. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
9. Include standards for termination of the agreement with and without cause;
10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
11. Specify that, if the insurer is placed in receivership or seized by the Director under the Arizona Receivership Act:
    a. All of the rights of the insurer under the agreement extend to the receiver or Director; and,
    b. All books and records will immediately be made available to the receiver or the Director, and shall be turned over to the receiver or Director immediately upon the receiver or Director's request;
12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the Arizona Receivership Act; and
13. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under the Arizona Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1407 recodified from R4-14-1407 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1408. Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to A.R.S. § 481.10(D) shall furnish the required information on Form F, attached hereto as Appendix F.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1408 recodified from R4-14-1408 (Supp. 95-1). R20-6-1408 repealed; new Section R20-6-1408 made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

R20-6-1409. Extraordinary Dividends and Other Distributions

A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

1. The amount of the proposed dividend;

2. The date established for payment of the dividend;
3. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
4. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
   a. The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
   b. Surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;
   c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
   d. If the insurer is not a life insurer, the net income, net realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
   e. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.
5. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and
6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

B. Subject to A.R.S. § 20-481.19, each registered insurer shall report to the Director all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 business days before payment of the dividend or distribution, including the same information required by subsection (A)(4)(a) through (e) of this rule.

Historical Note
New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4). Amended by final rulemaking at 23 A.A.R 3311, effective January 16, 2018 (Supp. 17-4).

R20-6-1410. Adequacy of Surplus
The factors set for in A.R.S. §§ 20-481.01(F) and 20-481.24 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Director instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Director will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Director will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Historical Note
New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix A. Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

[Name of Domestic Insurer]

By

[Name of Acquiring Person (Applicant)]

Filed with the Arizona Department of Insurance

Dated:_____, 20____

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

_____

ITEM 1. METHOD OF ACQUISITION

[State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired. State the federal identification number and the NAIC number of the domestic insurer.]

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

[(a) State the name and address of the applicant seeking to acquire control over the insurer.]

[(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.]

[(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant, including NAIC numbers for all insurers. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.]

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

[On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

(a) Name and business address;

(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(c) Material occupations, positions, officer or employment during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on: if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;

(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

Such persons may also submit fingerprints and the fingerprint processing fee in accordance with A.R.S. § 20-481.03(B).]

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

[(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.]

[(b) Explain the criteria used in determining the nature and amount of such consideration.]

[(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.)

ITEM 5. FUTURE PLANS OF INSURER

[Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.]

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

[State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.]

ITEM 7. OWNERSHIP OF VOTING SECURITIES

[State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.]

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

[Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.]

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

[Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefore. State whether any such shares so purchased are hypothecated.]

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

[Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.)

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

[Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.]

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

[(a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.]

[(b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. The statements may be prepared on either an individual basis, or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.]

[(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Appendix G.)

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.02 _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20_____.

(SEAL)

Name of Applicant

BY _____
(Name)

_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20_____, for and on behalf of _____; that (s)he is the _____
(Name of Applicant) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix B. Form B - Insurance Holding Company System Annual Registration Statement

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date: _____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

[Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the federal identification number and the NAIC number of each, the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.]

ITEM 2. ORGANIZATIONAL CHART

[Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.]

ITEM 3. THE ULTIMATE CONTROLLING PERSON

[As to the ultimate controlling person in the insurance holding company system furnish the following information:

(a) Name;

(b) Home office address;

(c) Principal executive office address;

(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;

(e) The principal business of the person;

(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.]

ITEM 4. BIOGRAPHICAL INFORMATION

[If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes

other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.]

ITEM 5. TRANSACTIONS AND AGREEMENTS

[Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;

(b) Purchases, sales or exchanges of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders;

(h) Consolidated tax allocation agreements; and

(i) Any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of A.R.S. § 20-481.09.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving 1/2 of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Director and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the Registrant.]

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

[A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.]

ITEM 7.a. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

[The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.]

ITEM 7.b. STATEMENT REGARDING CORPORATE GOVERNANCE AND INTERNAL CONTROLS

[The insurer shall furnish a statement that the insurer's board of directors oversees corporate governance and internal controls of the insurer and that the insurer's officers or senior management have approved, implemented and maintain and monitor corporate governance and internal control procedures.]

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

[(a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Forms B and G.]

ITEM 9. FORM C REQUIRED

[A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.]

ITEM 10. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant _____ has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____day of _____, 20_____.

(SEAL)

Name of Applicant

BY _____
(Name)

_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20_____, for and on behalf of _____; that (s)he is the _____
(Name of Applicant) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix C. Form C - Summary of Registration Statement

SUMMARY OF CHANGES TO REGISTRATION STATEMENT

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Dated:_____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

[Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Director, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.]

SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant _____ has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20____.

(SEAL)

Name of Applicant

BY_____
(Name)

_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, 20_____, for and on behalf of _____; that (s)he is the _____
(Name of Applicant) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix D. Form D - Prior Notice of a Transaction

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Dated:_____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

[Furnish the following information for each of the parties to the transaction:

(a) Name;

(b) Home office address;

(c) Principal executive office address;

(d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.;

(e) A description of the nature of the parties' business operations;

(f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;

(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.]

ITEM 2. DESCRIPTION OF THE TRANSACTION

[Furnish the following information for each transaction for which notice is being given:

(a) A statement as to whether notice is being given under A.R.S. § 20-481.12(B);

(b) A statement of the nature of the transaction;

(c) If a notice for amendments or modifications, the reasons for the change and the financial impact on the domestic insurer;

(d) A statement of how the transaction meets the "fair and reasonable" standard of A.R.S. § 20-481.12(A)(1); and

(e) The proposed effective date of the transaction.]

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

[Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

[If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

ITEM 5. REINSURANCE

[If the transaction is a reinsurance agreement or modification thereto, as described by A.R.S. § 20-481.12(B)(3)(b), or a reinsurance pooling agreement or modification thereto as described by A.R.S. § 20-481.12(B)(3)(a), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.]

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS

[For management and service agreements, furnish:

(a) A brief description of the managerial responsibilities, or services to be performed;

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.]

[For cost-sharing arrangements, furnish:

(a) A brief description of the purpose of the agreement;

(b) A description of the period of time during which the agreement is to be in effect;

(c) A brief description of each party's expenses or costs covered by the agreement;

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;]

(e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and

(g) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.]

ITEM 7. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.09, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____on the _____ day of _____, 20_____.

(SEAL)

By_____
Name of Applicant

_____
(Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20_____, for and on behalf of _____; that (s)he is the _____
(Name of Applicant) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix E. Form E - Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing Business in this State or by a Domestic Insurer

PRE-ACQUISITION NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER

_____

Name of Applicant

_____

Name of Other Person Involved in Merger or Acquisition

Filed with the Arizona Department of Insurance
Dated:_____, 20_____
Name, title, address and telephone number of person completing this statement:
_____
_____
_____
_____

ITEM 1. NAME AND ADDRESS

[State the name and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.]

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

[State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.]

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

[State the nature and purpose of the proposed merger or acquisition.]

ITEM 4. NATURE OF BUSINESS

[State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.]

ITEM 5. MARKET AND MARKET SHARE

[State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in A.R.S. § 20-481.25(D). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.]

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Appendix E. *Instructions on Forms,* renumbered to Appendix G; new Appendix E. Form E made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix F. Form F - Enterprise Risk Report

ENTERPRISE RISK REPORT

Filed with the Arizona Department of Insurance

_____
Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies
Name Address

_____
_____
_____
_____
Dated:_____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

_____
_____
_____

ITEM 1. ENTERPRISE RISK

[The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in A.R.S. § 20-481(4), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities with the insurance holding company system;

Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;

Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system'

Business plan of the insurance holding company system and summarized strategies for next 12 months;

Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

Identification of insurance holding company system capital resources and material distribution patterns;

Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (include both the rating score and outlook);

Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

[The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.]

ITEM 2. OBLIGATION TO REPORT

[If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.]

Historical Note

Appendix F, Form F made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

Appendix G. Instructions on Forms A, B, C, D, E and F

INSTRUCTIONS ON FORMS A, B, C, D, E AND F

FORMS - GENERAL REQUIREMENTS

Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by A.R.S. §§ 20-481.02, 20-481.09, 20-481.12 and 20-481.25. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

One original paper statement excluding exhibits, and all other papers and documents shall be filed with the Director. The statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement. All paper filings shall be by personal delivery or mail addressed to: Arizona Department of Insurance, Financial Affairs Division.

In addition to the filed paper statement, a copy of the statement, including exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically.

All filed documents shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

If an applicant requests a hearing on a consolidated basis under A.R.S. § 20-481.07, in addition to filing the Form A with the Director, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMMISSIONS

Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Director which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Director which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Director as a separate document:

(1) Identifying the information, document or report in question;

(2) Stating why the filing thereof at the time required is impractical; and

(3) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Director within 60 days after receipt thereof enters an order denying the request.

FORMS - ADDITIONAL INFORMATION AND EXHIBITS

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Director may request such further information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the forms. The

exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: “Change No. (insert number) to” and shall indicate the date of the change and not the date of the original filing.

Historical Note

Appendix G. *Instructions on Forms,* renumbered from Appendix E. *Instructions on Forms,* with heading amended to include new Appendix F, by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

ARTICLE 15. RESERVED

ARTICLE 16. CREDIT FOR REINSURANCE

R20-6-1601. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1601 recodified from R4-14-1601 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1601 renumbered to R20-6-A1601 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1602. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1602 recodified from R4-14-1602 (Supp. 95-1). R20-6-1602 renumbered to R20-6-1607; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1602 renumbered to R20-6-A1602 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1603. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1603 recodified from R4-14-1603 (Supp. 95-1). R20-6-1603 renumbered to R20-6-1608; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1603 renumbered to R20-6-A1603 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1604. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1604 recodified from R4-14-1604 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). R20-6-1604 renumbered to R20-6-1609; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1604 renumbered to R20-6-A1604 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1605. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1605 recodified from R4-14-1605 (Supp. 95-1). R20-6-1605 renumbered to R20-6-1610; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1605 renumbered to R20-6-A1605 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1606. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1606 recodified from R4-14-1606 (Supp. 95-1). R20-6-1606 renumbered to R20-6-1611; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1606 renumbered to R20-6-A1606 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1607. Renumbered

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1607 recodified from R4-14-1607 (Supp. 95-1). Section R20-6-1607 renumbered to R20-6-1612; new Section R20-6-1607 renumbered from R20-6-1602 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1607 renumbered to R20-6-A1607 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1608. Renumbered

Historical Note

New Section R20-6-1608 renumbered from R20-6-1603 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1608 renumbered to R20-6-A1608 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1609. Repealed

Historical Note

New Section R20-6-1609 renumbered from R20-6-1604 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). Repealed by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1610. Renumbered

Historical Note

New Section R20-6-1610 renumbered from R20-6-1605 by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1610 renumbered to R20-6-B1601 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1611. Renumbered

Historical Note

New Section R20-6-1611 renumbered from R20-6-1606 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1611 renumbered to R20-6-B1602 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-1612. Renumbered

Historical Note

New Section R20-6-1612 renumbered from R20-6-1607 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). R20-6-1612 renumbered to R20-6-B1603 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

PART A. CREDIT FOR REINSURANCE

R20-6-A1601. Credit for Reinsurance – Reinsurer Licensed in Arizona

Pursuant to A.R.S. § 20-3602(C) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in Arizona as of any date on which statutory financial statement credit for reinsurance is claimed.

Historical Note

New Section R20-6-A1601 renumbered from R20-6-1601 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-A1602. Credit for Reinsurance – Accredited Reinsurers

A. Pursuant to A.R.S. § 20-3602(D) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Arizona as of the date on which statutory financial statement credit for reinsurance is claimed.

B. An accredited reinsurer must:

1. File a properly executed Form AR-1, attached as Exhibit A to this Part, as evidence of its submission to the Director's jurisdiction and to the Director's authority to examine its books and records;
2. File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
3. File annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
4. Maintain a surplus as regards policyholders in an amount not less than $20 million, or obtain the affirmative approval of the Director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

C. If the Director determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Director may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this Section if the assuming insurer's accreditation has been revoked by the Director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Director.

Historical Note

New Section R20-6-A1602 renumbered from R20-6-1602 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; clerical error under subsection (B)(1) referencing Form AR-1 as an Appendix A corrected to Exhibit A (Supp. 22-1).

R20-6-A1603. Credit for Reinsurance – Reinsurer Domiciled in Another State

A. Pursuant to A.R.S. § 20-3602(E) the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under A.R.S. Title 20, Chapter 30 and this Part;
2. Maintains a surplus as regards policyholders in an amount not less than $20 million; and
3. Files a properly executed From AR-1 (Exhibit A) with the Director as evidence of the submission to the Director's authority to examine its books and records.

B. The provisions of this Section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this Section, "substantially similar" standards means credit for reinsurance standards that the Director determines equal or exceed the standards of A.R.S. Title 20, Chapter 30 and this Part.

Historical Note

New Section R20-6-A1603 renumbered from R20-6-1603 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-A1604. Credit for Reinsurance – Reinsurers Maintaining Trust Funds

A. Pursuant to A.R.S. § 20-3602(F) and (F)(1), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in A.R.S. § 20-3601 for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in subsection (B)(2).
2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the

trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuing insurer's liabilities, attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

3. The trust fund for a group including incorporated and individual unincorporated underwriters:
   a. Shall consist of:
      i. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
      ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this Part, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
      iii. In addition to these trusts, the group shall maintain a trusteed surplus of which $100 million shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.
   b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director:
      i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
      ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.
4. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:
   a. Consist of funds in trust in an amount no less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
   b. Maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and
   c. File a properly executed Form AR-1 (Exhibit A) as evidence of the submission to the Director's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.
   d. Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

1. The trust instrument shall provide that:
   a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;
   b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;
   c. The trust shall be subject to examination as determined by the commissioner;
   d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
   e. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.
2. Notwithstanding any other provisions in the trust instrument;
   a. If the trust fund is inadequate because it contains an amount less than the amount required by this Section or if the granter of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of

competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

D. For purposes of this Section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
   a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
   b. Reserves for losses reported and outstanding;
   c. Reserves for losses incurred but not reported;
   d. Reserves for allocated loss expenses; and
   e. Unearned premiums.
2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:
   a. Aggregate reserves for life policies and contracts net of policy loans and net due, and deferred premiums;
   b. Aggregate reserves for accident and health policies;
   c. Deposit funds and other liabilities without life or disability contingencies; and
   d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to A.R.S. § 20-3602 and this Section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in A.R.S. § 20-3601, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution as defined in A.R.S. § 20-3601, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subsections (E)(1)(e), (E)(3), (E)(6)(b), or (E)(7), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of A.R.S. § 20-3602 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest that are valid and legally authorized and that are issued, assumed, or guaranteed by:
   a. The United States or by any agency or instrumentality of the United States;
   b. A state of the United States;
   c. A territory, possession, or other governmental unit of the United States;
   d. An agency or instrumentality of a governmental unit referred to in subsections (E)(1)(b) and (E)(1)(c) if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection (E)(1)(d) if payable solely out of special assessments on properties benefited by local improvements; or
   e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
   a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
   b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in Arizona and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
   c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
4. An investment made pursuant to the provisions of subsections (E)(1), (E)(2), or (E)(3) shall be subject to the following additional limitations;
   a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5% of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed 5% of the assets of the trust;
c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under subsections (E)(2)(a) and (E)(2)(c), but shall not exceed 2% of the assets of the trust.

5. As used in this Section:
a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
i. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: (1) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and (2) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1703; or
ii. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (E)(5)(a)(i);
b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity interests.
a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
i. Its obligations and preferred shares, if any, are eligible as investments under this Section; and
ii. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a - 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this Section an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;
b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:
i. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and
ii. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;
c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection (E)(6), when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection (E)(6), shall not exceed 10% of the assets in the trust;

7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment companies.
a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. 80a, are permissible investments if the investment company:
i. Invests at least 90% of its assets in the types of securities that qualify as an investment under subsection (E)(1), (E)(2), or (E)(3) or invests in securities that are determined by the Director to be substantively similar to the types of securities set forth in subsection (E)(1), (E)(2), or (E)(3); or
ii. Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subsection (E)(6)(a);
b. Investments made by a trust in investment companies under this subsection (E)(8) shall not exceed the following limitations:
i. An investment in an investment company qualifying under subsection (E)(8)(a)(i) shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust, and

ii. Investments in an investment company qualifying under subsection (E)(8)(a)(ii) shall not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subsection (E)(6)(a).

9. Letters of Credit.
   a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director) to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
   b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section R20-6-A1607 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this Section.

Historical Note

New Section R20-6-A1604 renumbered from R20-6-1604 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" was removed when followed by a subsection reference (Supp. 22-1).

R20-6-A1605. Credit for Reinsurance – Certified Reinsurers

A. Pursuant to A.R.S. §§ 20-3602(G), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Arizona at all times for which statutory financial statement credit for reinsurance is claimed under this Section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Director. The security shall be in a form consistent with the provisions of A.R.S. §§ 20-3602(G), and 20-3603 and R20-6-A1608 or R20-6-A1609(A). The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

	Ratings	Security Required
a.	Secure-1	0%
b.	Secure-2	10%
c.	Secure-3	20%
d.	Secure-4	50%
e	Secure-5	75%
f	Vulnerable-6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
3. The Director shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Director. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
   a. Line 1: Fire
   b. Line 2: Allied Lines
   c. Line 3: Farmowners multiple peril
   d. Line 4: Homeowners multiple peril
   e. Line 5: Commercial multiple peril
   f. Line 9: Inland Marine
   g. Line 12: Earthquake
   h. Line 21: Auto physical damage
5. Credit for reinsurance under this Section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract covering any risk for which collateral was provided previously, shall only be subject to this Section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
6. Nothing in this Section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

B. Certification Procedure.
1. The Director shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Director may not take final action on the application until at least 30 days after posting the notice required by this subsection (B)(1).
2. The Director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection (A). The Director shall publish a list of all certified reinsurers and their ratings.
3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
   a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Director pursuant to subsection (C).
   b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250 million calculated in accordance with subsection (B)(4)(h). This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least

$250 million and a central fund containing a balance of at least $250 million.

c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
   i. Standard & Poor's;
   ii. Moody's Investors Service;
   iii. Fitch Ratings;
   iv. A.M. Best Company; or
   v. Any other Nationally Recognized Statistical Rating Organization.

d. The certified reinsurer must comply with any other requirements reasonably imposed by the Director.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
   a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the Table 1. The Director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification as outlined in Table 1.
   b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
   c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
   d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (instructions attached as Exhibit C) for property/casualty reinsurers or Form CR-S (instructions attached as Exhibit D) for life and health reinsurers;
   e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
   f. Regulatory actions against the certified reinsurer;
   g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(4)(h);
   h. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the Director will consider audited financial statements for the last two years filed with its non-U.S. jurisdiction supervisor;
   i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
   j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
   k. Any other information deemed relevant by the Director.

5. Based on the analysis conducted under subsection (B)(4)(e) of a certified reinsurer's reputation for prompt payment of claims, the Director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subsection (B)(4)(a) if the Director finds that:
   a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100 thousand for each cedent; or
   b. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50 million.

6. The assuming insurer must submit a properly executed Form CR-1 (attached as Exhibit B) as evidence of its submission to the jurisdiction of Arizona, appointment of the Director as an agent for service of process in Arizona, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Director shall not certify any assuming insurer that is domiciled in a jurisdiction that the Director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under A.R.S. § 20-158 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
   a. Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency,

including a statement describing such changes and the reasons therefore;

b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(7)(d);

d. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the Director may reasonably require.

8. Change in Rating or Revocation of Certification.

a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (B)(4)(a).

b. The Director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this Section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the Director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Director, the Director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer shall be required to post security in accordance with R20-6-A1607 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with R20-6-A1604, the Director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Director shall publish notice and evidence of such recognition in an appropriate manner. The Director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Director, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Director in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the Director.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Director shall consider this list in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Director shall provide thoroughly documented justification with

respect to the criteria provided under subsections (C)(2)(a) through (C)(2)(i).

4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 (Exhibit B) and such additional information as the Director requires. The assuming insurer shall be considered to be a certified reinsurer in Arizona.
2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in Arizona as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Director of any change in its status or rating within ten days after receiving notice of the change.
3. The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (B)(8).
4. The Director may withdraw recognition of the other jurisdiction's certification at any time with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with subsection (B)(8), the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in Arizona.

E. Mandatory Funding Clause. In addition to the clauses required under R20-6-A1609(B), reinsurance contracts entered into or renewed under this Section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this Section for reinsurance ceded to the certified reinsurer.

F. The Director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Historical Note

New Section R20-6-A1605 renumbered from R20-6-1605 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" and word "below" were removed when by followed a subsection reference (Supp. 22-1).

Table 1. Financial Strength Ratings

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

Historical Note

Table 1 renumbered from R20-6-1605 by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

R20-6-A1606. Credit for Reinsurance - Reciprocal Jurisdictions; Credit for Reinsurance Required by Law

A. Credit for reisurance to a reciprocal jurisdiction assuming insurer. Pursuant to A.R.S. § 20-3602(H), (I), (J), (K), (L), and (R), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this Part.

B. A "reciprocal jurisdiction" is a jurisdiction, as designated by the Director pursuant to subsection (D) that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
3. A qualified jurisdiction, as determined by the Director pursuant to A.R.S. § 20-3602(G)(3) and Section R20-6-A1605(C), which is not otherwise described in subsections (B)(1) or (B)(2) and which the Director determines meets all of the following additional requirements:
   a. Provides that an insurer who has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
   b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

c. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups who are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Director or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Director in accordance with a memorandum of understanding or similar document between the Director and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to a reciprocal jurisdiction assuming insurer meeting each of these conditions:

1. The assuming insurer must be licensed to transact insurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;
2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subsection (C)(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:
   a. No less than $250 million; or
   b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
      i. Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250 million; and
      ii. A central fund containing a balance of the equivalent of at least $250 million.
3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
   a. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (B)(1), the ratio specified in the applicable covered agreement;
   b. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (B)(2), a risk-based capital (RBC) ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the NAIC; or
   c. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (B), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Director determines to be an effective measure of solvency.
4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (Exhibit E), of its agreement to the following:
   a. The assuming insurer must agree to provide prompt written notice and explanation to the Director if it falls below the minimum requirements set forth in subsections (C)(2) or (C)(3), or if any regulatory action is taken against it for serious noncompliance with applicable law;
   b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the Director as agent for service of process.
      i. The Director may also require that such consent be provided and included in each reinsurance agreement under the Director's jurisdiction.
      ii. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
   c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;
   d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;
   e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involved this state's ceding insurers, and agrees to notify the ceding insurer and the Director and to provide 100% security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of A.R.S. §§ 20-3602(G) and 20-3603, R20-6-A1608, or R20-6-A1609(A). For purposes of this Section, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed class members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a

governing authority outside the ceding insurer's home jurisdiction; and

f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subsection (C)(5).

5. The assuming insurer or its legal successor must provide, if requested by the Director, on behalf of itself and any legal predecessors, the following documentation to the Director:
   a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
   b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
   c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
   d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subsection (C)(6).
6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
   a. More than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported by the Director;
   b. More than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100 thousand, or as otherwise specified in a covered agreement; or
   c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50 million, or as otherwise specified in a covered agreement.
7. The assuming insurer's supervisory authority must confirm to the Director on an annual basis that the assuming insurer complies with the requirements set forth in subsections (C)(2) and (C)(3).
8. Nothing in this provision precludes an assuming insurer from providing the Director with information on a voluntary basis.

D. The Director shall timely create and publish a list of reciprocal jurisdictions.
1. A list of reciprocal jurisdictions is published through the NAIC committee process. The Director's list shall include any reciprocal jurisdiction as defined under subsections (B)(1) and (B)(2), and shall consider any other reciprocal jurisdiction included on the NAIC list. The Director may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.
2. The Director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the Director shall not remove from the list a reciprocal jurisdiction as defined under subsections (B)(1) and (B)(2). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to A.R.S. Title 20, Chapter 30 and this Part.

E. The Director shall timely create and publish a list of reciprocal jurisdiction assuming insurers that have satisfied the conditions set forth in this Section and to which cessions shall be granted credit in accordance with this subsection.
1. If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (C) have been met, the Director has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The Director may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirement of subsection (C).
2. When requesting that the Director defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 (Appendix E) and additional information as the Director may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

F. If the Director determines that a reciprocal jurisdiction assuming insurer no longer meets one or more of the requirements under this Section, the Director may revoke or suspend the eligibility of the reciprocal jurisdiction assuming insurer for recognition under this Section.
1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with R20-6-A1607.
2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Director and consistent with the provisions of R20-6-A1607.

G. Before denying statement credit or imposing a requirement to post security with respect to subsection (F) or adopting any similar requirement that will have substantially the same regulatory impact as security, the Director shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (C);
2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;
3. After the expiration of 90 days or less, as set out in subsection (G)(2), if the Director determines that no or insufficient action was taken by the assuming insurer, the Director may impose any of the requirements as set out in this subsection (G); and
4. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection (G).

H. If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring the reciprocal jurisdiction assuming insurer to post security for all outstanding liabilities.

I. Credit for reinsurance required by law. Pursuant to A.R.S. § 20-3602(M), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. §§ 20-3602(C) through (G) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this Section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

Historical Note

New Section R20-6-A1606 renumbered from R20-6-1606 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" and word "above" were removed when followed by a subsection reference (Supp. 22-1).

R20-6-A1607. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of R20-6-A1601 through R20-6-A1606

A. Pursuant to A.R.S. § 20-3603, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. § 20-3602 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in A.R.S. § 20-3601. This security may be in the form of any of the following:

1. Cash;
2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
3. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in A.R.S. § 20-3601, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
4. Any other form of security acceptable to the Director.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this Section shall be allowed only when the requirements of R20-6-A1609(B) and the applicable portions of R20-6-A1608 or R20-6-A1609(A) have been satisfied.

Historical Note

New Section R20-6-A1606 renumbered from R20-6-1606 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant word "Section" was removed before a Chapter Section number (Supp. 22-1).

R20-6-A1608. Trust Agreements Qualified under R20-6-A1607; Letters of Credit Qualified under R20-6-A1607

A. Trust agreements - definitions. As used in subsections (B) through (G):

1. "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator.
2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
3. "Obligations," as used in subsection (B)(11), means:
   a. Reinsured losses and allocated loss expenses paid by the ceding company but not recovered from the assuming insurer;
   b. Reserves for reinsured losses reported and outstanding;
   c. Reserves for reinsured losses incurred but not reported; and
   d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. Trust agreements - required conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in A.R.S. § 20-3601.
2. The trust agreement shall create a trust account into which assets shall be deposited.
3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
4. The trust agreement shall provide that:
   a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
   b. No other statement or document is required to be presented in order to withdraw assets, except that the

beneficiary may be required to acknowledge receipt of withdrawn assets;
c. It is not subject to any conditions or qualifications outside of the trust agreement; and
d. It shall not contain references to any other agreements or documents except as provided for in subsections (B)(11) and (B)(12).

5. The trust agreement shall be established for the sole benefit of the beneficiary.
6. The trust agreement shall require the trustee to:
a. Receive assets and hold all assets in a safe place;
b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
d. Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;
e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
7. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.
8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
11. Notwithstanding other provisions of subsections (A) through (G), when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in A.R.S. § 20-3601 apart from its general assets, in trust for such uses and purposes specified in subsections (11)(a) and (11)(b) as may remain executory after such withdrawal and for any period after the termination date.
12. Notwithstanding other provisions of subsections (A) through (G), when a trust agreement is established to meet the requirements of R20-6-A1607 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
a. To pay or reimburse the ceding insurer for:
i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provision of the policies reinsured under the reinsurance agreement.
b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer, or
c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to

withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subsections (12)(a) and (12)(b) as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code, or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subsection must be included in the reinsurance agreement.

C. Trust agreements - permitted conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (D)(1)(b).
4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Trust agreements - additional conditions applicable to reinsurance agreements:

1. A reinsurance agreement may contain provisions that:
   a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
   b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
   c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
   d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:
      i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; and
      ii. To pay or reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
      iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding reinsurer; or
      iv. To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
2. The reinsurance agreement also may contain provisions that:
   a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

i. The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
ii. After withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.

b. Provide for the return of any amount withdrawn in excess of the actual amounts required for subsection (D)(1)(d), and for interest payments at a rate not in excess of the prime rate of interest on such amounts;
c. Permit the award by any arbitration panel or court of competent jurisdiction of:
i. Interest at a rate different from that provided in subsection (D)(2)(b);
ii. Court or arbitration costs;
iii. Attorney's fees; and
iv. Any other reasonable expenses.

E. Trust agreements - financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Director in compliance with the provisions of this Part when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

F. Trust agreements - existing agreements. Notwithstanding the effective date of this Part, any trust agreement or underlying reinsurance agreement in existence and approved by the Director prior to the effective date of this Part will continue to be acceptable until December 31, 2016, at which time the agreements will have to fully comply with subsections (A) through (G) for the trust agreement to be acceptable.

G. Trust agreements - failure to identify beneficiary. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (A)(1) shall not be construed to affect any actions or rights that the Director may take or possess pursuant to the provisions of the laws of Arizona.

H. Letters of credit. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined A.R.S. § 20-3601. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (N)(1). As used in this Section, "beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

I. Letters of credit - heading. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

J. Letters of credit - required statements and clauses.
1. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
2. The letter of credit shall state whether it is subject to and governed by the laws of Arizona or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98). All drafts of letters of credit drawn according to UCP 600 or ISP98 shall be presentable at an office in the United States of a qualified United States financial institution.
3. The letter of credit shall contain an "evergreen clause" in compliance with subsection (K).

K. Letters of credit - term of the letter of credit. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for no less than 30 days' notice prior to expiration date or nonrenewal.

L. Letters of credit made subject to UCP 600 or ISP98. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP 600 occur.

M. Letters of credit - additional requirements. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (H), then the following additional requirements shall be met:
1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
2. The "evergreen clause" shall provide for 30 days' notice prior to expiration date or nonrenewal.

N. Letters of credit - reinsurance agreement provisions.
1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;
b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific

reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

ii. To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

iv. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsections (N)(1)(b)(i), (N)(1)(b)(ii), and (N)(1)(b)(iii) as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of subsections (N)(1)(a) and (N)(1)(b) shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subsection (N)(1) shall preclude the ceding insurer and assuming insurer from providing for:
   a. An interest payment, at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (N)(1)(b); or
   b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

Historical Note

New Section R20-6-A1608 renumbered from R20-6-1608 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" was removed when followed by a subsection reference, and the word "Section" was removed before a Chapter Section number (Supp. 22-1).

R20-6-A1609. Other Security; Reinsurance Contract; Contracts Affected

A. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

B. Reinsurance Contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of R20-6-A1601 through R20-6-A1605 or R20-6-A1607 of this Article or otherwise in compliance with A.R.S. § 20-3602 after the adoption of this Part unless the reinsurance agreement:
   1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to A.R.S. § 20-261(C);
   2. Includes a provision pursuant to A.R.S. § 20-3602 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute-resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
   3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

C. Contracts affected. All new and renewal reinsurance transactions entered into after the effective date of this Part shall conform to the requirements of A.R.S. Title 20, Chapter 30 and this Part if credit is to be given to the ceding insurer for such reinsurance.

Historical Note

New Section R20-6-A1609 renumbered from R20-6-1609 and amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant word "Section" was removed before a Chapter Section number (Supp. 22-1).

Exhibit A. Form AR-1, Certificate of Assuming Insurer

FORM AR-1, CERTIFICATE OF ASSUMING INSURER

I,_____,_____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, hereby certify that
(name of state)

_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

_____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Director of the Arizona Department of Insurance and Financial Institutions ("Director") as its lawful attorney upon whom may be served any lawful process in any action, suit or legal proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Director to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in
_____reinsured by Assuming Insurer and
(ceding insurer's state of domicile)

undertakes to submit additions to or deletions from the list to the Director at least once per calendar quarter.

Dated:_____ _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit A amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4). Exhibit A amended by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

Exhibit B. Form CR-1, Certificate of Certified Reinsurer

FORM CR-1, CERTIFICATE OF CERTIFIED REINSURER

I,_____,_____
(name of officer) (title of officer)

of _____ , the assuming insurer under
(name of assuming insurer)

a reinsurance agreement with one or more insurers domiciled in_____
(name of state)

in order to be considered for approval in this state, hereby certify that

_____("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____ ____for the adjudication of any issue arising out of the (ceding insurer's state of domicile) reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____ (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with this Article.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with this Article.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated:_____ _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit B repealed; new Exhibit B made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

Exhibit C. Form CR-F Instructions

Form CR-F Instructions

Part 1 - Assumed Reinsurance as of December 31, Current Year (000 Omitted)
Create a spreadsheet with the following columns (total each column 5 through 15):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsured
4. Domiciliary Jurisdiction
5. Assumed Premium
6. Reinsurance on Paid Losses and Loss Adjustment Expenses
7. Reinsurance on Known Case Losses and LAE
8. Cols. 6 + 7
9. Contingent Commissions Payable
10. Assumed Premium Receivable
11. Unearned Premium
12. Funds Held By or Deposited With Reinsured Companies
13. Letters of Credit Posted
14. Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit
15. Amount of Assets Pledged or Collateral Held in Trust

Each row shall list each insurer for which reinsurance is assumed for the calendar year.

Part 2 - Ceded Reinsurance as of December 31, Current Year (000 Omitted)
Create a spreadsheet with the following columns (total each column 6 through 19):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsurer
4. Domiciliary Jurisdiction
5. Reinsurance Contracts Ceding 75% or More of Direct Premiums Written
6. Reinsurance Premiums Ceded
7. Reinsurance Recoverable on Paid Losses
8. Reinsurance Recoverable on Paid LAE
9. Reinsurance Recoverable on Known Case Loss Reserves
10. Reinsurance Recoverable on Known Case LAE Reserves
11. Reinsurance Recoverable on IBNR Loss Reserves
12. Reinsurance Recoverable on IBNR LAE Reserves
13. Reinsurance Recoverable on Unearned Premiums
14. Reinsurance Recoverable on Contingent Commissions
15. Cols. 7 through 14 Totals
16. Reinsurance Payable Ceded Balances Payable
17. Reinsurance Payable Other Amounts Due to Reinsurers
18. Net Amount Recoverable From Reinsurers, Cols. 15 – [16 + 17]
19. Funds Held by Company Under Reinsurance Treaties

Each row shall list each insurer to whom reinsurance was ceded for the calendar year.

Historical Note
Exhibit C made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

Exhibit D. Form CR-S Instructions

Form CR-S Instructions

Part 1 – Section 1. Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Location
6. Type of Reinsurance Assumed
7. Amount of In Force at End of Year
8. Reserve
9. Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies, and related benefits) for the calendar year.

Part 1 – Section 2. Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

Please create a spreadsheet with the following columns (total columns 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Domiciliary Jurisdiction
6. Type of Reinsurance Assumed
7. Premiums
8. Unearned Premiums
9. Reserve Liability Other Than For Unearned Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (accident and health insurance) for the calendar year.

Part 2. Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 6 and 7):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Paid Losses
7. Unpaid Losses

Each row shall list each insurer for which reinsurance on paid and unpaid losses is recoverable.

Part 3 – Section 1. Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year
Create a spreadsheet with the following columns (total each column 7 through 14):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location

6. Type of Reinsurance Ceded
7. Amount in Force at End of Year
8. Reserve Credit Taken Current Year
9. Reserve Credit Taken Prior Year
10. Premiums
11. Outstanding Surplus Relief Current Year
12. Outstanding Surplus Relief Prior Year
13. Modified Coinsurance Reserve
14. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies and related benefits).

Part 3 – Section 2. Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year
Create a spreadsheet with the following columns (total each column 7 through 13):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Type
7. Premiums
8. Unearned Premiums (Estimated)
9. Reserve Credit Taken other than for Unearned Premiums
10. Outstanding Surplus Relief Current Year
11. Outstanding Surplus Relief Prior Year
12. Modified Coinsurance Reserve
13. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (accident and health insurance).

Historical Note

Exhibit D made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

Exhibit E. Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction

FORM RJ-1,
CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I,_____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____,
(name of state)

in order to be considered for approval in this state, hereby certify that

_____("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in Arizona for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the Director of the Arizona Department of Insurance and Financial Institutions ("Director"). Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Director as its lawful attorney in and for the State of Arizona upon whom may be served any lawful process in any action, suit, or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that is it not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Arizona. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the Director, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with R20-6-A1606(C)(5), if requested by the Director.

Dated:_____ _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

Historical Note
Exhibit E made by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022 (Supp. 22-1).

PART B. TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

R20-6-B1601. Applicability; Exemptions; Definitions; Severability; Prohibition Against Avoidance

A. Applicability. Part B of this Article shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in subsection (C), issued by any life insurance insurer domiciled in this state. Parts A and B of this Article shall both apply to such reinsurance treaties provided, that in the event of a direct conflict between the provisions of Part B and Part A, the provisions of Part B shall apply but only to the extent of the conflict.

B. Exemptions. Part B of this Article does not apply to the following situations:
1. Reinsurance of:

a. Policies that satisfy the criteria for exemption set forth in A.R.S. § 20-510 and which are issued before the later of:
   i. The effective date of this Part B; and
   ii. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;
b. Portions of policies that satisfy the criteria for exemption set forth in A.R.S. § 20-510 and which are issued before the later of:
   i. The effective date of this Part B; and
   ii. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;
c. Any universal life policy that meets all of the following requirements:
   i. Secondary guarantee period, if any, if five years or less;
   ii. Specified premium for the secondary guarantee period is not less that the net level reserve premium for the secondary guarantee period based on the Director's Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and
   iii. The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period;
d. Credit life insurance;
   i. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or
   ii. Any group life insurance certificate unless the certificate provides for a stated and implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. § 20-3602(F); or
3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. §§ 20-3602(C), (D), or (E), and that, in addition:
   a. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to the Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and
   b. Is not a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in A.R.S. § 20-488 when its Risk-Based Capital ("RBC") is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or
   holder to keep a policy in force over a secondary
4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of A.R.S. §§ 20-3602(C), (D), or (E), and that, in addition:
   a. Is not an affiliate, as that term is defined in A.R.S. § 20-481, of:
      i. The insurer ceding the business to the assuming insurer; or
      ii. Any insurer that directly or indirectly ceded the business to that ceding insurer;
   b. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;
   c. Is both:
      i. Licensed or accredited in at least ten states including its state of domicile; and
      ii. Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
   d. Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in A.R.S. § 20-488 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or
5. Reinsurance ceded to an assuming insurer that meets the requirements of A.R.S. § 20-3604(D)(2); or
6. Reinsurance not otherwise exempt under subsections (B)(1) through (B)(5) if the Director, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:
   a. The risks are clearly outside of the intent and purpose of this Part B;
   b. The risks are included within the scope of this regulation only as a technicality; and
   c. The application of this Part B to those risks is not necessary to provide appropriate protection to policyholders. The Director shall publicly disclose any decision made pursuant to this subsection (B)(6) to exempt a reinsurance treaty from this Part B, as well as the general basis for the decision including a summary of the treaty.

C. Part B Definitions:
1. "Actuarial Method" means the methodology used to determine the Required Level of Primary Security, as described in R20-6-B1602.
2. "Covered Policies" means policies, other than Grandfathered Policies and policies that are not exempt under subsection (B), of the following policy types:
   a. Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or
   b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policy-
   guarantee period.

3. "Grandfathered Policies" means Covered Policies that were:
   a. Issued prior to January 1, 2015; and
   b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in subsection (B).
4. "Non-Covered Policies" means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.
5. "Other Security" means any security acceptable to the Director other than security meeting the definition of Primary Security.
6. "Primary Security" means the following forms of security:
   a. Cash meeting the requirements of A.R.S. § 20-3603(B)(1);
   b. Securities listed by the Securities Valuation Office meeting the requirements of A.R.S. § 20-3603(B)(2), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit excluding any securities issued by the ceding insurer or any of its affiliates; and
   c. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
      i. Commercial loans in good standing of CM3 quality and higher:
      ii. Policy loans; and
      iii. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
7. "Required Level of Primary Security" means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.
8. "Valuation Manual" means the Valuation Manual adopted by the NAIC as described in A.R.S. § 20-510, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.
9. "VM-20" means "Requirements for Principle-Based Reserves for Life Products" including all relevant definitions from the Valuation Manual.

D. Severability. If any provision of this Part B is held invalid, the remainder shall not be affected.

E. Prohibition against avoidance. No insurer that has Covered Policies to which this Part B applies, as set forth in subsection (A), shall take any action or series of actions or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of the action, transaction, or arrangement or series is to avoid the requirements of this Part B or to circumvent its purpose and intent.

Historical Note

New Section R20-6-B1601 renumbered from R20-6-1610 and repealed; new Section R20-6-B1601 made by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" was removed when followed by a subsection reference, and the word "Section" was removed before a Chapter Section number (Supp. 22-1).

R20-6-B1602. The Actuarial Method

A. Actuarial Method. The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this Part B shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual then in effect, applied as follows:
1. For Covered Policies described in R20-6-B1601(C)(2)(a), the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in R20-6-B1601(C)(2)(b), the ceding insurer may elect to instead use subsection (A)(2) as the Actuarial Method for the entire reinsurance agreement. Whether subsection (A)(1) or (A)(2) is used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.
2. For Covered Policies described in R20-6-B1601(C)(2)(b), the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met.
3. Except as provided in subsection (A)(4), the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.
4. If the reinsurance treaty cedes less than 100% of the risk with respect to the Covered Policies, then the Required Level of Primary Security may be reduced as follows:
   a. If a reinsurance treaty cedes only a quota share of some of all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under subsection (A)(4)(c), may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;
   b. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cessation of mortality risk on a yearly renewable term basis in an exempt arrangement;
   c. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the

reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to January 1, 2017, this adjustment is not to exceed [cx/ (2 * number of reinsurance premiums per year)] where cx is calculated using the same mortality table used in calculating the Net Premium Reserve; and

d. For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss, and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security. It is possible for any combination of subsections (A)(4)(a), (A)(4)(b), (A)(4)(c), and (A)(4)(d) to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than 100% of the risk. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

5. In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.
6. If the ceding insurer cedes risk with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Part B, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Part B.
7. If a reinsurance treaty subject to this Part B cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:
   a. The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and R20-6-B1603 shall be used to determine the reinsurance credit for the covered policy reserves; and
   b. Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subsection (A)(7)(a), is held by or on behalf of the ceding insurer in accordance with A.R.S. §§ 20-3602 and 20-3603. Any Primary Security used to meet the requirements of this subsection (A)(7)(b) may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

B. Valuation used for Purposes of Calculations. For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

1. For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
2. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

Historical Note

New Section R20-6-B1602 renumbered from R20-6-1611 and repealed; new Section R20-6-B1602 made by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" and word "below" were removed when followed by a subsection reference, and the word "Section" was removed before a Chapter Section number (Supp. 22-1).

R20-6-B1603. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation

A. Requirements. Subject to the exemptions described in R20-6-B1601(B) and the provisions of subsection (B), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to A.R.S. §§ 20-3602 or 20-3603 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

1. The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of A.R.S. § 20-510 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and
2. The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this Part B and provides support for its calculation as determined to be acceptable to the Director; and
3. Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of A.R.S. § 20-3603, on a funds withheld, trust, or modified coinsurance basis; and
4. Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to subsection (A)(3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of A.R.S. § 20-3603; and
5. Any trust used to satisfy the requirements of this Section shall comply with all of the conditions and qualifications of R20-6-A1608(A) through (G), except that:
   a. Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in R20-6-B1602(B), be valued according to the valuation rules set forth in R20-6-B1602(B), as applicable; and

b. There are no affiliate investment limitations with respect to any security held in the trust if such security is not needed to satisfy the requirements of subsection (A)(3); and

c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subsection (A)(3) 102% of the level required by subsection (A)(3) at the time of the withdrawal or substitution; and

d. The determination of reserve credit under R20-6-A1608(E) shall be determined according to the valuation rules set forth in R20-6-B1602(B), as applicable; and

6. The reinsurance treaty has been approved by the Director.

B. Requirements at inception date and on an on-going basis; remediation:

1. The requirements of subsection (A) must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after the effective date of this Part B) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subsections (A)(3) or (A)(4) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection R20-6-B1601(A) shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subsections (A)(3) and (A)(4) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to subsection (A)(3), unless either:

   a. The requirements of subsections (A)(3) and (A)(4) were fully satisfied as of the valuation date as to the reinsurance treaty; or

   b. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of subsections (A)(3) and (A)(4) to be fully satisfied as of the valuation date.

3. Nothing in subsection (B)(2) shall be construed to allow a ceding company to maintain any deficiency under subsection (A)(3) or (A)(4) for any period of time longer than is reasonably necessary to eliminate it.

Historical Note

New Section R20-6-B1603 renumbered from R20-6-1612 and repealed; new Section R20-6-B1603 made by final rulemaking at 28 A.A.R. 493 (March 4, 2022), effective April 9, 2022; the redundant phrase "of this Section" and word "below" were removed when followed by a subsection reference, and the word "Section" was removed before a Chapter Section number (Supp. 22-1).

ARTICLE 17. EXAMINATIONS

R20-6-1701. Definitions

A. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the Director.

B. "Examination" shall be defined for purposes of this Article to mean any examination relating to the financial condition of a company.

C. "Examiner" means any individual or firm having been authorized by the Director to conduct an examination under this Article.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1701 recodified from R4-14-1701 (Supp. 95-1).

R20-6-1702. Authority, Scope, and Scheduling of Examinations

A. The Director shall examine an insurer under A.R.S. § 20-156(A) at least once every five years.

B. Instead of the examination under subsection (A), the Director may accept the most recent examination report prepared by the National Association of Insurance Commissioners insurance regulatory authority of another state on any foreign or alien insurer if:

1. The insurance regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program at the time of the examination,

2. A National Association of Insurance Commissioners accredited insurance regulatory authority supervised the examination, or

3. At least one examiner employed or contracted by a National Association of Insurance Commissioners accredited insurance regulatory authority:

   a. Participated in and reviewed the examination work papers and report, and

   b. Signed an affidavit stating that the examination was performed in a manner consistent with the standards and procedures required by the National Association of Insurance Commissioners accredited insurance regulatory authority.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended effective October 27, 1993 (Supp. 93-4). R20-6-1702 recodified from R4-14-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2975, effective September 10, 2005 (Supp. 05-3).

R20-6-1703. Conduct of Examinations

A. Upon determining that an examination should be conducted, the Director or the Director's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination.

B. Nothing contained in this Article shall be construed to limit the Director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state or to pursue such action concurrent with the examination.

C. The Director may disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country or to law enforcement officials of this or any other state or agency of the federal government at any time. Prior to making such disclosure, the Director may require such other department or office to agree in writing to hold as confidential the examination report, preliminary examination report or results or any matter relating thereto until such time as the examination report, preliminary examination report or results or matter relating thereto are made public by the Director.

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1703 recodified from R4-14-1703 (Supp. 95-1).

R20-6-1704. Examination Reports

A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find warranted from the facts.

B. No later than 60 days following completion of the examination, the examiner in charge shall submit to the Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not less than 10 days nor more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

C. Within 30 days after the end of the period allowed for the receipt of written submissions or rebuttals, the Director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and shall:

1. File the examination report as submitted or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Director, the Director may order the company to take any action necessary and appropriate to cure such violation; or
2. Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and resubmission pursuant to subsection (B).

Historical Note
Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1704 recodified from R4-14-1704 (Supp. 95-1).

ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS

R20-6-1801. Definitions

In this Article the following definitions apply:

"Appointment" means a first-available, initial, non-emergent, diagnostic visit to a dentist.

"Board certified" means a dentist who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association.

"Board eligible" means a dentist who successfully completes an approved training program in a specialty field recognized by the American Dental Association.

"BODEX' means the Arizona State Board of Dental Examiners.

"Chief executive officer" means the person who has the authority and responsibility for the operation of an Organization according to applicable legal requirements and policies approved by the governing authority.

"Dental hygienist" means a person who is licensed to practice dental hygiene under A.R.S. § 32-1281 et seq.

"Dentist" means a person who is licensed to practice dentistry under A.R.S. § 32-1201 et seq.

"Department" means the Arizona Department of Insurance and Financial Institutions.

"Diagnostic service" means a dental service intended to identify a dental abnormality, and includes a radiograph and a clinical exam.

"Director" has the meaning prescribed at A.R.S. § 20-102.

"Emergency dental service" means a dental service intended to evaluate and stabilize a dental condition of recent onset, control bleeding, and relieve pain, and includes the provision of local anesthesia, and elimination of acute infection, but does not mean a medication that is prescribed by the dentist.

"General dentist" means a dentist whose practice is not limited to a specific area and who is not board certified.

"Governing authority" means the persons, including a board of trustees or board of directors, who have the ultimate authority and responsibility for the direction of a prepaid dental plan Organization.

"Organization" means a prepaid dental plan organization as defined in A.R.S. § 20-1001.

"Patient" means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental treatment.

"Preventive service" means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, routine prophylaxis, and application of fluorides.

"Prophylaxis" means cleaning the teeth of a patient with healthy tissue using mild abrasives and dental instruments to remove plaque, calculus, and stains above the gum line.

"Provider directory" means an Organization's published listing of all contracted network dentists.

"Radiograph" means a picture produced on a sensitive surface by a form of radiation other than light, including x-ray.

"Restorative service" means the use of a metal or composite filling or crown.

"Specialist" means a dentist whose practice is limited to one of the nine specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, oral and maxillofacial radiology, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.

"Treatment plan" means a statement of the services to be performed to eliminate or alleviate a patient's symptoms or dis-

that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.

2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).
6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2102. Customer Information Security Program
A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2103. Objectives of Customer Information Security Program
A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2104. Guidelines for Methods of Development and Implementation
A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
   a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
   b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
   c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:
   a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
   b. Training staff to implement the licensee's information security program; and
   c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
   a. Exercising appropriate due diligence in selecting its service providers; and
   b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

ARTICLE 22. MILITARY PERSONNEL

R20-6-2201. Military Sales Practices

A. Definitions.

1. "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. "Active duty" does not include members of

the reserve component who are performing active duty or active duty under military calls or orders specifying periods of less than 31 calendar days.

2. "Department of Defense (DoD) personnel" means all active duty service members and all civilian employees, including non-appropriated fund employees and special government employees, of the Department of Defense.
3. "Division" means the Division of Insurance of the Department of Insurance and Financial Institutions.
4. "Door-to-door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
5. "ERISA" means the Employee Retirement and Income Security Act.
6. "Formal banking relationship" for purposes of subsection (D), means a relationship established between a service member and a depository institution which:
   a. Provides the service member with a deposit agreement and periodic statements and makes disclosures required by the Truth in Savings Act, 12 U.S.C.§ 4301, et seq. and its accompanying regulations; and
   b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.
7. "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer, or the promotion of the insurance producer.
8. "Insurer" means an insurance company required to be licensed under the laws of Arizona to provide life insurance products, including annuities.
9. "Insurance producer" means a person required to be licensed pursuant to A.R.S. § 20-282.
10. "IRC" means Internal Revenue Code.
11. "Known" or "Knowingly" means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of, that depending on its use in this Section, the person solicited was either a service member or was a service member with a pay grade of E-4 or below.
12. "Life insurance" has the meaning defined at A.R.S. § 20-254.
13. "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.
14. "MyPay" is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
15. "Service member" means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.
16. "SGLI" means Servicemembers' Group Life Insurance.
17. "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium, or deposits with interest, or by other means. "Side fund" does not include:
    a. Accumulated value, or cash value, or secondary guarantees provided by an universal life insurance policy;
    b. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
    c. A premium deposit fund which:
       i. Contains only premiums paid in advance which accumulate at interest;
       ii. Imposes no penalty for withdrawal;
       iii. Does not permit funding beyond future required premiums;
       iv. Is not marketed or intended as an investment; and
       v. Does not carry a commission, either paid or calculated.
18. "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.
19. "U.S." means United States.
20. "U.S. Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.
21. "VGLI" means Veterans' Group Life Insurance.

B. Exemptions.

1. This Section shall not apply to solicitations or sales involving:
   a. Credit insurance;
   b. Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;
   c. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Division; or, when a term conversion privilege is exercised among corporate affiliates;
   d. Individual stand-alone health policies, including disability income policies;
   e. Contracts offered by SGLI or VGLI, as authorized by 38 U.S.C. §§ 1965 et seq.;
   f. Life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the IRC, and which are not underwritten by an insurer; or
   g. Contracts used to fund:
      i. An employee pension or welfare benefit plan that is covered by ERISA;
      ii. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established and maintained by an employer;
      iii. A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

iv. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
v. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
vi. Prearranged funeral contracts.

2. Nothing in this Section shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the U.S. Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – Personal Commercial Solicitation on DoD Installations or any successor directive.
3. This purposes of this Section, the following do not constitute solicitation:
   a. General advertisements;
   b. Direct mail;
   c. Internet marketing; and
   d. Telephone marketing if the caller explicitly and conspicuously discloses that the product being marketed is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.
4. Any in-person, face-to-face meeting resulting from an exempt type of solicitation listed in subsection (B)(3) is not exempt and the insurer or insurance producer is subject to this Section.
5. The following subsections do not apply to individually issued annuities: (D)(3)(b), (D)(5)(c), (D)(5)(e), (D)(6)(a), (D)(6)(c) and (D)(6)(d).

C. Practices Declared False, Misleading, Deceptive, or Unfair on a Military Installation.
1. The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:
   a. Knowingly soliciting the purchase of any life insurance product door-to-door or without first establishing a specific appointment for each meeting with a prospective purchaser.
   b. Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
   c. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
   d. Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation.
   e. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.
   f. Posting unauthorized bulletins, notices, or advertisements.
   g. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to solicited service members or discouraging solicited service members from completing or submitting a DD Form 2885.
   h. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the U.S. Armed Forces without first obtaining a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the DoD or any branch of the U.S. Armed Forces for the insurer's files.
2. The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences, or inducements and are declared to be false, misleading, deceptive, or unfair:
   a. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity, with or without compensation, with respect to the solicitation or sale of life insurance to service members.
   b. Using an insurance producer to participate in any U.S. Armed Forces sponsored education or orientation program.

D. Practices declared false, misleading, deceptive, or unfair regardless of location.
1. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:
   a. Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the U.S. Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. This includes, but is not limited to, using or assisting in using the service member's "MyPay" account or other similar internet or electronic medium. This subsection does not prohibit an insurer or insurance producer assisting a service member by providing the insurer or premium information necessary to complete any allotment form.
   b. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship.
   c. Employing any device or method or entering into any agreement where funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's "Leave and Earnings Statement" or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship.
   d. Entering into any agreement with a depository institution for the purposes of receiving funds from a service member where the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.
   e. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity, with or without compensation, with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade or to their family members.
   f. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting, or facilitating the

solicitation or sale of life insurance to a service member.

g. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for their attendance to any event where an application for life insurance is solicited.

h. Advising a service member with a pay grade of E-4 or below to change their income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

2. The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:

a. Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliate, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the U.S. Armed Forces, or any state, federal agency, or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor." An insurance producer may use a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning including, but not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Masters of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).

b. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the U.S. Armed Forces in a manner that has a tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government or the U.S. Armed Forces.

3. The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair:

a. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

b. Misrepresenting the mortality costs of a life insurance product, including a statement or implication that the product costs nothing or is free.

4. The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

a. Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

b. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations of coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

c. Suggesting, recommending, or encouraging a service member to cancel or terminate their SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the U.S. Armed Forces.

5. The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair:

a. Deploying, using, or contracting for any lead-generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

b. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

c. Failing to clearly and conspicuously disclose that fact that the product being sold is life insurance.

d. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by the Military Personnel Financial Services Protection Act, Public Law 109-290, Sec. 10, p. 16, 10 U.S.C. § 992 note.

e. When the sale is conducted in-person and face-to-face with an individual known to be a service member, failing at the time the application is taken to provide to the applicant:

i. An explanation of any applicable free look period with instructions on how to cancel if a policy is issued; and

ii. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of A.R.S. §§ 20-1241 through 20-1241.09, Section R20-6-202 and Section R20-6-209 shall be deemed sufficient to meet this requirement for a written disclosure.

6. The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair:

a. Recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

b. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the

completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

i. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

ii. "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

c. Offering for sale or selling any life insurance contract which includes a side fund:

i. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

ii. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

iii. Which by default diverts or transfers funds accumulated to the side fund to pay, reduce, or offset any premiums due.

d. Offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4215, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 28 A.A.R. 687 (April 1, 2022), effective May 7, 2022 (Supp. 22-1).

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

R20-6-2301. Applicability; Definitions

A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:

1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).

B. In this Article, the following definitions apply:

1. "Department" means the Arizona Department of Insurance.
2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
3. "CMS" means the Centers for Medicare & Medicaid Services.
4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
7. "Individual health insurance" means health insurance that a health insurer issues to either:
   a. An individual, to cover:
      i. The individual, or
      ii. The individual's dependents, or
      iii. The individual and the individual's dependents.
   b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
9. "Product" means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
11. "Rate increase" means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:
    a. Results from a change to the underlying rate structure of the product, and
    b. May result in premium changes for the product.
12. "Secretary" means the Secretary of the United States Department of Health and Human Services.
13. "Threshold rate increase" means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
    a. The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
    b. If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when com-

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

20-461. Unfair claim settlement practices

A. A person shall not commit or perform with such a frequency to indicate as a general business practice any of the following:

1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.

2. Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under an insurance policy.

3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under an insurance policy.

4. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

6. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

7. As a property or casualty insurer, failing to recognize a valid assignment of a claim. The property or casualty insurer shall have the rights consistent with the provisions of its insurance policy to receive notice of loss or claim and to all defenses it may have to the loss or claim, but not otherwise to restrict an assignment of a loss or claim after a loss has occurred.

8. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds.

9. Attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

10. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured.

11. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made.

12. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

13. Delaying the investigation or payment of claims by requiring an insured, a claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

14. Failing to promptly settle claims if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

15. Failing to promptly provide a reasonable explanation of the basis in the insurance policy relative to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

16. Attempting to settle claims for the replacement of any nonmechanical sheet metal or plastic part which generally constitutes the exterior of a motor vehicle, including inner and outer panels, with an aftermarket crash part which is not made by or for the manufacturer of an insured's motor vehicle unless the part meets the

specifications of section 44-1292 and unless the consumer is advised in a written notice attached to or printed on a repair estimate which:

(a) Clearly identifies each part.

(b) Contains the following information in ten point or larger type:

This estimate has been prepared based on the use of replacement parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle.

17. As an insurer subject to section 20-826, 20-1342, 20-1402 or 20-1404, or as an insurer of the same type as those subject to section 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans, coverages or evidences of coverage for delivery in this state, failing to pay charges for reasonable and necessary services provided by any physician licensed pursuant to title 32, chapter 8, 13 or 17, if the services are within the lawful scope of practice of the physician and the insurance coverage includes diagnosis and treatment of the condition or complaint, regardless of the nomenclature used to describe the condition, complaint or service.

18. Failing to comply with chapter 15 of this title.

19. Denying liability for a claim under a motor vehicle liability policy in effect at the time of an accident without having substantial facts based on reasonable investigation to justify the denial for damages or injuries that are a result of the accident and that were caused by the insured if the denial is based solely on a medical condition that could affect the insured's driving ability.

B. Nothing in subsection A, paragraph 17 of this section shall be construed to prohibit the application of deductibles, coinsurance, preferred provider organization requirements, cost containment measures or quality assurance measures if they are equally applied to all types of physicians referred to in this section, and if any limitation or condition placed upon payment to or upon services, diagnosis or treatment by any physician covered by this section is equally applied to all physicians referred to in subsection A, paragraph 16 of this section, without discrimination to the usual and customary procedures of any type of physician. A determination under this section of discrimination to the usual and customary procedures of any type of physician shall not be based on whether an insurer applies medical necessity review to a particular type of service or treatment.

C. In prescribing rules to implement this section, the director shall follow, to the extent appropriate, the national association of insurance commissioners unfair claims settlement practices model regulation.

D. Nothing contained in this section is intended to provide any private right or cause of action to or on behalf of any insured or uninsured resident or nonresident of this state. It is, however, the specific intent of this section to provide solely an administrative remedy to the director for any violation of this section or rule related to this section.

E. The director shall deposit, pursuant to sections 35-146 and 35-147, all civil penalties collected pursuant to this article in the state general fund.

20-1691.02. Adoption of rules

The director may adopt reasonable rules to implement this article, including rules that:

1. Establish specific standards for policy provisions of long-term care insurance policies, including terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage, coverage of dependents, preexisting conditions, termination of insurance, continuation, conversion, probationary periods, limitations, exceptions, reductions, elimination periods, replacement, recurrent conditions and definitions.

2. Establish loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rule.

3. Promote premium adequacy and protect policyholders in the event of substantial rate increases.

4. Establish standards for the manner, content and required disclosure for the sale of long-term care insurance policies, including disclosure of policy provisions, conditions and limitations.

5. Prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

6. Establish minimum standards for marketing practices, insurance producer testing and reporting practices relating to long-term care insurance and penalties for violating the standards.

7. Specify the type or types of nonforfeiture benefits to be offered as part of a long-term care insurance policy and certificate, the standards for nonforfeiture benefits and the requirements for contingent benefit on lapse, including a determination of the specified period of time during which a contingent benefit on lapse will be available and the substantial premium rate increase that triggers a contingent benefit on lapse as described in section 20-1691.11.

20-448.01. Required insurance procedures relating to HIV information; confidentiality; violations; penalties; definitions

A. In this section unless the context otherwise requires:

1. "Confidential HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information which identifies or reasonably permits identification of that person or the person's contacts.

2. "HIV" means the human immunodeficiency virus.

3. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.

4. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome or HIV-related illness.

5. "Person" includes all entities subject to regulation under title 20, the employees, contractors and agents thereof, and anyone performing insurance related tasks for such entities, employees, contractors or agents.

B. Except as otherwise specifically authorized or required by this state or by federal law, no person may require the performance of, or perform an HIV-related test without first receiving the specific written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of a person authorized pursuant to law to consent for that person. Written consent shall be in a form as prescribed by the director.

C. No person who obtains confidential HIV-related information in the course of processing insurance information or insurance applications or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose that information except to the following:

1. The protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person.

2. A person to whom disclosure is authorized in writing pursuant to a release as set forth in subsection E of this section, including but not limited to a physician designated by the insured or a medical information exchange for insurers operated under procedures intended to ensure confidentiality, provided that in the case of a medical information exchange:

(a) The insurer will not report that blood tests of an applicant showed the presence of the AIDS virus antibodies, but only that unspecified blood test results were abnormal.

(b) Reports must use a general code that also covers results of tests for many diseases or conditions, such as abnormal blood counts that are not related to HIV, AIDS, AIDS related complex or similar diseases.

3. A government agency specifically authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this section or as otherwise permitted by law.

4. A person regulated by this title to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

5. The industrial commission or parties to an industrial commission claim pursuant to the provisions of section 23-908, subsection D and section 23-1043.02.

D. Test results and application responses may be shared with the underwriting departments of the insurer and reinsurers, or to those contractually retained medical personnel, laboratories, and insurance affiliates, excluding

agents and brokers, which are involved in underwriting decisions regarding the individual's application if disclosure is reasonably necessary to make the underwriting decision regarding such application, and claims information may be shared with claims personnel and attorneys reviewing claims if disclosure is reasonably necessary to process and resolve claims.

E. A release of confidential HIV-related information pursuant to subsection C, paragraph 2 of this section shall be signed by the protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person. A release shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information is not a release of confidential HIV-related information unless the authorization specifically indicates its purpose as a general authorization and an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

F. A person to whom confidential HIV-related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a person who is authorized pursuant to law to consent for the protected person.

G. If a disclosure of confidential HIV-related information is made pursuant to the provisions of a written release as permitted by subsection C, paragraph 2 of this section, the disclosure shall be accompanied by a statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law.

H. The person making a disclosure in accordance with subsection C, paragraphs 3, 4 and 5, and subsection G of this section shall keep a record of all disclosures for the time period prescribed by the director. On request, a protected person or his legal representative shall have access to the record.

I. Except as otherwise provided pursuant to this section or subject to an order or search warrant issued pursuant to section 36-665, no person who receives confidential HIV-related information pursuant to a release of confidential HIV-related information may disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

J. The director shall adopt rules to implement the allowable tests and testing procedures, written consent to perform a human immunodeficiency virus related test, procedures for confidentiality and disclosure of medical information and procedures for gathering underwriting information and may adopt additional rules reasonable and necessary to implement this section.

K. Notwithstanding any other provision of law to the contrary, nothing in this section shall be interpreted to restrict the director's authority to full access to records of any entity subject to regulation under title 20, including but not limited to all records containing confidential HIV-related information. The director may only redisclose confidential HIV-related information in accordance with this section.

L. A protected person, whose rights provided in this section have been violated by a person or entity described in subsection A, paragraph 5 of this section, has those individual remedies specified in section 20-2118 against such a person or entity.

20-481.22. Power to make rules

The director may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this article, subject to title 41, chapter 6.

20-3604. Rules

A. The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.

B. The rules may include regulation of reinsurance arrangements relating to any of the following:

1. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits.

2. Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

3. Variable annuities with guaranteed death or living benefits.

4. Long-term care insurance policies.

5. Any other life and health insurance and annuity products for which the national association of insurance commissioners adopts model regulatory requirements with respect to credit for reinsurance.

C. Any rule adopted pursuant to subsection B, paragraph 1 or 2 of this section may apply to any treaty that contains either or both:

1. Policies issued on or after January 1, 2015.

2. Policies issued before January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

D. Any rule adopted pursuant to subsection B of this section:

1. May require the ceding insurer, in calculating the amounts or forms of security required to be held pursuant to rules adopted by the department, to use the valuation manual adopted by the national association of insurance commissioners under section 11B(1) of the national association of insurance commissioners standard valuation law, including all amendments adopted by the national association of insurance commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

2. Does not apply to cessions to an assuming insurer that is licensed in at least twenty-six states or that is licensed in at least ten states and licensed or accredited in a total of at least thirty-five states and that either:

(a) Meets the conditions prescribed in section 20-3602, subsection H in this state.

(b) Is certified in this state.

(c) Maintains at least $250,000,000 in capital and surplus as determined in accordance with the accounting practices and procedures manual and amendments adopted by the national association of insurance commissioners, excluding the impact of any allowed or prescribed practices.

E. The authority to adopt rules pursuant to subsection B of this section does not limit the department's general authority to adopt rules pursuant to subsection A of this section.

20-156. Examination of insurers; financial surveillance fund; definition

A. The director shall examine the affairs, transactions, accounts, records and assets of each authorized insurer as often as the director deems advisable. The director shall so examine each domestic insurer at least once every five years. Examination of an alien insurer shall be limited to its insurance transactions in the United States. The director may examine the business transactions and affairs of each domestic life and disability reinsurer as defined in section 20-1082, service company as defined in section 20-1095 and mechanical reimbursement reinsurer as defined in section 20-1096.

B. The director shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

C. In lieu of making an examination, the director may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth or district of the United States.

D. The expenses of the examinations conducted under this section shall be paid by the insurance examiners' revolving fund as provided in section 20-159. Such expenses shall be limited to preexamination selection and preparation costs, examination costs, postexamination costs and other such costs of evaluations of compliance required by law.

E. The financial surveillance fund is established consisting of monies collected pursuant to subsection F of this section. The fund is a special state fund pursuant to section 35-142, subsection A, paragraph 8. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

F. The director shall annually assess and collect from each domestic insurer, other than a domestic life and disability reinsurer as defined in section 20-1082, a service company as defined in section 20-1095, and a mechanical reimbursement reinsurer as defined in section 20-1096, an amount within the ranges provided in this subsection and on a uniform percentage basis among all fee categories, to pay the costs of employing financial analysts who shall assist the department in conducting financial surveillance of domestic insurers. The director shall deposit all collected monies in the financial surveillance fund. The director shall base the amount of each insurer's assessment on the total admitted assets of the insurer as shown in its annual statement for the calendar year preceding the year in which the assessment is made, according to the following schedule:

	Minimum Assessment Amount	Maximum Assessment Amount
Insurers with total admitted assets of greater than $1,000,000,000	$15,000	$22,500
Insurers with total admitted assets of at least $200,000,000 but not more than $1,000,000,000	$ 5,000	$ 7,500
Insurers with total admitted assets of at least $100,000,000		

but not more than $199,999,999	$ 3,000	$ 4,500
Insurers with total admitted assets of at least $50,000,000 but not more than $99,999,999	$ 1,500	$ 2,250
Insurers with total admitted assets of at least $25,000,000 but not more than $49,999,999	$ 500	$ 750
Insurers with total admitted assets of not more than $24,999,999	$ 250	$ 375

G. For the purposes of this section, "insurer" includes health care services organizations, prepaid dental plan organizations, hospital service corporations, medical service corporations, dental service corporations and hospital, medical, dental and optometric service corporations incorporated in this state.

20-106. Acts constituting the transaction of business; definition

A. "Transact" with respect to insurance includes any of the following:

1. Solicitation and inducement.

2. Preliminary negotiations.

3. Effectuation of a contract of insurance.

4. Transaction of matters subsequent to effectuation of the contract and arising out of it.

B. Any of the following acts in this state effected by mail or otherwise, by or on behalf of an unauthorized insurer, is deemed to constitute the transaction of an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an insurance producer or agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.

8. The transacting or proposing to transact any insurance business in substance equivalent to any provisions as provided in paragraphs 1 through 7 of this subsection in a manner designed to evade the laws of this state.

C. In this section, unless the context otherwise requires, "insurer" includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

20-142. Powers and duties of director; payment of examination and investigation costs; home health services

A. The director shall enforce this title.

B. The director shall have powers and authority expressly conferred by or reasonably implied from the provisions of this title.

C. The director may conduct examinations and investigations of insurance matters, including examinations and investigations of adjusters, producers and brokers and any other persons who are regulated under this title, in addition to examinations and investigations expressly authorized, as the director deems proper in determining whether a person has violated any provision of this title or for the purpose of securing information useful in the lawful administration of any provision of this title. The examined party shall pay the costs of examinations that are allowed pursuant to subsection D of this section and that are conducted pursuant to this subsection except for examinations of adjusters, producers and brokers. An examined adjuster, producer or broker shall pay the costs allowed pursuant to subsection D of this section only if the adjuster, producer or broker is found to have violated any provision of this title. This state shall pay the cost of any related investigation.

D. The department shall prepare detailed billing statements that provide reasonable specificity of the time and expenses billed in connection with an examination and that cite the statute or rule that authorizes the fees being charged. Notwithstanding any other law, from and after December 31, 2021, a person that is being examined pursuant to any section of this title is responsible for only the direct costs of an examination that are supported by a billing statement that complies with this subsection.

E. The director shall establish guidelines for insurers on home health services that shall be used by the director pursuant to sections 20-826, 20-1342, 20-1402 and 20-1404. The director may use home health services as defined in section 36-151. Guidelines shall include the following:

1. Home health services that are prescribed by a physician or a registered nurse practitioner.

2. Home health services that are determined to cost less if provided in the home than the average length of in-hospital service for the same service.

3. Skilled professional care in the home that is comparable to skilled professional care provided in-hospital and that is reviewed and approved at thirty-day intervals by a physician.

F. Pursuant to section 41-1750, subsection G, the director may receive criminal history record information in connection with the issuance, renewal, suspension or revocation of a license or certificate of authority or the consideration of a merger or acquisition. The director may require a person to submit a full set of fingerprints to the department. The department of insurance and financial institutions shall submit the fingerprints to the department of public safety 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.