ARIZONA CRIMINAL JUSTICE COMMISSION
Title 10, Chapter 4

Amend: R10-4-501

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 20, 2023

SUBJECT: **ARIZONA CRIMINAL JUSTICE COMMISSION**
Title 10, Chapter 4

Amend: R10-4-501

Summary:

This regular rulemaking from the Arizona Criminal Justice Commission (Commission) seeks to amend one (1) rule in Title 10, Chapter 4, Article 5 regarding Full-Service Forensic Crime Laboratory Account. Rule R10-4-501 relates to definitions and the Commission indicates, due to rapid changes in technology used by full-service forensic crime laboratories, the rule would be more effective if the definition of "full-service forensic crime laboratory" were amended to include accreditation based on relevant field-specific standards.

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?

The Commission indicates the rulemaking does not establish or increase a fee.

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

The Commission indicates it did not review or rely on any study for this rulemaking.

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

The proposed rulemaking updates the eligibility definition of full-service forensic crime laboratory to include accreditation based on relevant field-specific standards. This definition change will enable Scottsdale police department's crime laboratory to be considered a full-service forensic crime laboratory.

The rule change does not establish a new fee, nor does it include a fee increase. No new staff are requested to support this rule change.

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?

According to the Commission, because the rulemaking has no effect on businesses, no less intrusive or less costly alternative methods were considered.

6. What are the economic impacts on stakeholders?

The proposed definition change will enable Scottsdale police department's crime laboratory to be considered a full-service forensic crime laboratory.

The Commission will have increased costs as a result of more agencies being eligible for the grant. The costs are modest and include additional staff time for the administration and management of the fund.

The Department of Public Service, which operates two full-service forensic laboratories, may receive a small share of the fund as the number of eligible laboratories increases. Their costs remain the same.

The City of Scottsdale, which operates a full-service forensic laboratory that qualifies under the new definition, will benefit from being eligible for the grant. Their costs include preparing the application and submitting program and financial reports.

Three of the full-service forensic laboratories that are operated by a political subdivision may receive a smaller share of the fund as the number of eligible laboratories increase. Their costs remain the same.

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

The Commission indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

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

The Commission indicates it received no 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?

Not applicable. The Commission indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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

The Commission indicates the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Commission seeks to amend one (1) rule in Title 10, Chapter 4, Article 5 regarding Full-Service Forensic Crime Laboratory Account. Rule R10-4-501 relates to definitions and the Commission indicates, due to rapid changes in technology used by full-service forensic crime laboratories, the rule would be more effective if the definition of "full-service forensic crime laboratory" were amended to include accreditation based on relevant field-specific standards.

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 Criminal Justice Commission

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Phoenix, Arizona 85007
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www.azcjc.gov

August 14, 2023

Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

Dear Councilmembers,

The Arizona Criminal Justice Commission requests approval for a rule change to A.A.C. 10-4-501, which provides a definition for a full-service forensic crime laboratory. The rule change updates the definition to reflect changes in how forensic laboratories are accredited and clarifies the number and types of forensic disciplines that are required.

- The close of record date was Augut 7, 2023.
- This is request is not related to a five-year review report.
- The rule change does not establish a new fee, nor does it include a fee increase.
- An immediate effective date is not requested.
- The preamble includes all information used by the commission to justify this rule change.
- No new staff are requested to support this rule change.

If you have any question please do not hesitate to contact Lloyd Y. Asato, Program Manager at lasato@azcjc.gov or by phone at (602) 364-1152. Thank your for your consideration of this request.

Sincerely,

Andrew T. LeFevre
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

PREAMBLE

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

R10-4-501 Amend

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

Authorizing statute: A.R.S. § 41-2421(J)(5)

Implementing statute: A.R.S. § 41-2421(J)(5)

3. The effective date of the rule:

October 15, 2023

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: 29 A.A.R. 1507, July 7, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1507, July 7, 2023

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

Name: Lloyd Y. Asato, Criminal Justice Systems Improvement Program Manager

Address: 1110 W. Washington Street, Suite, 230, Phoenix, AZ 85007

Telephone: (602) 364-1152

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E-mail: lasato@azcjc.gov

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Criminal Justice Commission was established in 1982 to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. The goal of the Arizona Criminal Justice Commission Full-service Forensic Crime Laboratory Program, which receives funding under A.R.S. § 41-2521(J)(5), is to improve the efficiency and effectiveness of the state's various full-service crime laboratories. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by

a dictionary definition. Rapid changes in technology used by full-service forensic crime laboratories lead the Commission to believe R10-4-501 would be more effective if the definition of full-service forensic crime laboratory is amended to include accreditation based on relevant field-specific standards.

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

None.

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

This rule updates the eligibility definition of full-service forensic crime laboratory to include accreditation based on relevant field-specific standards.

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

Arizona currently has five full-service forensic crime laboratories. Two of the full-service forensic crime laboratories are within the Arizona Department of Public Safety. There is one each in the Mesa, Phoenix, and Tucson police departments. The proposed definition change will enable Scottsdale police department's crime laboratory to be considered a full-service forensic crime laboratory.

The only persons regulated by the Full-service Forensic Crime Laboratory Account rules are Arizona's full-service forensic crime laboratories. The rules impose the following costs on full-service forensic crime laboratories:

- Prepare and submit a grant application to receive Account monies; and
- Prepare quarterly reports regarding activities supported by a grant of Account monies.

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

There were no changes.

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

No public nor written comments were received.

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

respond to the following questions:

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to this specific rule, or to this class of rules.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require the provider to obtain a permit or a general permit.

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

The rule is 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:

The rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 10. LAW
CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION
ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

Section
R10-4-501. Definitions

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

In this Article:

1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).

2. “Commission” means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.

3. “Full-service forensic crime laboratory” means a facility that:

    a. Is operated by a criminal justice agency that is a political subdivision of the state;

    b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor’s degree in a physical or natural science;

    c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances;

    d. ~~Is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board; and~~

    e. Is accredited by an organization that provides accreditation based on ILAC G19 and ISO/IEC 17025 or ISO/IEC 17020; and

        ILAC – International Laboratory Accreditation Cooperation

        G19 – G series # 19 (standard number for forensic science processes)

        ISO – International Organization of Standardization

        17025 - Standard number for calibration testing laboratories

        17020 – Standard number of general operation of bodies performing inspections

    f. ~~Provides, at a minimum, services in the areas of controlled substances, forensic biology, DNA, blood and breath alcohol, firearms, and toolmarks.~~ Provides a minimum of 6 forensic disciplines in the areas of trace evidence, blood and breath alcohol, firearms and toolmarks, crime scene processing, latent print comparisons, seized drugs, DNA, digital forensics, and drug toxicology. At least one of the 6 disciplines must be DNA, digital forensics, or drug toxicology.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 10. LAW
CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

1. Identification of the rulemaking:

   The Arizona Criminal Justice Commission was established in 1982 to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. The goal of the Arizona Criminal Justice Commission Full-service Forensic Crime Laboratory Program, which receives funding under A.R.S. § 41-2521(J)(5), is to improve the efficiency and effectiveness of the state's various full-service crime laboratories. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. Rapid changes in technology used by full-service forensic crime laboratories lead the Commission to believe R10-4-501 would be more effective if the definition of full-service forensic crime laboratory is amended to include accreditation based on relevant field-specific standards.

   Specifically the amended definition includes additional organizations that provide accreditation based on ILAC G19 and ISO/IEC 17025 or ISO/IEC 17020; and

   - ILAC – International Laboratory Accreditation Cooperation
   - G19 – G series # 19 (standard number for forensic science processes)
   - ISO – International Organization of Standardization
   - 17025 - Standard number for calibration testing laboratories
   - 17020 – Standard number of general operation of bodies performing inspections

   Provides a minimum of 6 forensic disciplines in the areas of trace evidence, blood and breath alcohol, firearms and toolmarks, crime scene processing, latent print comparisons, seized drugs, DNA, digital forensics, and drug toxicology. At least one of the 6 disciplines must be DNA, digital forensics, or drug toxicology.

   Arizona currently has five full-service forensic crime laboratories, all of which are accredited. The Department of Public Safety operates laboratories in Phoenix, and Tucson. The cities of Mesa, Phoenix, and Tucson also operate laboratories.

   Last year, the Commission distributed $500,000 in grants to the five full-service forensic crime laboratories. Grant monies result from A.R.S. § 41-2421, which requires that 14.29% of the amount collected under A.R.S. § 12-116.01 be distributed by the Commission to full-service forensic crime laboratories. The grant monies are to be used to improve the efficiency and effectiveness of the full-service forensic crime laboratories. The monies are generally used to purchase new equipment, provide training, or hire personnel.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:
   The Commission will bear the costs of the rulemaking and will benefit from rules that are more clear, concise, and understandable.

3. Cost-benefit analysis:
   a. Costs and benefits to state agencies directly affected by the rulemaking:

The Commission will have increased costs as a result of more agencies being eligible for the grant. The costs are modest and include additional staff time for the administration and management of the fund.

The Department of Public Service, which operates two full-service forensic laboratories, may receive a smaller share of the fund as the number of eligible laboratories increase. Their costs remain the same.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:
The City of Scottsdale, which operates a full-service forensic laboratories that qualifies under the new definition, will benefit from being eligible for the grant. Their costs include preparing the application, and submitting program and financial reports.

Three of the full-service forensic laboratories are operated by a political subdivision may receive a smaller share of the fund as the number of eligible laboratories increase. Their costs remain the same.

c. Costs and benefits to businesses directly affected by the rulemaking:
No businesses are directly affected by the rulemaking. Because Arizona's five full-service forensic crime laboratories remain eligible to receive a grant and the rulemaking does not affect the use of grant monies, the rulemaking will not have an indirect affect on businesses.

4. Impact on private and public employment:
The rulemaking will have no impact on private or public employment. A full-service forensic laboratory may choose to use grant monies to employ personnel but, that is not the result of the rulemaking.

5. Impact on small businesses:
The rulemaking has no direct effect on businesses--large or small.

6. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
There are no costs to private persons or consumers. Private persons pay the surcharge that is used to fund the grants but the surcharge is established by statute. Private persons and consumers benefit from having efficient and effective full-service forensic crime laboratories but this benefit is not affected by the rulemaking.

7. Probable effects on state revenues:
There is no effect on state revenues.

8. Less intrusive or less costly alternative methods considered:
Because the rulemaking has no effect on businesses, no less intrusive or less costly alternative methods were considered.

R10-4-403 renumbered to R10-4-404; new Section R10-4-403 renumbered from R10-4-402 and amended by final rulemaking at 14 A.A.C. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

R10-4-404. Application Evaluation; Standards for Award

A. The Commission shall ensure that each application that is submitted timely and proposes a project eligible for funding from the Account is evaluated. After the applications are evaluated, the Committee shall forward a recommended allocation plan to the Commission. The Commission shall grant or deny funding within 90 days after the application deadline.

B. If the Commission determines that it needs additional information to facilitate its review of an application, the Commission shall:
1. Request the additional information from the applicant, or
2. Request the applicant to amend the application.

C. The Commission shall approve grant funding, in whole or in part, or deny funding using standards referenced under A.R.S. § 41-2402 and R10-4-402(C).

D. The standards referenced in subsection (C) include an assessment of whether the proposed project:
1. Is directed toward a problem that is demonstrated by statistical data;
2. Is designed to address the identified problem;
3. Is a coordinated effort among multiple approved agencies;
4. Has specific goals;
5. Has measurable objectives that relate to the goals;
6. Has appropriate methods for evaluating achievement of objectives;
7. Has a reasonable budget of allowable expenses;
8. Has identified the required matching funds;
9. Has internal controls to monitor expenditure of Account funds; and
10. If the program was previously funded, all grant requirements were met timely and there were no reportable deficiencies during monitoring reviews.

Historical Note

Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Adopted without change as a permanent rule effective July 18, 1988 (Supp. 88-3). Amended effective October 28, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 1007, effective February 8, 2001 (Supp. 01-1). Former Section 10-4-404 renumbered to R10-4-406; new Section R10-4-404 renumbered from R10-4-403 and amended by final rulemaking 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

R10-4-405. Request for Modification of Recommended Allocation Plan

A. Commission staff shall provide an applicant with at least five days' notice of the Committee's recommended allocation plan and the date, time, and location of the meeting at which the Committee will make a decision about forwarding the recommended allocation plan to the Commission for its action.

B. If an applicant disagrees with the recommended allocation plan, the applicant may verbally request that the Committee modify the recommended allocation plan. The Committee shall consider the request for modification before forwarding the recommended allocation plan to the Commission.

C. Commission staff shall provide an applicant with at least five days' notice of the date, time, and location of the meeting at which the Commission will consider the recommended allocation plan.

D. If an applicant disagrees with the recommendation of the Committee, the applicant may verbally request that the Commission modify the recommended allocation plan. The Commission shall consider the request for modification when making a final decision to award or deny a grant of Account funds to the applicant. The Commission's decision is final.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4).

R10-4-406. Required Reports

A. The Commission shall annually prepare and submit the report required under A.R.S. § 41-2405(A)(11). The Commission shall use data submitted by grant recipients as specified in the recipient's grant agreement to prepare the report.

B. A grant recipient shall submit to the Commission financial, activity, and progress reports documenting the activities supported by the Account funds. The grant recipient shall submit the reports as specified in the grant agreement. The specific reports required are determined by the nature of the proposed project.

C. The Commission shall not distribute Account funds to a grant recipient that fails to submit a required report within 60 days of its due date.

D. A grant recipient shall cooperate with and participate in all assessment, evaluation, or data collection efforts authorized by the Commission.

E. The Commission has the right to obtain, reproduce, publish, or use information provided in the required reports or assessment, evaluation, or data collection efforts. When in the best interest of the state, the Commission may authorize others to receive and use the information.

Historical Note

New Section R10-4-406 renumbered from R10-4-404 and amended by final rulemaking 14 A.A.R. 4654, effective January 31, 2009 (Supp. 08-4). Section amended by final rulemaking at 24 A.A.R. 3425 effective December 4, 2018 (Supp. 18-4).

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

R10-4-501. Definitions

In this Article:
1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).
2. "Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.
3. "Full-service forensic crime laboratory" means a facility that:
   a. Is operated by a criminal justice agency that is a political subdivision of the state;
   b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor's degree in a physical or natural science;
   c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances;
   d. Is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board; and
   e. Provides, at a minimum, services in the areas of controlled substances, forensic biology, DNA, blood and breath alcohol, firearms, and toolmarks.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-502. Grant Solicitation Process

A. The Commission shall annually publish and post on the Commission's internet site, which is www.azacjc.gov, a grant solicitation for distribution of Account monies. When the grant solicitation is posted, the Commission shall send an electronic notice of the posting to all Arizona criminal justice agencies that operate a full-service forensic crime laboratory.

B. The Commission shall ensure that the grant solicitation contains:
1. The Commission's goals for the grant program for the allocation year,
2. Applicant eligibility criteria,
3. The format in which a grant application is to be submitted,
4. The date by which a grant application is to be submitted,
5. Grant application evaluation criteria,
6. Project expenses for which Account monies may be used,
7. The period in which all Account monies must be expended,
8. Account money reversion criteria and process, and
9. The award denial appeal process.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-503. Grant Application Evaluation; Decision of the Commission

A. The Commission shall evaluate each grant application and make a decision to award or deny a grant within 120 days of the date by which grant applications are due.

B. If the Commission determines additional information is needed to facilitate its evaluation of an application, the Commission shall request from the applicant:
1. Additional information, or
2. Application modification.

C. An applicant from whom additional information or application modification is requested shall submit the information or modification to the Commission within 10 business days from the date of the request.

D. After completing its evaluation of an application, the Commission shall vote to award, in whole or in part, or deny a grant based on:
1. The grant criteria published in the grant solicitation;
2. The amount of funds available for allocation; and
3. Compliance with the application format.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

R10-4-504. Reports

Within 15 days after the end of each calendar quarter, a grantee shall submit a written report, on a form prescribed by the Commission, containing:
1. A financial report that includes itemized budget information, and
2. An activity report that documents activities supported by the grant funds and includes:
   a. A narrative of activities undertaken during the reporting period;
   b. An evaluation of progress toward achieving the goals and objectives in the grant application;
   c. An evaluation of adherence to the time-frames in the grant application; and
   d. A description of equipment purchased with grant funds during the reporting period, how the equipment is related to achieving the goals and objectives of the project, and the current status of the equipment, such as whether it is operational, waiting to be installed, or undergoing testing; and
3. A copy of any deliverable provided by a consultant paid with grant funds.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2294, effective August 5, 2006 (Supp. 06-2).

41-2421. Enhanced collections; allocation of monies; criminal justice entities

A. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the supreme court and the court of appeals for the payment of filing fees, including clerk fees, diversion fees, fines, penalties, surcharges, sanctions and forfeitures, shall be deposited, pursuant to sections 35-146 and 35-147, and allocated pursuant to the formula in subsection B of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A, or for child support, restitution or exonerated bonds.

B. The monies deposited pursuant to subsection A of this section shall be allocated according to the following formula:

1. 21.61 per cent to the state aid to county attorneys fund established by section 11-539.

2. 20.53 per cent to the state aid to indigent defense fund established by section 11-588.

3. 57.37 per cent to the state aid to the courts fund established by section 12-102.02.

4. 0.49 per cent to the department of law for the processing of criminal cases.

C. Notwithstanding any other law and except as provided in subsection J of this section, five per cent of any monies collected by the superior court, including the clerk of the court and the justice courts in each county for the payment of filing fees, including clerk fees, diversion fees, adult and juvenile probation fees, juvenile monetary assessments, fines, penalties, surcharges, sanctions and forfeitures, shall be transmitted to the county treasurer for allocation pursuant to subsections E, F, G and H of this section. This subsection does not apply to monies collected by the courts pursuant to section 16-954, subsection A or for child support, restitution or exonerated bonds.

D. The supreme court shall adopt guidelines regarding the collection of revenues pursuant to subsections A and C of this section.

E. The county treasurer shall allocate the monies deposited pursuant to subsection C of this section according to the following formula:

1. 21.61 per cent for the purposes specified in section 11-539.

2. 20.53 per cent for the purposes specified in section 11-588.

3. 57.37 per cent to the local courts assistance fund established by section 12-102.03.

4. 0.49 per cent to the state treasurer for transmittal to the department of law for the processing of criminal cases.

F. The board of supervisors in each county shall separately account for all monies received pursuant to subsections C and E of this section and expenditures of these monies may be made only after the requirements of subsections G and H of this section have been met.

G. By December 1 of each year each county board of supervisors shall certify if the total revenues received by the justice courts and the superior court, including the clerk of the superior court, exceed the amount received in fiscal year 1997-1998. If the board so certifies, then the board shall distribute the lesser of either:

1. The total amount deposited pursuant to subsection C of this section.

2. The amount collected and deposited pursuant to subsection C of this section that exceeds the base year collections of fiscal year 1997-1998. These monies shall be distributed according to the formula specified in

subsection E of this section. Any monies remaining after this allocation shall be transmitted as otherwise provided by law.

H. If a county board of supervisors determines that the total revenues transmitted by the superior court, including the clerk of the superior court and the justice courts in the county, do not equal the base year collections transmitted in fiscal year 1997-1998 the monies specified in subsection C of this section shall be transmitted by the county treasurer as otherwise provided by law.

I. For the purposes of this section, base year collections shall be those collections specified in subsection C of this section.

J. Monies collected pursuant to section 12-116.01, subsection B shall be allocated as follows:

1. 15.44 per cent to the state aid to county attorneys fund established by section 11-539.

2. 14.66 per cent to the state aid to indigent defense fund established by section 11-588.

3. 40.97 per cent to the state aid to the courts fund established by section 12-102.02.

4. 0.35 per cent to the department of law for the processing of criminal cases.

5. 14.29 per cent to the Arizona criminal justice commission for distribution to state, county and municipal law enforcement full service forensic crime laboratories pursuant to rules adopted by the Arizona criminal justice commission.

6. 14.29 per cent to the supreme court for allocation to the municipal courts pursuant to subsection K of this section.

K. The supreme court shall administer and allocate the monies received pursuant to subsection J, paragraph 6 of this section to the municipal courts based on the total amount of surcharges transmitted pursuant to section 12-116.01 by that jurisdiction's city treasurer to the state treasurer for the prior fiscal year divided by the total amount of surcharges transmitted to the state treasurer pursuant to section 12-116.01 by all city treasurers statewide for the prior fiscal year. The municipal court shall use the monies received to improve, maintain and enhance the ability to collect and manage monies assessed or received by the courts, to improve court automation and to improve case processing or the administration of justice. The municipal court shall submit a plan to the supreme court and the supreme court shall approve the plan before the municipal court begins to spend these allocated monies.

C-2.

ARIZONA STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend: R4-11-403

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 5, 2023**

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS**
Title 4, Chapter 11

Amend: R4-11-403

Summary:

This regular rulemaking from the Arizona State Board of Dental Examiners seeks to amend one (1) rule in Title 4, Chapter 11 related to Licensing Fees. The Board is assigned with the duty to protect the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals. Here, the Board is amending Rule 403 to address inconsistencies related to its fees referenced in statute and rule and to comply with findings found during the 2023 Performance Audit and Sunset Review.

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 this rulemaking does not establish a new fee or contain a fee increase, but is conducting this rulemaking to conform the Board's rules to statute and the findings of its Sunset Audit. Conforming the rules to statute does however increase the fees and creates a new fee within the content of the rules.

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 states that no study was reviewed or relied upon when conducting this rulemaking. However, in 2022, the Board reviewed the fees of US dental jurisdictions and local and national dental associations.

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

The rulemaking ensures that the fees the Arizona Board of Dental Examiners (The Board) charges are consistent with statute and with the Board's 2023 Performance Audit and Sunset Review. Once these criteria are met, the Board does not need to address its fees again without statutory change. In 2022, the Board found that its renewal fees were reasonable: the Board collected dentist renewal fees 184% below the national average, dentist renewal fees 646% lower than the local association fees, and 756% lower than the national association fees, and hygienist renewal fees 99% below the national average. The rulemaking changes these renewal fees to be consistent with other legislation. The persons impacted by the rulemaking are the Board's licensees.

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 determined that the proposed amendments are the least costly method of benefiting those regulated and the public they serve.

6. What are the economic impacts on stakeholders?

Dental businesses are the only stakeholders affected by the rulemaking. The proposed economic impact is minimal and is based on the cost to employers who pay for the license fees for its hired dental facilities.

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

The Board indicates that no changes were made from the proposed to the final rules.

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

The Board indicates that no comments were received on this rulemaking and that no one attended the oral proceeding on August 1, 2023.

9. 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 general permits are issued to licensees who meet the criteria established in statute and rule.

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 no federal rules apply to this rulemaking.

11. Conclusion

This regular rulemaking from the Arizona State Board of Dental Examiners seeks to amend one (1) rule in Title 4, Chapter 11 related to Licensing Fees. The Board is amending Rule 403 to address inconsistencies related to its fees referenced in statute and rule and to comply with findings found during the 2023 Performance Audit and Sunset Review.

The Board 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 State Board of Dental Examiners
"Caring for the Public's Dental Health and Professional Standards"

1740 West Adams Street, Suite 2470
Phoenix, Arizona 85007
P: 602.242.1492
E: info@dentalboard.az.gov
W: www.dentalboard.az.gov

October 12, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 11. State Board of Dental 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:

1. Close of record date: The rulemaking record was closed on August 1, 2023 following a period for public comment and an oral proceeding. The Board did *not* receive any public comment regarding this rulemaking.

2. Relation of the rulemaking to a five-year rule review report: This rulemaking does not relate to a Five-year Rule Review Report.

3. New fee or fee increase: This rulemaking appears to be an increase, but it is just intended to conform the Board's rules related to fees with what is referenced in the Board's statutes. Pursuant to A.R.S. §§ 32-1236, 1276.02, 1287 and 1297.06, the Board shall review the amount of [its renewal fees] at least once every three years. Additionally, and as the Board went through its Sunset Audit, the Auditor General's report stated that the Board should be reviewing *all* its fees annually. Pursuant to the LES section of the Attorney General's office, they also concurred with the Auditor General's findings and provided the legal opinion that the Board should review all of its fees annually. It was also pointed out that the Board's rules do *not* conform to its statutes and the current language in A.A.C. R4-11-403 establishes that the Board "shall collect…", but then lists fees that are below what's written in statute.

   Provided all of the aforementioned, the fact that the Board operates on a zero-based budget and to comply with the Auditor General's recommendation and to follow the Board's legal counsel is why the Board is seemingly increasing its fees in A.A.C. R4-11-403, but the Board does not have any intention, in the near future, of increasing its fees. In fact, the Board did not collect a single dollar from January 2018 – December 2020 for any of its 10,000 plus license renewals and based on a healthy fund balance. Subsequent to those dates, the Board then only collected 40% of its renewal fees for the same reason thru December 2022. Notwithstanding that, the Board also did *not* collect any fees, at all, for most of 2020 and all of 2021 due to the COVID-19 pandemic and at the discretion of Governor Ducey's Executive Order 2020-17 to ease the financial burdens on its license population.

The Auditor General's report also discovered and made one of its findings that the Board has a fee listed in statute related to mobile dental facilities, but the Board has not taken any step(s) to promulgate rules to establish a fee. To be compliant with the Auditor General's finding, the Board promulgated fees pursuant to A.R.S. § 32-1299.23. The Auditor General's specific finding reads,

> *"Our review of Board statutes and rules found that the Board had adopted rules for most of the statutes when required to do so. However, the Board has not developed some rules required by statute. Specifically:… A.R.S. § 32-1299.23(A)(B) requires the Board to promulgate rules establishing annual registration fees and late fees for mobile dental unit permits, and penalties for when a dental unit permit holder fails to notify the Board of a change in address within 10 days."*

Again, there is no intention to increase fees, but this is a new fee that should have been established prior to the Auditor General's finding. Therefore, the Board is not only complying with the Auditor General's finding, but with its own statutory mandate by adding fees pursuant to A.R.S. 32-1299.23.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

7. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

8. List of documents enclosed:
   a. Cover letter signed by the Board's Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
   c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Ryan Edmonson
Executive Director

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners (Board) needs to amend its rules to align its fees consistent with its statutes.

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

      The Board needs to amend its rules to address inconsistencies related to its fees referenced in statute and rule and to comply with a recent audit finding during the Board's 2023 Performance Audit and Sunset Review. The necessary changes ensure the fees the Board charges for its services are uniform, clear, concise, and consistent and clarifies any ambiguity. Additionally, and pursuant to the Auditor General's Office findings, during the aforementioned Sunset Review, the Board needs to ensure its fees are based on the costs of providing services and periodic reviews. Pursuant to the same report, the Auditor General's Office also concluded that pursuant to A.R.S. § 32-1299.23(A) & (B) the Board has *not* promulgated rules to establish annual registration and late fees for mobile dental unit permits. Once the Board's rules related to its fees align with its statutes, and with exception of the authority granted to the Board to periodically review the appropriateness of fees to operate with a zero-based budget, the Board does not anticipate a need to address its fees again without a statutory change(s).

   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:

      Unless these rule amendments are made, the Board will not be compliant with its statutes – A.R.S. §§ 32-1201 et seq, and more specifically A.R.S. §§ 32-1236, 32-1287, 32-1297.06 & 32-1299.23(A) & (B). Furthermore, without these amendments, the Board will not be compliant with the Auditor General's findings, which then may require the Legislature to act if the Board fails to meet its statutory obligation of promulgating rules consistent with its statutes.

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

      There will be no change in the frequency of licensing renewals; this is set in statute.

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

   As part of its statutory obligations, the Auditor General's Office conducted its Performance Audit and Sunset Review of the Board and finalized that report on September 29, 2022. The report had several findings of which the Board is compliant with all but five, and of those five, all five require a new database or changes within the current database. In the same report, and in discussions that followed, it was discovered that the Board has not established fees for mobile dental units through promulgation of rules, nor are the current fees in rule consistent to what is in statute.

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:	Ryan Edmonson, Executive Director
Address:	Arizona State Board of Dental Examiners
	1740 W. Adams St., Ste. 2470
	Phoenix, AZ 85007
Telephone:	(602) 542-4493
E-Mail:	ryan.edmonson@dentalboard.az.gov

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

   Intentionally, the persons directly affected by, bear the costs of, or who directly benefit from the rulemaking are the Board's licensees. For purposes of this EIS, licensee shall have the same meaning for all the Board's regulated professionals. All revenue received is used to license and regulate the dental profession in the State of Arizona. The Board's licensees obtain higher education degrees in order to procure professional licenses and maintain those licenses to practice in their respective dental professions. The Board is keenly aware that it is a health board that licenses and regulates a health profession in order to protect the health safety and welfare of the public. The Board also understands its obligation to periodically review its operations and establish fees to operate on a zero-base budget.

It's worth noting that the Board had a renewal fee holiday from January 1, 2018 through December 31, 2020 and did *not* collect any fees related to renewals for those three years. Additionally, and through the discretion of Governor Ducey's Executive Order during the COVID-19 pandemic, the Board did not collect *any* fees, it extended renewal expiration dates, relaxed the continuing education requirements, and worked with the local dental association to commandeer Personal Protective Equipment ("PPE") to be given freely to those who requested due to PPE being in short supply and high demand.

In 2022, the Board compared its renewal fees with the rest of the US dental jurisdictions and the local and national dental associations. The Board determined that its renewal fees were reasonable especially considering that the Board collected dentist renewal fees 184% below the national average and hygienist renewal fees 99% below the national average. When comparing the Board's dentist renewal fees with the local and national association fees, the Board's fees are significantly lower by 646% and 756% respectively.

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 affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:
    N/A
    c. Costs and benefits to businesses directly affected by the rulemaking:
    No new costs will be incurred to businesses. In fact, this does not even affect the Board's business entity registration fees.

6. Impact on private and public employment:
    N/A

7. Impact on small businesses:
    a. Identification of the small business subject to the rulemaking:

The Board licensees will be affected by this rulemaking, but there is no financial impact to small businesses other than dental businesses.

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

c. Description of methods that may be used to reduce the impact on small businesses:
Minimal, if any, and only based on the cost to employers who pay for the license fees for its hired dental professionals.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
The Board cannot increase its renewal fees beyond what is statutorily written. In addition, the Board does not anticipate increasing what it is currently charging to renew licenses. Changing these rules is simply to remove inconsistency between its existing statutes and rules and to comply with the Auditor General's findings.

9. Probable effects on state revenues:
No new expenses are expected at this time. However, all revenue received by the Board is shared with the State's general fund.

10. Less intrusive or less costly alternative methods considered:
The Board believes that by amending its rules, this will be the least costly method of benefiting the dental community and the public they serve.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected **Rulemaking Action**

R4-11-403 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. § 32-1207

Implementing statutes: A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

None

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

None

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 1406, June 23, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1406, June 23, 2023

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

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners

1740 W. Adams St., Ste. 2470

Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board needs to amend its rules to update various rules to update its fees consistent with statute.

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:

In 2022, the Board compared its renewal fees with the rest of the US dental jurisdictions and the local and national dental associations. The Board determined that its renewal fees were reasonable especially considering that the Board collected dentist renewal fees 184% below the national average and hygienist renewal fees 99% below the national average. When comparing the Board's dentist renewal fees with the local and national association fees, the Board's fees are significantly lower by 646% and 756% respectively.

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:

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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

Not applicable

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

No one attended the oral proceeding on August 1, 2023.

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 issues general permits to licensees who meet the criteria established in statute 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:

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 4. FEES

R4-11-403. Licensing Fees

ARTICLE 4. FEES

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, ~~and~~ 32-1297.06, and 32-1299.23, the Board establishes and shall collect up to the following licensing fees paid by a method authorized by law:

1. Dentist triennial renewal fee: ~~$510~~ $650;
2. Dentist prorated initial license fee: $110;
3. Dental therapist triennial renewal fee: $375;
4. Dental therapist prorated initial license fee: $80;
5. Dental hygienist triennial renewal fee: ~~$255~~ $325;
6. Dental hygienist prorated initial license fee: $55;
7. Denturist triennial renewal fee: ~~$233~~ $300; ~~and~~
8. Denturist prorated initial license fee: $46. and
9. Mobile dental facility permit initial license or annual renewal fee: $200.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the following fees paid by a method authorized by law:

1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental therapists: $200;
   c. Dental hygienists: $100; and
   d. Denturists: $250.
2. Licensure by credential fee:
   a. Dentists: $2,000; and

b. Dental therapists: $1,500;

c. Dental hygienists: $1,000.

3. Penalty to reinstate an expired license or certificate: $100 for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).

4. Penalty for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:

a. Failure after 10 days: $50; and

b. Failure after 30 days: $100.

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11
Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

    (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

    (b) Imposition of restrictions on the scope of practice.

    (c) Imposition of peer review and professional education requirements.

    (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

    (a) Charges for services not rendered.

    (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

    (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

    (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

    (e) Any statement that is material to the claim and that the licensee knows is false or misleading.

    (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

    (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

    (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

    (b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
D. A board member shall not serve more than two consecutive terms.
E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.

6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee 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 days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)
Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means documents that contain the following information:
Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

"Licensee" means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Moderate sedation" is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide (N2O/O2) as an inhalation analgesic.

"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polish" means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).
E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant’s eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
    a. The applicant's dental, dental hygiene, or denturist school, or
    b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
    a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
    b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
    c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the selfinquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
3. Written verification of the applicant's work history, and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022(Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental Hygienists: $100; and
    c. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
    a. Failure after 10 days: $50; and
    b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.
D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
    a. A minimum of four hours in medical emergencies; and
    b. A minimum of eight hours in at least two of the following areas:
        i. Pediatric or other special health care needs,
        ii. Preventative dentistry, or
        iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp.17-3).

R4-11-802. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
    a. Has established examination requirements and standards,
    b. Appraised an applicant's qualifications,
    c. Administered comprehensive examinations, and
    d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.
H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
    d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
    e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
    f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
    d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
    e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
    a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
    b. b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
    c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
    d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
    a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
    b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
    c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
    d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
    e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
        i. Only once for materials presented;
        ii. Only if the date of publication or original presentation was during the applicable renewal period; and
        iii. One Credit Hour for each hour of preparation, writing, and presentation; or

f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists no more than 21 hours;
2. Dental therapists, no more than 18 horus;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
        vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
    a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
        i. Emergency Drugs;
        ii. Electrocardiograph monitor;
        iii. Pulse oximeter;
        iv. Cardiac defibrillator or automated external defibrillator;
        v. Positive pressure oxygen and supplemental oxygen;
        vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
        vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
        viii. Endotracheal tubes and appropriate connectors;
        ix. Magill forceps;
        x. Oropharyngeal and nasopharyngeal airways;
        xi. Auxiliary lighting;

xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    b. Pediatric advanced life support in a practice treating pediatric patients; or
    c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
    a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
    b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
    c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications; or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);

b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and

8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
      i. Emergency Drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:

1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications, or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);
    b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
    e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
    f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
    a. Pass. Successful completion of the onsite evaluation;
    b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
    c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
    d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
    e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
   1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
   2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
      a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
         i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
         ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
      b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
        a. Contains the following properly operating equipment and supplies during the provision of sedation:
            i. Emergency Drugs;
            ii. Cardiac defibrillator or automated external defibrillator;
            iii. Positive pressure oxygen and supplemental oxygen;
            iv. Stethoscope;
            v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
            vi. Pulse oximeter;
            vii. Blood pressure monitoring device; and
            viii. Auxiliary lighting; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
            i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
            ii. Is present during the Oral Sedation procedure; and
            iii. After the procedure, monitors the patient until discharge;
    3. Hold a valid license to practice dentistry in this state;
    4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
    5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
        a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Pediatric advanced life support in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
    1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
    2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
        a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or

3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
   a. Training in basic Oral Sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
   f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
      d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
      e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
   3. The evaluation team shall recommend one of the following:
      a. Pass. Successful completion of the onsite evaluation;
      b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
      c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
      d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
   4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
   5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
      a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
    1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
    2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
    3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
        a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
            i. Emergency drugs;
            ii. Electrocardiograph monitor;
            iii. Pulse oximeter;
            iv. Cardiac defibrillator or automated external defibrillator (AED);
            v. Positive pressure oxygen and supplemental continuous flow oxygen;
            vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
            vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
            viii. Endotracheal tubes and appropriate connectors;
            ix. Magill forceps;
            x. Oropharyngeal and nasopharyngeal airways;
            xi. Auxiliary lighting;
            xii. Stethoscope; and
            xiii. Blood pressure monitoring device; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
    3. Hold a valid license to practice dentistry in this state; and
    4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another

agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation; or
b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
    1. The program shall include instruction in the following subject areas:
        a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
        b. Physiological and psychological risks for the use of various modalities of pain control;
        c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
        d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
        e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
    2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
        a. Be the same for all dentists, whether general practitioners or specialists; and
        b. Include each subject area listed in subsection (A)(1).
    3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. General anesthesia,
        b. Parenteral sedation,
        c. Physical evaluation,
        d. Medical emergencies,
        e. Monitoring and use of monitoring equipment, or
        f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management;
    3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
    4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. Oral sedation,
        b. Physical evaluation,
        c. Medical emergencies,
        d. Monitoring and use of monitoring equipment, or
        e. Pharmacology of oral sedation drugs and non-drug substances; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        c. Pediatric advanced life support (PALS);
        d. A recognized continuing education course in advanced airway management; and
    3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
    1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11- 1306;
    2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
    3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
    4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
    1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
    2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist's name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient's name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient's allergies,
      b. Incompatibilities with a patient's currently taken medications,
      c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
   6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
   7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
   1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
   2. Sequentially file orders separately from patient records, as follows:
      a. File Schedule II drug orders separately from all other prescription orders;
      b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
      c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
   3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
   4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
   5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
   3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
   1. Is made in writing,
   2. States the reason for the postponement, and
   3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
   1. Review and either deny or approve the request for postponement; and
   2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
   1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
   2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
   3. Accident or surprise which could not have been prevented by ordinary prudence;
   4. Excessive or insufficient penalties;
   5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
   6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
   7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
   8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:
   1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
   2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

C-3.

ARIZONA STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend: R4-11-502, R4-11-903, R4-11-1503

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **Oct 4, 2023**

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS**
Title 4, Chapter 11

Amend: R4-11-502, R4-11-903, R4-11-1503

Summary:

This regular rulemaking from the State Board of Dental Examiners seeks to amend three (3) rules in Title 4, Chapter 11 related to identity disclosures. The Board is assigned with the duty to protect the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals. Here, the Board is amending the rules to update statutory requirements and to allow for the disclosure of the identity of a licensee to an investigator or consultant in order to ensure there is no conflict of interest during a Clinical Evaluation.

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

The Board cites both authorizing and implementing statutes.

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

The Board states 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 states no study was reviewed or relied upon during the course of this rulemaking.

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

As a result of the most recent Five-year Review Report(s), the Board needs to amend its rules to update outdated references and to clarify that the Board shall disclose the identity of a licensee to ensure there is no conflict of interest during a Clinical Evaluation. The economic impact is minimized because the rulemaking simply clarifies statutory requirements that already exist.

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?

Because no person or group of persons will be directly affected by the rulemaking's minor amendments, the Board has determined the rules impose the least burden and costs to those regulated.

6. What are the economic impacts on stakeholders?

There are no associated costs with the rulemaking, including those to state agencies, businesses, and individuals. The rulemaking provides very minor amendments to existing rules, which are neither intrusive nor costly.

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

The Board indicates that there were no changes between the proposed and final rules.

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

The Board did not receive any written comments and no one attended the oral proceeding on August 1, 2023.

9. 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 general permits are issued to licensees per statute and rule.

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 there are no federal laws applicable to these rules.

11. Conclusion

This regular rulemaking from the State Board of Dental Examiners seeks to amend three rules in Title 4, Chapter 11 related to identity disclosures. Here, the Board is amending the rules to update statutory requirements and to allow for the identity of a licensee to be disclosed to an investigator.

The Board 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 State Board of Dental Examiners
"Caring for the Public's Dental Health and Professional Standards"

1740 West Adams Street, Suite 2470
Phoenix, Arizona 85007
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October 12, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 11. State Board of Dental 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:

1. Close of record date: The rulemaking record was closed on August 1, 2023 following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a Five-year Rule Review report: This rulemaking relates to the Board's most recent Five-year Rule Review Report(s). Pursuant to R1-6-202(A)(c), the Five-year Rule Review for Articles 502 and 903 was approved by the Council on October 4, 2022. The Five-year Rule Review for Article 1503 was approved by the Council on July 7, 2020.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

9. List of documents enclosed:
   a. Cover letter signed by the Board's Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
   c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Ryan Edmonson
Executive Director

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners (Board) needs to amend its rules to update outdated references and to clarify that the Board shall disclose the identity of a licensee to its investigator(s) in order to ensure there is no conflict of interest.

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

      The Board needs to amend its rules related to its most recent Five-year Review Report(s) (5YRRs) and to make other necessary changes to ensure the rules are clear, concise and consistent.

   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:

      There is no real or perceived harm now or in the future. These are very simple amendments needed to comply with the Board's most recent 5YRRs.

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

      N/A.

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

   There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply amends rules that already exist, but require very minor edits. Thus, the economic impact is minimized.

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: Ryan Edmonson, Executive Director

   Address: Arizona State Board of Dental Examiners
   1740 W. Adams St., Ste. 2470
   Phoenix, AZ 85007

   Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

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

   Again, no person or group of persons will be directly affected by these minor rule amendments.

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 affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment.

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

      N/A

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

      No new costs will be incurred to businesses.

6. Impact on private and public employment:

   N/A

7. Impact on small businesses:

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

      There is no financial impact to small businesses and there are *no* new costs.

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

      Negligible

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

      N/A.

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

   No new costs will be incurred to individuals.

9. Probable effects on state revenues:

   N/A.

10. Less intrusive or less costly alternative methods considered:

    These are very minor amendments to already existing rules, which are neither intrusive, nor costly.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected	Rulemaking Action
R4-11-502	Amend
R4-11-903	Amend
R4-11-1503	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. § 32-1207

Implementing statutes: A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

None

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

None

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 1406, June 23, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1406, June 23, 2023

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

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners

1740 W. Adams St., Ste. 2470

Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board needs to amend its rules to update outdated references and clarify that the Board shall disclose the identity of a licensee in order to ensure there is no conflict of interest during a Clinical Evaluation.

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

No study was reviewed.

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

Not applicable.

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

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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

Not applicable.

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

The Board did not receive any written comments and no one attended the oral proceeding on August 1, 2023.

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 issues general permits to licensees who meet the criteria established in statute 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:

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 5. DENTISTS

R4-11-502. Affiliated Practice

ARTICLE 9. RESTRICTED PERMITS

R4-11-903. Recognition of a Charitable Dental Clinic or Organization

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1503. Initial Complaint Review

ARTICLE 5. DENTISTS

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § ~~32-1289(F)~~ 32-1289(E), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

ARTICLE 9. RESTRICTED PERMITS

R4-11-903. Recognition of a Charitable Dental Clinic or Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. The Board shall notify the Licensee, denturist, Business Entity or Mobile Dental Permit Holder by certified U.S. Mail when the following occurs:
    a. A formal interview is scheduled, and
    b. A subpoena, notice, or order is issued.
2. The Board shall notify the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder by U.S. mail or email when the following occurs:
    a. The complaint is tabled, and
    b. The Board grants a postponement or continuance.
3. Board shall provide the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder with a copy of the complaint.
4. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to Clinical Evaluation are:

1. Except as provided in subsection (B)(1)(a), the President's Designee shall appoint one or more dental consultants to perform a Clinical Evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
    a. If the complaint involves a dental hygienist, denturist, dental therapist, or dentist who is a recognized specialist in one of the areas listed in R4-11-

1102(B), the President's Designee shall appoint a dental consultant from that area of practice or specialty.

b. The Board shall ~~not~~ disclose the identity of the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder to a dental consultant performing a Clinical Evaluation before the Board receives the dental consultant's report.

2. The dental consultant shall prepare and submit a Clinical Evaluation report. The President's Designee shall provide a copy of the Clinical Evaluation report to the Licensee or denturist. The Licensee or denturist may submit a written response to the Clinical Evaluation report.

C. Notwithstanding any other provision, the Board may take immediate action consistent with A.R.S. §§ 32-1201.01 or 32-1263 in order to protect public health and safety.

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11
Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

    (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

    (b) Imposition of restrictions on the scope of practice.

    (c) Imposition of peer review and professional education requirements.

    (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

    (a) Charges for services not rendered.

    (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

    (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

    (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

    (e) Any statement that is material to the claim and that the licensee knows is false or misleading.

    (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

    (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

    (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

    (b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
D. A board member shall not serve more than two consecutive terms.
E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.

6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee 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 days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)
Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means documents that contain the following information:
Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

"Licensee" means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Moderate sedation" is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide (N2O/O2) as an inhalation analgesic.

"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polish" means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).
E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant’s eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
    a. The applicant's dental, dental hygiene, or denturist school, or
    b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
    a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
    b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
    c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the selfinquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
3. Written verification of the applicant's work history, and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022(Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental Hygienists: $100; and
    c. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
    a. Failure after 10 days: $50; and
    b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.
D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
    a. A minimum of four hours in medical emergencies; and
    b. A minimum of eight hours in at least two of the following areas:
        i. Pediatric or other special health care needs,
        ii. Preventative dentistry, or
        iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp.17-3).

R4-11-802. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
    a. Has established examination requirements and standards,
    b. Appraised an applicant's qualifications,
    c. Administered comprehensive examinations, and
    d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.
H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
    d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
    e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
    f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
    d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
    e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
    a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
    b. b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
    c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
    d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
    a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
    b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
    c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
    d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
    e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
        i. Only once for materials presented;
        ii. Only if the date of publication or original presentation was during the applicable renewal period; and
        iii. One Credit Hour for each hour of preparation, writing, and presentation; or

f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists no more than 21 hours;
2. Dental therapists, no more than 18 horus;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
        vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
    a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
        i. Emergency Drugs;
        ii. Electrocardiograph monitor;
        iii. Pulse oximeter;
        iv. Cardiac defibrillator or automated external defibrillator;
        v. Positive pressure oxygen and supplemental oxygen;
        vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
        vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
        viii. Endotracheal tubes and appropriate connectors;
        ix. Magill forceps;
        x. Oropharyngeal and nasopharyngeal airways;
        xi. Auxiliary lighting;

xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    b. Pediatric advanced life support in a practice treating pediatric patients; or
    c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
    a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
    b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
    c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications; or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);

b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and

8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
      i. Emergency Drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:

1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications, or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);
    b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
    e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
    f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
    a. Pass. Successful completion of the onsite evaluation;
    b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
    c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
    d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
    e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
   1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
   2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
      a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
         i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
         ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
      b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
        a. Contains the following properly operating equipment and supplies during the provision of sedation:
            i. Emergency Drugs;
            ii. Cardiac defibrillator or automated external defibrillator;
            iii. Positive pressure oxygen and supplemental oxygen;
            iv. Stethoscope;
            v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
            vi. Pulse oximeter;
            vii. Blood pressure monitoring device; and
            viii. Auxiliary lighting; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
            i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
            ii. Is present during the Oral Sedation procedure; and
            iii. After the procedure, monitors the patient until discharge;
    3. Hold a valid license to practice dentistry in this state;
    4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
    5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
        a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Pediatric advanced life support in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
    1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
    2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
        a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or

3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
   a. Training in basic Oral Sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
   f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
      d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
      e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
   3. The evaluation team shall recommend one of the following:
      a. Pass. Successful completion of the onsite evaluation;
      b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
      c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
      d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
   4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
   5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
      a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
    1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
    2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
    3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
        a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
            i. Emergency drugs;
            ii. Electrocardiograph monitor;
            iii. Pulse oximeter;
            iv. Cardiac defibrillator or automated external defibrillator (AED);
            v. Positive pressure oxygen and supplemental continuous flow oxygen;
            vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
            vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
            viii. Endotracheal tubes and appropriate connectors;
            ix. Magill forceps;
            x. Oropharyngeal and nasopharyngeal airways;
            xi. Auxiliary lighting;
            xii. Stethoscope; and
            xiii. Blood pressure monitoring device; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
    3. Hold a valid license to practice dentistry in this state; and
    4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another

agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation; or
b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
    1. The program shall include instruction in the following subject areas:
        a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
        b. Physiological and psychological risks for the use of various modalities of pain control;
        c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
        d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
        e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
    2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
        a. Be the same for all dentists, whether general practitioners or specialists; and
        b. Include each subject area listed in subsection (A)(1).
    3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. General anesthesia,
        b. Parenteral sedation,
        c. Physical evaluation,
        d. Medical emergencies,
        e. Monitoring and use of monitoring equipment, or
        f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management;
    3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
    4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. Oral sedation,
        b. Physical evaluation,
        c. Medical emergencies,
        d. Monitoring and use of monitoring equipment, or
        e. Pharmacology of oral sedation drugs and non-drug substances; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        c. Pediatric advanced life support (PALS);
        d. A recognized continuing education course in advanced airway management; and
    3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
    1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11- 1306;
    2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
    3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
    4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
    1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
    2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist's name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient's name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient's allergies,
      b. Incompatibilities with a patient's currently taken medications,
      c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
   6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
   7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
   1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
   2. Sequentially file orders separately from patient records, as follows:
      a. File Schedule II drug orders separately from all other prescription orders;
      b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
      c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
   3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
   4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
   5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
   3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
   1. Is made in writing,
   2. States the reason for the postponement, and
   3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
   1. Review and either deny or approve the request for postponement; and
   2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
   1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
   2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
   3. Accident or surprise which could not have been prevented by ordinary prudence;
   4. Excessive or insufficient penalties;
   5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
   6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
   7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
   8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:
   1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
   2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

Amend: R20-6-401, R20-6-405, R20-6-409

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 20, 2023

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6

Amend: R20-6-401, R20-6-405, R20-6-409

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend three (3) rules in Title 20, Chapter 6, Article 4 related to Types of Insurance Companies. Specifically, the Department is proposing the following changes which were outlined in the Department's previous Five-Year Review Report for this Article, approved by the Council in September 2020:

- **R20-6-401 (Proxies, Consents, and Authorizations of Domestic Stock Insurers):**
  - Correct page numbers in the incorporated by reference material and update the physical address of the Department.
- **R20-6-405 (Health Care Service Organizations):**
  - Eliminate unnecessary subsections and renumber remaining subsections, modernize antiquated language for readability, eliminate redundant statutory definitions and subsections, eliminate references to obsolete forms, eliminate unnecessary requirements, eliminate filing of reports related to advertising matter and sales materials, and clarify that appointments are not filed with the Department.

- **R20-6-409 (Hospital, Medical, Dental, and Optometric Service Corporations):**
    - Update the Sections to which subscription contracts must comply and eliminate an unnecessary subsection.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase.

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

The Department indicates it did not review and does not propose to rely on any study relevant to this rulemaking.

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

As outlined above, the Department is proposing the following changes to the rules:

- **R20-6-401 (Proxies, Consents, and Authorizations of Domestic Stock Insurers):**
    - Correct page numbers in the incorporated by reference material and update the physical address of the Department.
- **R20-6-405 (Health Care Service Organizations):**
    - Eliminate unnecessary subsections and renumber remaining subsections, modernize antiquated language for readability, eliminate redundant statutory definitions and subsections, eliminate references to obsolete forms, eliminate unnecessary requirements, eliminate filing of reports related to advertising matter and sales materials, and clarify that appointments are not filed with the Department.
- **R20-6-409 (Hospital, Medical, Dental, and Optometric Service Corporations):**
    - Update the Sections to which subscription contracts must comply and eliminate an unnecessary subsection.

Stakeholders include the Department, domestic stock insurers, health care service organizations, and hospital, medical, dental and optometric service corporations.

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 current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

6. What are the economic impacts on stakeholders?

The Department states that the current changes to the rules do not impose any additional or other costs required for compliance with the proposed rulemaking. The Department anticipates minimal financial impact, including no anticipated impact on the revenues or payroll expenditures, to insurers subject to the rules. No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

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 between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- The Department added a link to its website to Section R20-6-401 as a source for the incorporated materials.
- The Department removed the "incorporated by reference" language found at subsection R20-6-405(K).

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 no 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?

Not applicable. The Department indicates the rules do not require the issuance of a permit, license, or agency authorization.

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

Not applicable. The Department indicates no federal law is applicable to the subject of these rules.

11. Conclusion

This regular rulemaking from the Department seeks to amend three (3) rules in Title 20, Chapter 6, Article 4 related to Types of Insurance Companies. Specifically, the Department is proposing to correct page numbers in incorporated by reference material and update the physical

address of the Department, eliminate unnecessary subsections and renumber remaining subsections, modernize antiquated language for readability, eliminate redundant statutory definitions and subsections, eliminate references to obsolete forms, eliminate unnecessary requirements, eliminate filing of reports related to advertising matter and sales materials, and clarify that appointments are not filed with the Department. Additionally, the Department is amending R20-6-409 to update the Sections to which subscription contracts must comply and eliminate an unnecessary subsection.

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 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

DATE: September 21, 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
A.A.C. Title 20, Chapter 6, Article 4 – Types of Insurance Companies; Sections R20-6-401, R20-6-405, and R20-6-409

Dear Chairperson Sornsin:

Please find enclosed the Final Rulemaking for A.A.C. Title 20, Chapter 6, Article 4, Sections R20-6-401 (Proxies, Consents, and Authorizations of Domestic Stock Insurers), R20-6-405 (Health Care Services Organizations), and R20-6-409 (Hospital, Medical, Dental, and Optometric Service Corporations), being submitted by the Arizona Department of Insurance and Financial Institutions ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

a. The Department closed the record on this rulemaking on June 25, 2023.
b. This rulemaking relates to the five-year review report submitted by the Arizona Department of Financial Institutions to the Council in June 2020 (except for changes proposed for Section R20-6-407 which was addressed in a rulemaking effective February 6, 2023 (28 A.A.R. 3968, December 30, 2022)).
c. The rulemaking does not establish a new fee.
d. The rulemaking does not contain a fee increase.
e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
g. No new full-time employees are necessary to implement and enforce the rule.
h. The following documents are also submitted to the Council with this cover letter:
    i. The Notice of Final Rulemaking;
    ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
    iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable) **Rulemaking Action**

R20-6-401	Amend
R20-6-405	Amend
R20-6-409	Amend

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

Authorizing statute:	A.R.S. § 20-143(A)
Implementing statutes:	R20-6-401: A.R.S. § 20-143(B)
	R20-6-405: A.R.S. § 20-1078
	R20-6-409: A.R.S. § 20-821(A)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

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. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

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:	29 A.A.R. 1203, May 26, 2023
Notice of Proposed Rulemaking:	29 A.A.R. 1167, May 26, 2023

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

Name: Mary E. Kosinski
Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, Arizona 85007-2630
Telephone: (602)364-3476
E-mail: mary.kosinski@difi.az.gov
Web site: https://difi.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing changes to A.A.C. Title 20, Chapter 6, Sections R20-6-401, R20-6-405 and R20-6-409. (The Department has already completed a rulemaking for the only other Section in Article 4, R20-6-407. Service Companies, which became effective on February 6, 2023 (28 A.A.R. 3968, December 30, 2022)).

The Department's changes are necessary to fulfill commitments made in prior Five-Year Review Reports, the most recent is the Department's 2020 Five-Year Report for these Sections. The Department is proposing the following changes:

- Section R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers. Correct page numbers in the incorporated by reference material, and update the physical address of the Department.
- Section R20-6-405. Health Care Service Organizations. Eliminate unnecessary subsections and renumber remaining subsections, modernize antiquated language for readability, eliminate redundant statutory definitions and subsections, eliminate references to obsolete forms, eliminate unnecessary requirements, eliminate filing of reports related to advertising matter and sales materials, and clarify that appointments are not filed with the Department.
- Section R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations. Update the Sections to which subscription contracts must comply and eliminate an unnecessary subsection.

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

The Department did not review and does not propose to rely on any study relevant to 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:

The rulemaking does not diminish a previous grant of authority granted to the Department.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to address any misconduct. Instead, it is necessary to fulfill commitments made by the Department in previous Five-Year Review Reports, the most recent in 2020. The proposed changes, including the elimination of a requirement to report information the Department receives pursuant to other statutory mandates, should make compliance with these Sections easier for regulated entities.
- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The Department does not anticipate any additional costs to be incurred by licensees.
- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

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

The Department has made the following changes from the proposed rulemaking:

- The Department added a link to its website to Section R20-6-401 as a source for the incorporated materials.
- The Department removed the "incorporated by reference" language found at subsection R20-6-405(K).

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

The Department published the Notice of Proposed Rulemaking for Sections R20-6-401, R20-6-405 and R20-6-409 on May 26, 2023. (29 A.A.R. 1167, May 26, 2023) At that time it also opened a 30-day Comment Period. During the Comment Period, no one submitted a comment to the Department or requested an Oral Proceeding.

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:

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable. Sections R20-6-401 and R20-6-409 do not require a permit.
Section R20-6-405 pertains to a Health Care Service Organization ("HCSO"). A.R.S. § 20-1052 requires a HCSO to obtain a certificate of authority from the Department before engaging in the business of a HCSO, not a permit.

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

No federal law is applicable to the subject of the rules. However, the deposit requirement for a Health Care Services Organization may be subject to a federal preemption claim pursuant to subsection R20-6-405(H)(2).

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 formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

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

Section R20-6-401 incorporates the National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-33, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments).

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. None of the Sections being amended in this rulemaking were previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION
ARTICLE 4. TYPES OF INSURANCE COMPANIES

Section

ARTICLE 4. TYPES OF INSURANCE COMPANIES

R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through ~~490-40,~~ 490-33, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite ~~102,~~ 261, Phoenix, AZ ~~85007-2624~~ 85007-2630, the Department's website: https://difi.az.gov/insurance-division-rulemaking, and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:

Section 1 A is modified to read: "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation.

B. Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

R20-6-405. Health Care Services Organization

A. ~~Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.~~

B. ~~Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).~~

C. Scope

1. The scope of this ~~Rule~~ Section is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corporations. As it relates to Health Care Services Organizations, the scope of this ~~rule~~ Section is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided

in A.R.S. § 20-1068. This ~~rule~~ Section is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.

2. The statutory authority for this ~~rule,~~ Section, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions ~~therefrom~~ for persons or agents of persons subject ~~thereto,~~ to A.R.S. Title 20, Chapter 4, Article 9, and no such exemption is intended or should be presumed by this ~~rule~~ Section or any provision ~~thereof.~~ of this Section.

~~D.~~ **B.** Repeal. This ~~rule~~ Section does not repeal any known prior ~~rule,~~ Section, memorandum, bulletin, directive or opinion on this subject matter. If such prior ~~rule~~ Section or directive exists and is in conflict ~~herewith, the same is repealed hereby.~~ with this Section, it is repealed by this Section.

~~E.~~ **C.** Definitions. ~~As used in this rule, unless the context otherwise requires:~~ In addition to the definitions provided in A.R.S. § 20-1051, the following definitions apply to this Section unless the context otherwise requires:

1. "Agent" has the same meaning as "insurance producer" ~~of A.R.S. § 20-282.~~ found at A.R.S. § 20-281(5).
2. ~~"Basic Health Care Services" has the meaning of A.R.S. § 20-1051.~~ "Certificate of Authority" has the meaning found at A.R.S. § 20-217.
3. ~~"Certificate of Authority" means a Certificate authorizing operation of a Health Care Services Organization.~~ "Director" has the meaning found at A.R.S. § 20-102.
4. ~~"Director" means the Director of Insurance of the State of Arizona.~~ "Hospital Service Corporation" has the meaning found at A.R.S. § 20-822.
5. ~~"Enrollee" has the meaning of A.R.S. § 20-1051.~~ "Insurer' has the meaning found at A.R.S. § 20-104.
6. ~~"Evidence of coverage" has the meaning of A.R.S. § 20-1051.~~ "License" means the authority to act as an agent of a Health Care Services Organization.
7. ~~"Health Care Plan" has the meaning of A.R.S. § 20-1051.~~ "Medical Service Corporation" has the meaning found at A.R.S. § 20-822.
8. ~~"Health Care Services" has the meaning of A.R.S. § 20-1051.~~ "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.
9. ~~"Health Care Services Organizations" has the meaning of A.R.S. § 20-1051.~~ "Physician and patient relationship" has the meaning found at A.R.S. § 20-833.
10. ~~"Hospital Service Corporation" has the meaning of A.R.S. § 20-822.~~ "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
11. ~~"Insurer" has the meaning of A.R.S. § 20-106(C).~~ "Prepaid Health Plan" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
12. ~~"License" means the authority to act as an agent of a Health Care Services Organization.~~ "Transact" has the meaning found at A.R.S. § 20-106(A) and (B).
13. ~~"Medical Service Corporation" has the meaning of A.R.S. § 20-822.~~ "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.

~~14. "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.~~

~~15. "Person" has the meaning of A.R.S. § 20-1051.~~

~~16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.~~

~~17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.~~

~~18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.~~

~~19. "Provider" has the meaning of A.R.S. § 20-1051.~~

~~20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).~~

~~21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.~~

~~F.~~ **D.** ~~Certificate of Authority~~

1. ~~Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.~~
2. ~~A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.~~
3. ~~An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.~~

~~G.~~ Certificate of Authority – Application

1. ~~A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.~~

   Pursuant to the authority of A.R.S. § 20-1053(A)(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions of principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
2. ~~Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.~~

   Pursuant to the authority of A.R.S. § 20-1053(A)(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.
3. ~~Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the~~

~~disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.~~

4. ~~The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.~~
5. ~~The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.~~
6. ~~The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.~~
7. ~~Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.~~
8. ~~Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.~~

~~**H.** Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of attorney as required by A.R.S. § 20-1053(A)(10), on Department Form E-128.~~

~~**I.**~~ **E.** Certificate of Authority – Grounds for denial

1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1051, 20-1052, 20-1052.01, 20-1053 and 20-1054 are met and will continue to be met.
2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
   a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
   b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
   c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage ~~mispresentation.~~ misrepresentation.

3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.

~~4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.~~

~~J.~~ **F.** Solicitation requirements

1. ~~Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the requirements of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.~~ Forms for evidences of coverage, advertising matter, sales material and amendments thereto will not be approved until the Director is satisfied all applicable statutory requirements have been met and will continue to be met, and the necessary fees have been paid.
2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other ~~State~~ state with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.

~~K. Annual report. Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.~~

~~L.~~ **G.** Taxes

1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return ~~on Department Form E-162,~~ and pay the tax due on ~~such~~ the filed return pursuant to A.R.S. § 20-1060.
2. ~~A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director.~~ Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.

3. Net charges, as in this ~~rule~~ Section defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.

~~**M.**~~ **H.** Deposit requirements

1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be ~~in~~ on a form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
2. ~~In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.~~
   Provider sponsored Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(F), shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
3. ~~No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.~~
   Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage, shall have been paid and the Director authorizes, in writing, to withdraw such deposits or cancel such bonds. Equal par value statutory deposit exchanges may be completed without the Director's prior approval.
4. ~~Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.~~
5. ~~Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage shall have been paid and the Director has given his authority in writing to withdraw such deposits or cancel such bonds.~~

~~**N.** Reserve requirements. Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.~~

~~**O.**~~ **I.** Insurers and hospital and medical service corporations – Certificate of Authority

1. Insurers, Hospital Service Corporation, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute~~,~~ if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.

2. The provisions of statute and this ~~rule~~ Section applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
3. Organizations claiming exemption or partial exemption pursuant to ~~A.R.S. § 20-1063(c)~~ A.R.S. § 20-1063(C) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.

~~P.~~ ~~Application, examination and licensing of agents~~

1. ~~No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.~~
2. ~~Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:~~
   a. ~~An application for such license on a form approved by the Director of the Department of Insurance;~~
   b. ~~The required fees for such license;~~
   c. ~~Such additional information as the Director may deem necessary.~~
3. ~~The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.~~
4. ~~The examination shall be given in such places and at such times as the Director shall from time to time designate.~~
5. ~~The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.~~
6. ~~Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.~~
7. ~~License and examination fees shall be in accordance with A.R.S. § 20-167.~~
8. ~~Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.~~
9. ~~Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.~~
10. ~~Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.~~

~~11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.~~

~~12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.~~

~~13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.~~

~~14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.~~

J. Application, examination and licensing of agents. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization unless, prior to making any solicitation or transaction, the agent has been appointed by a Health Care Services Organization holding a current valid Certificate of Authority and is licensed as an insurance producer. The Health Care Services Organization is not required to report its appointments to the Department. An agent directly or indirectly representing or acting for a Health Care Services Organization and not licensed or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.

~~**Q.**~~ **K.** Forms

1. The forms prescribed by this ~~rule~~ Section and ~~the instructions applicable thereto~~ their instructions are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended and approved without reference to this ~~rule~~ Section ~~and when approved as amended are incorporated in this rule by reference~~. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this ~~rule,~~ Section, if applied for in writing not less than 10 days prior to the due date of ~~such~~ the report and statement, exhibit, return or accounting.

~~**R.**~~ **L.** Severability. In any provision of this ~~rule~~ Section or the forms, statements, returns or reports made part of this ~~rule,~~ Section, or the application ~~thereof~~ to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this ~~rule,~~ Section, which can be given effect without the invalid provision or application, and to this end the provisions of this ~~rule~~ Section are declared to be severable.

~~**S.** Effective date. This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.~~

R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations

A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.

B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the

requirements of the following ~~rules:~~ Sections:

1. R20-6-201. Advertisements of ~~disability insurance.~~ Health,
2. ~~R20-6-209. Unfair sex discrimination.~~ R20-6-207. Gender Discrimination,
3. ~~R20-6-210. Group coverage discontinuance and replacement.~~ R20-6-208. Group Coverage Discontinuance and Replacement,
4. ~~R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.~~ R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness,
5. ~~R20-6-216. Life and disability insurance policy language simplification.~~ R20-6-213. Life and Disability Insurance Policy Language Simplification, and
6. ~~R20-6-302. Valuation of reserves for disability policies.~~ R20-6-607. Reasonableness of Benefits in Relation to Premium Charged.
7. ~~R20-6-606. Medicare supplement insurance disclosure and minimum standards.~~
8. ~~R20-6-607. Reasonableness of benefits in relation to premium charged.~~

~~C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.~~

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions and Insurance
Chapter 6. Department of Insurance and Financial Institutions – Insurance Division
Article 4. Types of Insurance Companies

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing changes to A.A.C. Title 20, Chapter 6, Sections R20-6-401, R20-6-405 and R20-6-409. (The Department has already completed a rulemaking for the only other Section in Article 4, R20-6-407. Service Companies, which became effective on February 6, 2023 (28 A.A.R. 3968, December 30, 2022)).

The Department's changes are necessary to fulfill commitments made in prior Five-Year Review Reports, the most recent is the Department's 2020 Five-Year Report for these Sections. The Department is proposing the following changes:

- Section R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers. Correct page numbers in the incorporated by reference material, and update the physical address of the Department.
- Section R20-6-405. Health Care Service Organizations. Eliminate unnecessary subsections and renumber remaining subsections, modernize antiquated language for readability, eliminate redundant statutory definitions and subsections, eliminate references to obsolete forms, eliminate unnecessary requirements, eliminate filing of advertising matter and sales materials, and clarify that appointments are not filed with the Department.
- Section R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations. Update the Sections to which subscription contracts must comply and eliminate an unnecessary subsection.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Section R20-6-401 applies to domestic stock insurers (A.R.S. §§ 20-203, 20-703). Section R20-6-405 applies to Health Care Services Organizations (A.R.S. § 20-1051(6)). Section R20-6-409 applies to Hospital, Medical, Dental, and Optometric Service Corporations (A.R.S. § 20-822).

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

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

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rulemaking.

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

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

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

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules.

A.R.S. § 41-1055(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 proposed rulemaking.

The Department does not anticipate any impact on the private employment of insurers subject to the rules. Likewise, the Department does not anticipate any impact on public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

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

The rules apply to types of insurance companies that would not qualify as small businesses.

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

The current changes to the rules do not impose any additional administrative or other costs required for compliance with the proposed rulemaking.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

Not applicable.

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

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

Private persons and consumers are not directly affected by the proposed rulemaking.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rules are not based on any data.

R20-6-310.04. Severability Clause
If any provision of this Section, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to that end the provisions of this Section are severable.

Historical Note
New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

Appendix A. Expired
Table 1. Expired
Table 2. Expired
Table 3. Expired
Table 4. Expired
Table 5. Expired
Table 6. Expired

Historical Note
Appendix A adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Appendix A (including Tables 1 through 6) expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

ARTICLE 4. TYPES OF INSURANCE COMPANIES

R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:

Section 1 A is modified to read: "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation."

B. Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

Historical Note
Former General Rule 57-3. R20-6-401 recodified from R4-14-401 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3). New Section made by final rulemaking at 9 A.A.R. 1086, effective March 6, 2003 (Supp. 03-1). Section amended by final expedited rulemaking with an immediate effective date of September 16, 2019 (Supp. 19-3).

R20-6-402. Expired

Historical Note
Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

Exhibit A. Expired

Historical Note
Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

Exhibit B. Expired

Historical Note
Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

R20-6-403. Expired

Historical Note
Former General Rule 69-21. R20-6-403 recodified from R4-14-403 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

Appendix A. Expired

Historical Note
R20-6-403, Appendix A recodified from R4-14-403, Appendix A (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

Appendix B. Expired

Historical Note
R20-6-403, Appendix B recodified from R4-14-403, Appendix B (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

Appendix C. Expired

Historical Note
R20-6-403, Appendix C recodified from R4-14-403, Appendix C (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

R20-6-404. Repealed

Historical Note
Former General Rule 73-31; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-404 recodified from R4-14-404 (Supp. 95-1).

R20-6-405. Health Care Services Organization

A. Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.

B. Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).

C. Scope

1. The scope of this Rule is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corporations. As it relates to Health Care Services Organiza-

tions, the scope of this rule is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided in A.R.S. § 20-1068. This rule is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.

2. The statutory authority for this rule, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions therefrom for persons or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.

D. Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.

E. Definitions. As used in this rule, unless the context otherwise requires:

1. "Agent" has the meaning of A.R.S. § 20-282.
2. "Basic Health Care Services" has the meaning of A.R.S. § 20-1051.
3. "Certificate of Authority" means a Certificate authorizing operation of a Health Care Services Organization.
4. "Director" means the Director of Insurance of the State of Arizona.
5. "Enrollee" has the meaning of A.R.S. § 20-1051.
6. "Evidence of coverage" has the meaning of A.R.S. § 20-1051.
7. "Health Care Plan" has the meaning of A.R.S. § 20-1051.
8. "Health Care Services" has the meaning of A.R.S. § 20-1051.
9. "Health Care Services Organizations" has the meaning of A.R.S. § 20-1051.
10. "Hospital Service Corporation" has the meaning of A.R.S. § 20-822.
11. "Insurer" has the meaning of A.R.S. § 20-106(C).
12. "License" means the authority to act as an agent of a Health Care Services Organization.
13. "Medical Service Corporation" has the meaning of A.R.S. § 20-822.
14. "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.
15. "Person" has the meaning of A.R.S. § 20-1051.
16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.
17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
19. "Provider" has the meaning of A.R.S. § 20-1051.
20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).
21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.

F. Certificate of Authority

1. Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.
2. A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
3. An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.

G. Certificate of Authority – Application

1. A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.
2. Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.
3. Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.
4. The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.
5. The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.
6. The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.
7. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
8. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.

H. Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of

attorney as required by A.R.S. § 20-1053(A)(10) on Department Form E-128.

I. Certificate of Authority – Grounds for denial

1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
   a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
   b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
   c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage misrepresentation.
3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.
4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.

J. Solicitation requirements

1. Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the requirements of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.
2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other State with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.

K. Annual report. Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.

L. Taxes

1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return on Department Form E-162, and pay the tax due on such return pursuant to A.R.S. § 20-1060.
2. A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director. Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.
3. Net charges, as in this rule defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.

M. Deposit requirements

1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be in form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
2. In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.
3. No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.
4. Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
5. Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage shall have been paid and the Director has given his authority in writing to withdraw such deposits or cancel such bonds.

N. Reserve requirements. Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital

of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.

O. Insurers and hospital and medical service corporations – Certificate of Authority

1. Insurers, Hospital Service Corporation, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute, if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.
2. The provisions of statute and this rule applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
3. Organizations claiming exemption or partial exemption pursuant to A.R.S. § 20-1063(c) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.

P. Application, examination and licensing of agents

1. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.
2. Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:
   a. An application for such license on a form approved by the Director of the Department of Insurance;
   b. The required fees for such license;
   c. Such additional information as the Director may deem necessary.
3. The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.
4. The examination shall be given in such places and at such times as the Director shall from time to time designate.
5. The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.
6. Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.
7. License and examination fees shall be in accordance with A.R.S. § 20-167.
8. Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.
9. Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.
10. Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.
11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.
12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.
13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.

Q. Forms

1. The forms prescribed by this rule and the instructions applicable thereto are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended without reference to this rule and when approved as amended are incorporated in this rule by reference. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this rule, if applied for in writing not less than 10 days prior to the due date of such report and statement, exhibit, return or accounting.

R. Severability. In any provision of this rule or the forms, statements, returns or reports made part of this rule, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

S. Effective date. This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.

Historical Note

Former General Rule 73-33; Amended subsections (E), (P), (R), (S), and (T) effective August 12, 1981 (Supp. 81-4). R20-6-405 recodified from R4-14-405 (Supp. 95-1).

R20-6-406. Expired

Historical Note

Adopted effective May 18, 1978 (Supp. 78-3). R20-6-406 recodified from R4-14-406 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

R20-6-407. Service Companies

A. Scope. This rule shall apply to all service companies except those that are exempt under A.R.S. § 20-1095.02.

B. Definitions. The definitions in A.R.S. § 20-1095 apply to this rule.
1. "Contract Holder" has the same meaning as "consumer" as defined in A.R.S. § 20-1095(1).
2. "Department" means the Arizona Department of Insurance and Financial Institutions, Insurance Division.
3. "Director" means the Director of the Department.
4. "Insolvent" as used in A.R.S. § 20-1095.08(3) means total liabilities are equal to or exceed total assets.
5. "Provider" means a person who is contractually obligated to the service contract holder under the terms of a service contract. "Provider" is synonymous with "service company" and "obligor" as defined in A.R.S. § 20-1095(6).
6. "Reasonable time" or "Reasonable period of time:"
   a. As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than 10 business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Department.
   b. As used in A.R.S. § 20-1095.09(A)(4), is what an ordinary person would consider "reasonable" under the totality of the circumstances.
7. "Solvent" as used in A.R.S. § 20-1095.03(A)(1) means total assets exceed total liabilities.
8. "Subcontractor" means a person or business having a contractual relationship with a service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.

C. Application for a service company permit.
1. Application form. The application for a service company permit shall be on a form designated by the Department and shall be transmitted through an electronic online system if such a system is designated on the Department's web site. An application must be complete and have all attachments to be considered by the Department.
2. Application. The application shall contain the following information:
   a. Applicant's full legal name;
   b. Applicant's federal employer identification number (EIN);
   c. Applicant's trade name or names, if applicable;
   d. Applicant's state of domicile;
   e. Applicant's form of business entity (corporation, limited liability company, etc.);
   f. Applicant's addresses, phone numbers, e-mail address or addresses and website or addresses;
   g. Name, address, and phone number or e-mail address for each contact person of the applicant;
   h. A list of the applicant's officers, directors, LLC managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;
   i. If the applicant intends to use a service contract administrator, the name and contact information for the applicant's service contract administrator;
   j. The applicant's fiscal year end date;
   k. A summary of the applicant's financial position including current assets, current liabilities, equity and income;
   l. The name and signature of an officer of the applicant; and
   m. Any other information the Department deems necessary to aid in the approval of the application.
3. Application attachments. The applicant shall include the following as part of the application:
   a. A copy of the service company's most recent financial statement sworn to and certified by the owner, duly elected officer or a certified public accountant.
   b. Evidence of compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
   c. A biographical affidavit, on a form approved by the Department, for each officer, director, LLC manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.
   d. A list of any actions taken against the applicant in any jurisdiction by a regulatory agency or state attorney general.
4. Application fee. At the time of filing the application, the applicant shall pay the nonrefundable application fee prescribed by A.R.S. § 20-167 and fixed by the Department.

D. Term of the service company permit.
1. Term of permit. A service company permit shall have a term that begins on the date that the Department either grants or renews a service company permit and expires at midnight on the last day of the month, three months after the service company's fiscal year-end date.
2. The Department is not required to issue a paper copy of the service company permit. However, the Department will make a copy of the service company permit available by electronic or other means.
3. Expiration of a service company permit.
   a. Unless the Department receives an application and full payment of fees for renewal prior to the end of the service company permit term, the service company permit expires.
   b. A service company whose permit term has expired shall not offer, extend, or renew a service contract.
   c. A service company whose permit has expired shall continue to fulfill the obligations of its in-force contracts and shall maintain the security required under A.R.S. § 20-1095.03(3) until such time that all of the service company's contractual obligations to contract holders are fulfilled.

E. Service company permit renewal and late-renewal.
1. Timely renewal. A service company seeking to renew its permit shall file with the Department a renewal application, consisting of the renewal application form, all required attachments and the renewal fee after the end of its fiscal year but before the expiration of its permit term. A service company shall transmit the renewal application through an electronic online system if such a system is designated on the Department's website. A renewal appli-

cation must be complete, have all required attachments and the renewal fee to be considered as having been received by the Department.

2. Renewal form. A service company shall use the renewal form designated by the Department. The renewal shall contain the following information:
   a. Service company name appearing on the permit, and the service company's Arizona license number and EIN;
   b. Any additions or deletions to the service company's trade name or trade names, addresses, phone numbers and website addresses;
   c. Any changes to the service company's contact person or persons or service contract administrator, or their contact information;
   d. A summary of the applicant's financial position including current assets, current liabilities, equity and income; and
   e. Any other information the Department deems necessary to aid in the renewal of the permit.
3. Renewal attachments. The service company shall attach the following to the renewal:
   a. A copy of the service company's financial statement as of the end of the service company's most recently completed fiscal year, sworn to and certified by the owner, duly elected officer or a certified public accountant.
   b. Evidence of continuing compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
   c. Any additions or deletions to the officers, directors, LLC managers, or persons owning 25% or more of the service company, or to an entity that owns the service company since the last report to the Department.
   d. A biographical affidavit, on a form approved by the Department, for each new person identified in subsection (3)(c).
   e. Any actions taken against the service company in any jurisdiction by a regulatory agency or state attorney general not previously reported to the Department.
4. Renewal fee. At the time of filing the renewal, the service company shall pay a nonrefundable renewal fee as prescribed by A.R.S. § 20-167 and fixed by the Department.
5. Late-renewed application and fee.
   a. Late-renewal period. A service company whose permit term has expired may file a renewal application up to ninety days after the expiration of the permit term. After the ninety-day period, a renewal application will not be accepted by the Department and the service company must file a service company permit application with the Department pursuant to subsection (C) of this Section.
   b. A service company whose permit term has expired shall not offer, extend, or renew a service contract until the permit is renewed or a new permit is issued by the Department.
   c. Fee. In addition to the nonrefundable renewal fee required under subsection (E)(4) of this Section, the service company shall pay a nonrefundable additional fee of $25 per day starting the calendar day after the permit term expiration and ending on the date the service company files a complete renewal application.
   d. Term of a late-renewed permit. The term of a late-renewed permit shall begin on the date the Department renews the permit and shall end on the last day of the permit term.

F. Deposits of cash or alternatives to cash.

1. Contracts issued, renewed, or extended on or after August 3, 2018. For any contract that a service company issues, extends, or renews from and after August 3, 2018, a service company may not satisfy the financial responsibility requirements of A.R.S. § 20-1095.04 by means of providing a deposit of cash or alternatives to cash.
2. Contracts issued, renewed, or extended before August 3, 2018. If a service company provided a deposit of cash or alternatives to cash covering service contracts that were issued, last extended, or last renewed prior to August 3, 2018, the service company shall maintain the deposit in the amount required to cover those contracts and the deposit shall not be encumbered.
3. Release of deposits of cash or alternatives to cash. As it relates to financial responsibility requirements fulfilled by a deposit of cash or alternatives to cash, the Director shall only release the deposit upon one of the following:
   a. The service company provides a surety bond or mechanical reimbursement policy that covers the outstanding service contract liabilities secured by the cash or alternatives to cash.
   b. The Department has approved the assumption of outstanding service contracts and liabilities by another service company that has acknowledged the assumption of the outstanding contracts and that shall provide each affected contract holder an endorsement issued by the mechanical reimbursement insurer or surety.
   c. The service company provides evidence satisfactory to the Department that:
      i. The outstanding service contracts and liabilities have expired or have been cancelled in accordance with the service contract terms;
      ii. All claims under the service contracts have been settled; and
      iii. The service company is financially able and agrees to be financially responsible for any valid unreported claims.

G. Filing of forms.

1. Contracts to be submitted for approval. A service company shall submit contracts for the Department's approval pursuant to A.R.S. § 20-1095.06. A service company is not required to submit advertisements or marketing materials for approval by the Department but shall abide by the provisions of Title 20, Chapter 2 - Article 6, Chapter 4 - Article 11, and this Section regarding misrepresentations in the sales of service contracts.
2. Requirements for approval. No service contract form shall be approved unless it:
   a. Complies with A.R.S. § 20-1095.06;
   b. Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;
   c. States the service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair;

d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company;
e. Specifies in clear and easily understood language the service company's financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;
f. If applicable, states the conditions under which the service contract or coverage may be reinstated;
g. States the dates of coverage under the service contract including any delay in coverage that differs from the purchase date of the contract which would extend the coverage term of the contract and any terms that govern renewal of the service contract; and
h. If providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract, the service contract shall contain language in conformance with A.R.S. § 20-1095.06(D)(9).

3. Disapproval of contracts. The Department may disapprove any service contract that is in violation of Title 20, Chapter 4 - Article 11, or this subsection (G). The service company may request a hearing to appeal the disapproval pursuant to A.R.S. § 20-161.

Historical Note

Adopted effective April 30, 1981 (Supp. 81-2). Former Section R4-14-407 repealed and a new Section R4-14-407 adopted effective July 2, 1987 (Supp. 87-3). R20-6-407 recodified from R4-14-407 (Supp. 95-1). Section amended by final rulemaking at 28 A.A.R. 3968 (December 30, 2022), effective February 6, 2023 (Supp. 22-4).

R20-6-408. Expired

Historical Note

Former Section R4-14-408 renumbered as Section R4-14-409; a new Section R4-14-408 adopted effective July 15, 1987 (Supp. 87-3). R20-6-408 recodified from R4-14-408 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 3106, effective October 9, 2018 (Supp. 18-4).

R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations

A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.

B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:
1. R20-6-201. Advertisements of disability insurance.
2. R20-6-209. Unfair sex discrimination.
3. R20-6-210. Group coverage discontinuance and replacement.
4. R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.
5. R20-6-216. Life and disability insurance policy language simplification.
6. R20-6-302. Valuation of reserves for disability policies.
7. R20-6-606. Medicare supplement insurance disclosure and minimum standards.
8. R20-6-607. Reasonableness of benefits in relation to premium charged.

C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

Historical Note

Adopted effective July 9, 1982 (Supp. 82-4). Former Section R4-14-408 renumbered without change as Section R4-14-409 effective July 15, 1987 (Supp. 87-3). R20-6-409 recodified from R4-14-409 (Supp. 95-1).

ARTICLE 5. THE INSURANCE CONTRACT

R20-6-501. Ten-day Period to Examine Disability Insurance Policy

For the purpose of implementing A.R.S. §§ 20-442, 20-443, 20-826, 20-1111 and 20-1113 and to make more specific the regulation therein provided relative to policies of individual disability insurance (accident and sickness, hospitalization, medical, surgical and loss of time) issued in the State of Arizona and further to provide satisfactory public remedy against the hazards of misunderstanding by an applicant, of deception and coercion by an agent and of certain policy exclusions and limitations that cheapen the value of coverage, the Insurance Department of Arizona adopts the following rule:

1. Each policy of individual disability insurance, except one for which no provision for renewal is made, issued for delivery in the State of Arizona on or after October 1, 1961, by an insurance company or by a hospital or medical service corporation shall have printed on the first page thereof or attached thereto or endorsed thereupon in prominent style a notice declaring that, during a period of 10 days (or, at the insurer's option, a longer period) from the date of delivery to the policyholder, such policy may be returned for cancellation to the insurer at its home office (or, at the insurer's option, to its branch office or to the agent through whom it was purchased) and declaring further that in the event of such return the insurer will refund the entirety of any premium paid therefor, including any policy fees or other charges, and that the policy shall be deemed void from the beginning and that the parties shall be returned to their original position as if no policy had been issued.
2. The Insurance Department does not specify the particular language the notice shall contain but prefers usage of a phraseology approximately along the lines of either the longer (Form A) or shorter (Form B) sample below:

Authorizing Statute: A.R.S. § 20-143

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.

Implementing Statute for Section R20-6-401: A.R.S. § 20-143(B)

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.

Implementing Statute for Section R20-6-405: A.R.S. § 20-1078

20-1078. Rules

The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.

Implementing Statute for Section R20-6-409: A.R.S. § 20-821(A)

20-821. Scope of article; rules; authority of director

A. Hospital service corporations, medical service corporations, dental service corporations, optometric service corporations and hospital, medical, dental and optometric service corporations incorporated in this state are governed by this article and are exempt from all other provisions of this title, except as expressly provided by this article and any rule adopted by the director pursuant to section 20-143 relating to contracts of such service corporations. No insurance law enacted after January 1, 1955 applies to such corporations unless the law specifically refers to corporations.

B. Chapter 2, articles 8 and 12 of this title, sections 20-223, 20-234, 20-261, 20-1133, 20-1377, 20-1408, 20-1692, 20-1692.01, 20-1692.02 and 20-1692.03 and chapters 15, 17, 20 and 30 of this title and any rules adopted to implement these provisions apply to all corporations governed by this article.

C. Chapter 21 of this title applies to a hospital service corporation, a medical service corporation or a hospital and medical service corporation.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

Amend: R20-6-205, R20-6-604, R20-6-801, R20-6-1003, Appendix B, R20-6-2002, R20-6-2401

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 20, 2023

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6

Amend: R20-6-205, R20-6-604, R20-6-801, R20-6-1003, Appendix B, R20-6-2002, R20-6-2401

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend six (6) rules and one (1) appendix in Title 20, Chapter 6, Articles 2, 6, 8, 10, 20, and 24. Specifically, the Department is proposing housekeeping changes to accurately reflect the correct name of the Department, which changed in 2020, to clarify the title of one Section, to correct statutory references, to correct typographical errors, and to remove some archaic language. The Department is proposing the following changes:

Article 2. Transaction of Insurance:

- **R20-6-205 (Local or Regional Retaliatory Tax Information)** will be amended to correct the name of the Department in subsection (A). This correction also fulfills a commitment made in the Department's 2021 Five-Year Review Report.

Article 6. Types of Insurance Contracts:

- **R20-6-604 (Definitions)** will be amended to change the title of the Section to "Consumer Credit Insurance; Definitions" to indicate that this Section and the following Sections (R20-6-601.01 through R20-6-601.10) pertain to Consumer Credit Insurance, to eliminate

redundant statutory definitions, and to add numbers to the definitions for clarity. This correction also fulfills a commitment made in the Department's 2020 Five-Year Review Report.

Article 8. Prohibited Practices, Penalties:

- **R20-6-801 (Unfair Claims Settlement Practices)** will be amended to revise the definitions for "agent" and "Director", to add a definition for "Department," to update antiquated language, and to revise to meet rule writing standards and promote clarity. This correction also fulfills a commitment made in the Department's 2023 Five-Year Review Report.

Article 10. Long-term Care Insurance:

- **R20-6-1003 (Policy Terms)** will be amended to correct statutory references in two definitions. **Appendix B (Long-term Care Insurance Potential Race (sic) Increase Disclosure Form)** will be amended to correct a typographical error in the title of the Appendix. This correction also fulfills a commitment made in the Department's 2018 and 2023 Five-Year Review Reports to correct errors when found.

Article 20. Captive Insurers:

- **R20-6-2002 (Fees; Examination Costs)** will be amended to correct a statutory reference in subsection (A). This correction also fulfills a commitment made in the Department's 2021 Five-Year Review Report.

Article 24. Out-of-Network Claim Dispute Resolution:

- **R20-6-2401 (Definitions)** will be amended to correct the name of the Department to its current name.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase.

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

The Department indicates it did not review and does not propose to rely on any study relevant to this rulemaking.

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

The Department believes the changes are necessary to accurately reflect the correct name of the Department which changed in 2020, to clarify the title of one section, to correct statutory reference, to correct typographical errors, and to remove some archaic language. Stakeholders include the Department, insurers subject to retaliation, insurers that issue Consumer Credit Insurance policies, insurers subject to the Arizona Unfair Practices and Frauds Act, insurers that issue Long-Term Care Insurance policies, Captive Insurance Companies, and consumers who have received a surprise bill from an out-of-network healthcare provider for services provided in a network health care facility.

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 current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

6. What are the economic impacts on stakeholders?

The Department states that the current changes to the rules do not impose any additional or other costs required for compliance with the proposed rulemaking. The Department anticipates minimal financial impact, including no anticipated impact on the revenues or payroll expenditures, to insurers subject to the rules. No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

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 a typographical correction to R20-6-801(D)(4) between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council, changing the fourth line from:

"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~~ the a time limit is not complied with unless the failure to comply with ~~such~~ the time limit prejudices the insurer's rights."

To:

"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~~ the time limit is not complied with unless the failure to comply with ~~such~~ the time limit prejudices the insurer's rights."

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 no 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?

Not applicable. The Department indicates the rules do not require the issuance of a permit, license, or agency authorization.

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

The Department indicates Article 24 (Out-of-Network Claim Dispute Resolution) and R20-6-2401 pertain to "Surprise Billing." Surprise Billing (also called balance billing) occurs when an insured person receives health care services from a provider who is not contracted with the insured person's network to provide services. The statutory sections pertaining to Surprise Billing are found at A.R.S. §§ 20-3111 through 20-3119.

In 2021, the Federal government passed the "No Surprises Act" (Consolidated Appropriations Act, 2021, Public Law 116-260). The No Surprises Act (the "Federal law") became effective for plans issued on or after January 1, 2022. The Federal law provides to consumers much of the same functions and protections of Arizona's Surprise Billing Act (the "Arizona law"). However, the Arizona law does not offer its protections to all persons enrolled in health plans and has a dollar limitation. Therefore, the Arizona law is more stringent than the Federal law. Consequently, the Arizona law will eventually be preempted in its entirety by the Federal law once all potential appeals for plans renewed in 2022 are expired. The Department estimates that this preemption will occur sometime in 2024. Further information is available on the Department's website at: https://difi.az.gov/soonbdr and on the CMS website at: https://www.cms.gov/nosurprises.

11. Conclusion

This regular rulemaking from the Department seeks to amend six (6) rules and one (1) appendix in Title 20, Chapter 6, Articles 2, 6, 8, 10, 20, and 24. Specifically, the Department is proposing housekeeping changes to accurately reflect the correct name of the Department, which changed in 2020, to clarify the title of one Section, to correct statutory references, to correct typographical errors, and to remove some archaic language.

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 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

DATE: September 21, 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
A.A.C. Title 20, Chapter 6, Housekeeping on Various Sections

Dear Chairperson Sornsin:

Please find enclosed the Final Rulemaking for A.A.C. Title 20, Chapter 6, housekeeping on various Sections being submitted by the Arizona Department of Insurance and Financial Institutions ("Department"). The following Sections are included in this rulemaking:

- R20-6-205. Local or Regional Retaliatory Tax Information
- R20-6-604. Definitions (Consumer Credit Insurance)
- R20-6-801. Unfair Claims Settlement Practices
- R20-6-1003. Policy Terms (Long-term Care Insurance); and Appendix B. Long-term Care Insurance Potential Race (sic) Increase Disclosure Form
- R20-6-2002. Fees; Examination Costs (Captive Insurers)
- R20-6-2401. Definitions (Out-of-Network Claim Dispute Resolution)

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

a. The Department closed the record on this rulemaking on June 25, 2023.
b. This rulemaking relates to the following five-year review reports for the following rules submitted by the Arizona Department of Financial Institutions to the Council (the remaining rule, R20-6-2401, does not relate to a five-year review report):
   - R20-6-205 – 2021 Five-Year Review Report
   - R20-6-604 – 2020 Five-Year Review Report
   - R20-6-801 – 2023 Five-Year Review Report
   - R20-6-1003 and Appendix B – 2023 Five-Year Review Report
   - R20-6-2002 – 2021 Five-Year Review Report
c. The rulemaking does not establish a new fee.
d. The rulemaking does not contain a fee increase.
e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.

f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
g. No new full-time employees are necessary to implement and enforce the rule.
h. The following documents are also submitted to the Council with this cover letter:
    i. The Notice of Final Rulemaking;
    ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
    iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable) **Rulemaking Action**

R20-6-205	Amend
R20-6-604	Amend
R20-6-801	Amend
R20-6-1003	Amend
Appendix B	Amend
R20-6-2002	Amend
R20-6-2401	Amend

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

Authorizing statute:	A.R.S. § 20-143(A)
Implementing statutes:	R20-6-205: A.R.S. § 20-230(A)
	R20-6-604: A.R.S. § 20-1615
	R20-6-801: A.R.S. § 20-461(C)
	R20-6-1003 and Appendix B: A.R.S. § 20-1691.02
	R20-6-2002: A.R.S. § 20-1098.14
	R20-6-2401: A.R.S. § 20-142(B); A.R.S. §§ 20-3111 through 20-3119

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

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. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

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:	29 A.A.R. 1204, May 26, 2023
Notice of Proposed Rulemaking:	29 A.A.R. 1173, May 26, 2023

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

Name:	Mary E. Kosinski
Address:	Department of Insurance and Financial Institutions 100 N. 15th Ave., Suite 261 Phoenix, Arizona 85007-2630
Telephone:	(602)364-3476
E-mail:	mary.kosinski@difi.az.gov
Web site:	https://difi.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing housekeeping changes to A.A.C. Title 20, Chapter 6, Sections R20-6-205, R20-6-604, R20-6-801, R20-6-1003 and Appendix B, R20-6-2002, and R20-6-2401.
The Department's changes are necessary to accurately reflect the correct name of the Department which changed in 2020, to clarify the title of one Section, to correct statutory references, to correct typographical errors, and to remove some archaic language. The Department is proposing the following changes:

- Article 2. Transaction of Insurance: Section R20-6-205 (Local or Regional Retaliatory Tax Information) will be amended to correct the name of the Department in subsection (A). This correction also fulfills a commitment made in the Department's 2021 Five-Year Review Report.
- Article 6. Types of Insurance Contracts: Section R20-6-604 (Definitions) will be amended to change the title of the Section to "Consumer Credit Insurance; Definitions" to indicate that this Section and the following Sections (R20-6-601.01 through R20-6-601.10) pertain to Consumer Credit Insurance, to eliminate redundant statutory definitions, and to add numbers to the definitions for clarity. This correction also fulfills a commitment made in the Department's 2020 Five-Year Review Report.
- Article 8. Prohibited Practices, Penalties: Section R20-6-801 (Unfair Claims Settlement Practices) will be amended to revise the definitions for "agent" and "Director", to add a definition for "Department," to update antiquated language, and to revise to meet rule writing standards and promote clarity. This correction also fulfills a commitment made in the Department's 2023 Five-Year Review Report.

- Article 10. Long-term Care Insurance: Section R20-6-1003 (Policy Terms) will be amended to correct statutory references in two definitions. Appendix B (Long-term Care Insurance Potential Race (sic) Increase Disclosure Form) will be amended to correct a typographical error in the title of the Appendix. This correction also fulfills a commitment made in the Department's 2018 and 2023 Five-Year Review Reports to correct errors when found.
- Article 20. Captive Insurers: R20-6-2002 (Fees; Examination Costs) will be amended to correct a statutory reference in subsection (A). This correction also fulfills a commitment made in the Department's 2021 Five-Year Review Report.
- Article 24. Out-of-Network Claim Dispute Resolution: R20-6-2401 (Definitions) will be amended to correct the name of the Department to its current name.

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

The Department did not review and does not propose to rely on any study relevant to 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:

The rulemaking does not diminish a previous grant of authority granted to the Department.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct. Instead, it is necessary to perform some housekeeping required when the Department changed its name in 2020 and to fulfill a commitment made by the Department in a 2021 Five-Year Review Report. The proposed changes should make compliance with these Sections less confusing for regulated entities.
- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The Department does not anticipate any additional costs to be incurred by licensees.
- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

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

The Department has made a typographical correction to subsection R20-6-801(D)(4) at the fourth line from:

"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~~ the a time limit is not complied with unless the failure to comply with ~~such~~ the time limit prejudices the insurer's rights."

to:

"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~~ the time limit is not complied with unless the failure to comply with ~~such~~ the time limit prejudices the insurer's rights."

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

The Department published the Notice of Proposed Rulemaking for these Sections on May 26, 2023. (29 A.A.R. 1173, May 26, 2023) At that time it also opened a 30-day Comment Period. During the Comment Period, no one submitted a comment to the Department or requested an Oral Proceeding.

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:

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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:

None of the Sections being revised require a permit.

Section R20-6-604 pertains to Consumer Credit Insurance which is a type of insurance issued by an insurer holding a Certificate of Authority in Arizona.

Section R20-6-1003 and Appendix B pertain to Long-term Care Insurers who hold a Certificate of Authority in Arizona.

Section R20-6-2002 pertains to Captive Insurers who hold a license to transact captive insurance from the Department pursuant to A.R.S. § 20-1098.01.

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:

Article 24. Out-of-Network Claim Dispute Resolution and Section R20-6-2401 pertain to "Surprise Billing." Surprise Billing (also called balance billing) occurs when an insured person receives health care services from a provider who is not contracted with the insured person's network to provide services. The statutory sections pertaining to Surprise Billing are found at A.R.S. §§ 20-3111 through 20-3119.

In 2021, the Federal government passed the "No Surprises Act" (Consolidated Appropriations Act, 2021, Public Law 116-260). The No Surprises Act (the "Federal law") became effective for plans issued on or after January 1, 2022. The Federal law provides to consumers much of the same functions and protections of Arizona's Surprise Billing Act (the "Arizona law"). However, the Arizona law does not offer its protections to all persons enrolled in health plans and has a dollar limitation. Therefore, the Arizona law is more stringent than the Federal law. Consequently, the Arizona law will eventually be pre-empted in its entirety by the Federal law once all potential appeals for plans renewed in 2022 are expired. The Department estimates that this pre-emption will occur sometime in 2024. Further information is available on the Department's website at: https://difi.az.gov/soonbdr and on the CMS website at: https://www.cms.gov/nosurprises.

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 formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

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

None of the rules being amended incorporate reference material.

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. None of the Sections being amended in this rulemaking were previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

ARTICLE 2. TRANSACTION OF INSURANCE

Section

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

Section

ARTICLE 8. PROHIBITED PRACTICES, PENALTIES

Section

ARTICLE 10. LONG-TERM CARE INSURANCE

Section

ARTICLE 20. CAPTIVE INSURERS

Section

ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

Section

ARTICLE 2. TRANSACTION OF INSURANCE

R20-6-205. Local or Regional Retaliatory Tax Information

A. Definitions.

1. "Addition to the rate of tax" means the tax rate determined under subsection (D) to be applied under A.R.S. 20-230(A) and this Section to foreign or alien insurers domiciled in a foreign country or other state that impose local or regional taxes.
2. "Alien insurer" has the meaning prescribed in A.R.S. § 20-201.
3. "Arizona life insurer" means a domestic insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
4. "Department" means the Arizona Department of Insurance~~.~~ and Financial Institutions.
5. "Director" has the meaning prescribed in A.R.S. § 20-102.
6. "Domestic insurer" has the meaning prescribed in A.R.S. § 20-203.

7. “Foreign insurer” has the meaning prescribed in A.R.S. § 20-204.
8. “Foreign or alien life insurer” means a foreign or alien insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
9. “Local or regional taxes” means any tax, license, or other obligation imposed upon domestic insurers or their producers by any:
    a. City, county, or other political subdivision of a foreign country or other state; or
    b. Combination of cities, counties, or other political subdivisions of a foreign country or other state.
10. “Other Arizona insurer” means a domestic insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
11. “Other foreign or alien insurer” means a foreign or alien insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
12. “Other state” means any state in the United States, the District of Columbia, and territories or possessions of the United States, excluding Arizona.
13. “Premium Tax and Fees Report,” includes the “Survey of Arizona Domestic Insurers” and the “Retaliatory Taxes and Fees Worksheet,” and means the form prescribed by the Director and filed annually by insurers under A.R.S. § 20-224.

B. Scope. This Section applies to all foreign, alien, and domestic insurers and to Premium Tax and Fees Reports filed by all insurers.

C. Data to be reported by domestic insurers. As a part of its Premium Tax and Fees Report, each domestic insurer shall file a Survey of Arizona Domestic Insurers that reports the following data for the calendar year covered by the insurer’s Premium Tax and Fees Report with respect to each foreign country or other state in which the insurer was required to pay any local or regional taxes:

1. Total local or regional taxes paid; and
2. Total premiums taxed under the premium taxing statute of the foreign country or other state, as reported by the insurer in any premium tax report filed under the laws of the foreign country or other state.

D. Computation of statewide and foreign countrywide additions to the rate of tax. For each foreign country or other state having one or more local or regional taxes on domestic insurers, the Department shall compute on a statewide or foreign countrywide basis an addition to the rate of tax. The Department shall compute the addition to the rate of tax payable by Arizona life insurers separately from the addition to the rate of tax payable by other Arizona insurers. The addition to the rate of tax payable by each category of Arizona domestic insurers shall be the quotient of:

1. The aggregate local or regional taxes reported as paid to the foreign country or other state by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report divided by,
2. The aggregate statewide or foreign countrywide premiums taxed under the premium taxing statute of the other state or foreign country reported by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report.

E. Publication of additions to the rate of tax. The Department shall publish additions to the rate of tax determined under A.R.S. § 20-230(A) and this Section, based upon the survey information gathered from domestic insurers for the preceding calendar year under subsection (C). The Department shall publish the information annually on the Department web site, on or before November 1, and in the Retaliatory Taxes and Fees Worksheet for the next year's Premium Tax and Fees Report.

F. Foreign and Alien Insurers' Report of the Effect of Local or Regional Taxes. Each foreign or alien insurer domiciled in a foreign country or other state for which the Department publishes an addition to the rate of tax shall include in the "State or Country of Incorporation" column of its Retaliatory Taxes ~~And~~ and Fees Worksheet for the calendar year covered by its Premium Tax and Fees Report an amount equal to:

1. The total premiums received in Arizona that would be taxed under the laws of the domiciliary jurisdiction, as reported in the "State or Country of Incorporation" column of its premium tax and fees report multiplied by,
2. The applicable addition to the rate of tax published by the Department for the calendar year covered by the insurer's Premium Tax and Fees Report.

G. Contesting computation. A foreign or alien insurer subject to this Section may preserve the right to contest the computation of the addition to the rate of tax by submitting a notice of appeal under A.R.S. Title 41, Chapter 6, Article 10 before or at the time the retaliatory tax is paid. Subject to A.R.S. § 20-162, the filing of a notice of appeal to contest the computation of the applicable addition to the rate of tax does not relieve a foreign or alien insurer of the obligation to timely pay the retaliatory tax, and does not stay accrual of any applicable interest and penalties.

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

R20-6-604. ~~Definitions~~ Consumer Credit Insurance; Definitions

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

1. "Actual loss ratio" means incurred claims divided by earned premiums at rates in use.
2. "Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.
3. "Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.
4. "Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.
5. "Earned premiums at prima facie rates" means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.
6. "Earned premiums at rates in use" means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.
7. "Evidence of individual insurability" means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

8. "Experience" means an insurer's earned premiums and incurred claims during an experience period.
9. "Experience period" means a period of time for which an insurer reports income and expense information on the insurer's credit insurance business.
10. "Final adjusted rates" means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

~~"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.~~

~~"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.~~

11. "Incurred claims" means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

~~"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.~~

12. "Plan of credit insurance" means an insurance plan based on one of the following rate and coverage categories:
    a. Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;
    b. Credit life insurance on revolving accounts;
    c. Credit life insurance on an age-graded basis;
    d. Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;
    e. Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.
13. "Preexisting condition" means a condition:
    a. For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and
    b. From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.
14. "Prima facie adjusted loss ratio" means incurred claims divided by earned premiums at prima facie rates.
15. "Prima facie rates" means the rates established by the Director as prescribed in R20-6-604.03.
16. "Reasonableness standard" means the requirement in A.R.S. § 20-1610(B) that an insurer's premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.
17. "Rule of Anticipation" means the product of the gross single premium per $100 of indebtedness for a debtor's remaining term of indebtedness, times the number of hundreds of dollars of

remaining indebtedness.

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. "Agent" has the same meaning as "Insurance producer" as defined at A.R.S. § 20-281(5).
2. "Claimant" means either a first party claimant, a third party claimant, or both and includes ~~such~~ the 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.~~
   "Department" means the Arizona Department of Insurance and Financial Institutions – Insurance Division.
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.~~
   "Director" has the meaning of A.R.S. § 20-102.
5. ~~"Insurance policy or insurance contract" has the meaning of A.R.S. § 20-103.~~
   "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 the policy or contract.
6. ~~"Insurer" has the meaning of A.R.S. § 20-106(C).~~
   "Insurance policy or insurance contract" has the meaning of A.R.S. § 20-103.
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.~~
   "Insurer" has the meaning of A.R.S. § 20-106(C).
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.~~
   "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.
9. ~~"Person" has the meaning of A.R.S. § 20-105.~~
   "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.
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.~~

"Person" has the meaning of A.R.S. § 20-105.

11. ~~"Worker's compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.~~

"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.

12. "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~~ The files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of ~~such~~ the 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~~ the 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~~ the time limit is not complied with unless the failure to comply with ~~such~~ the 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~~ the notice unless payment is made within ~~such period of time.~~ the 10 working days. 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~~ 15 working days of receipt of ~~such~~ the 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 a 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 a claim, unless ~~such~~ the investigation cannot reasonably be completed within ~~such time.~~ 30 days.

G. Standards for prompt, fair and equitable settlements applicable to all insurers

1. Notice of acceptance of denial of claim.
   a. Within ~~fifteen~~ 15 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~~ the 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~~ 15 working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 45 days from the date of the initial notification and every 45 days thereafter, send to ~~such~~ the 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~~ subsection (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~~ The notice shall be given to first party claimants 30 days, and to third party claimants 60 days, before the date on which ~~such~~ the 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~~ of the offer 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~~ The 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~~ the 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~~ the 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~~ the 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~~ the deductible 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~~ the 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~~ the reduction shall be contained in the claim file. ~~Such deductions~~ The reductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of ~~deductions.~~ reductions.
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~~ the amount is agreed to by the insured.

I. Severability. If any provision of this ~~rule~~ Section or ~~the application thereof~~ its application to any person or circumstances is held invalid, the remainder of the ~~rule~~ Section and the application of ~~such~~ the 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.~~

ARTICLE 10. LONG-TERM CARE INSURANCE

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).~~ A.R.S. § 20-1691(6).
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)~~ A.R.S. § 20-1691(13) 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.

Appendix B. Long-term Care Insurance Potential ~~Race~~ Rate 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%

ARTICLE 20. CAPTIVE INSURERS

R20-6-2002. Fees; Examination Costs

A. A corporation applying for a license to do business as a captive insurer~~, under A.R.S. § 20-1098,~~ shall pay a nonrefundable fee of $1,000.00 to the Department for issuance of the license~~.~~ under A.R.S. § 20-1098.01(J). A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of $1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.

B. A captive insurer shall pay a nonrefundable annual renewal fee of $5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of $2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.

C. A captive insurer shall pay a nonrefundable fee of $200.00 to the Department at the time of filing for issuance of an amended certificate of authority.

D. In addition to the fees prescribed in subsections (A), ~~and~~ (B), and (C), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

R20-6-2401. Definitions

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.

1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.
5. "A.R.S. § 20-3113 Disclosure" means a written, dated document that contains the following information:
   a. The name of the billing health care provider;
   b. A statement that the health care provider is not a contracted provider;
   c. The estimated total cost to be billed by the health care provider or the provider's representative for the health care services being provided;
   d. A notice that the enrollee or the enrollee's authorized representative is not required to sign the A.R.S. § 20-3113 Disclosure to obtain health care services;
   e. A notice that if the enrollee or the enrollee's authorized representative signs the A.R.S. § 20-3113 Disclosure, they may have waived any rights to request arbitration of a qualifying surprise out-of-network bill.
6. "Balance bill" means all charges that exceed the enrollee's cost sharing requirements and the amount paid by the insurer.
7. "Date of service" means the latest date on which the health care provider rendered a related health care service that is the subject of a qualifying surprise out-of-network bill.
8. "Days" as used in this Article means calendar days unless specified as business days and does not include the day of the filing of a document.
9. "Department" means the Arizona Department of Insurance and Financial Institutions or an entity with which it contracts to administer the out-of-network claim dispute resolution process.
10. "Enrollee's authorized representative" means a person to whom an enrollee has given express written consent to represent the enrollee, the enrollee's parent or legal guardian, a person appointed by the court to act on behalf of the enrollee or the enrollee's legal representative. An enrollee's authorized representative shall not be someone who represents the provider's interests.
11. "Final resolution of a health care appeal" means that a member has a final decision under the review process provided by A.R.S. Title 20, Chapter 15, Article 2.

12. “Informal Settlement Teleconference” means a teleconference arranged by the Department that is held to settle the enrollee’s qualifying surprise out-of-network bill prior to an Arbitration being scheduled. The parties to the Informal Settlement Teleconference are: (a) the enrollee or the enrollee’s authorized representative; (b) the health insurer; and (c) the provider or the provider’s representative.
13. “Qualifying surprise out-of-network bill” is a surprise out-of-network bill for health care services provided on or after January 1, 2019, that is disputed by the enrollee and:
    a. Is for health care services covered by the enrollee’s health plan;
    b. Is for health care services provided in a network health care facility;
    c. Is for health care services performed by a provider who is not contracted to participate in the network that serves the enrollee’s health plan;
    d. The enrollee has resolved any health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, that the enrollee may have had against the insurer following the health insurer’s initial adjudication of the claim;
    e. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the surprise out-of-network bill or the health care services provided;
    f. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee’s cost sharing requirements and the insurer’s allowable reimbursement, is at least $1,000.00; and
    g. One of the following applies:
        i. The bill is for emergency services, including under circumstances described by A.R.S. § 20-2803(A);
        ii. The bill is for health care services directly related to the emergency services that are provided during an inpatient admission to any network facility;
        iii. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider’s representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure:
        iv. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider’s representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure within a reasonable amount of time before the enrollee received the service;
        v. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider’s representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure (“Disclosure”) and the enrollee or the enrollee’s authorized representative chose not to sign the Disclosure;
        vi. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider’s representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure (“Disclosure”) and the enrollee or the enrollee’s authorized representative signed the Disclosure but the amount actually billed to the enrollee is greater than the estimated cost provided in the signed Disclosure.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement

Title 20. Commerce, Financial Institutions and Insurance

Chapter 6. Department of Insurance and Financial Institutions – Insurance Division

Article 2. Transaction of Insurance

Article 6. Types of Insurance Contracts

Article 8. Prohibited Practices, Penalties

Article 10. Long-Term Care Insurance

Article 20. Captive Insurers

Article 24. Out-of-Network Claim Dispute Resolution

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing housekeeping changes to A.A.C. Title 20, Chapter 6, Sections R20-6-205, R20-6-604, R20-6-801, R20-6-1003 and Appendix B, R20-6-2002, and R20-6-2401.

The Department's changes are necessary to accurately reflect the correct name of the Department which changed in 2020, to clarify the title of one Section, to correct statutory references, to correct typographical errors, and to remove some archaic language. The Department is proposing the following changes:

- Article 2. Transaction of Insurance: Section R20-6-205 (Local or Regional Retaliatory Tax Information) will be amended to correct the name of the Department in subsection (A).
- Article 6. Types of Insurance Contracts: Section R20-6-604 (Definitions) will be amended to change the title of the Section to "Consumer Credit Insurance; Definitions" to indicate that this Section and the following Sections (R20-6-601.01 through R20-6-601.10) pertain to Consumer Credit Insurance, to eliminate redundant statutory definitions, and to add numbers to the definitions for clarity.
- Article 8. Prohibited Practices, Penalties: Section R20-6-801 (Unfair Claims Settlement Practices) will be amended to revise the definitions for "agent" and "Director", to add a definition for "Department," to update antiquated language,

and to revise to meet rule writing standards and promote clarity.

- Article 10. Long-term Care Insurance: Section R20-6-1003 (Policy Terms) will be amended to correct statutory references in two definitions. Appendix B (Long-term Care Insurance Potential Race (sic) Increase Disclosure Form) will be amended to correct a typographical error in the title of the Appendix.
- Article 20. Captive Insurers: R20-6-2002 (Fees; Examination Costs) will be amended to correct a statutory reference in subsection (A). This correction also fulfills a commitment made in the Department's 2021 Five-Year Review Report.
- Article 24. Out-of-Network Claim Dispute Resolution: R20-6-2401 (Definitions) will be amended to correct the name of the Department to its current name.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Section R20-6-205 pertains to insurers subject to retaliation (A.R.S. § 20-230).
Section R20-6-604 pertains to insurers that issue Consumer Credit Insurance policies (A.R.S. § 20-1603(1)).
Section R20-6-801 pertains to insurers subject to the Arizona Unfair Practices and Frauds Act (A.R.S. § 20-441).
Section R20-6-1003 and Appendix B pertains to insurers that issue Long-Term Care Insurance policies (A.R.S. § 20-1691(7)).
Section R20-6-2002 applies to Captive Insurance Companies (A.R.S. § 20-1098).
Section R20-6-2401 applies to consumers who have received a surprise bill from an out-of-network health care provider for services provided in a network health care facility (A.A.C. R20-6-2401(13)).

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall

include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rulemaking.

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

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

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

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules.

A.R.S. § 41-1055(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 proposed rulemaking.

The Department does not anticipate any impact on the private employment of insurers subject to the rules. Likewise, the Department does not anticipate any impact on public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

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

The rulemaking changes which apply to types of insurance companies are not applicable because insurers do not qualify as small businesses.

The rulemaking changes which apply to Out-of-Network Claim Dispute Resolution can potentially impact out-of-network health care providers which may qualify as small businesses. But since the only change is to correct the name of the Department in Section R20-6-2401, the Department does not anticipate any impact to these small businesses that differs from the current impact the rule imposes upon them.

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

The current changes to the rules do not impose any additional administrative or other costs required for compliance with the proposed rulemaking.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

Not applicable.

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

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

Private persons and consumers are not directly affected by the proposed rulemaking pertaining to insurers. Private persons and consumers are potentially affected by any changes to Section R20-6-2401. However, since the only change is to correct the name of the Department, no impact is expected to consumers.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rules are not based on any data.

iii. Prepared sales talks and presentations and material for use by an insurer or prepared by an insurer for use by authorized producers; and
iv. Material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements;

b. "Advertisement" does not include the following:
i. Material used solely for training and educating an insurer's employees or producers;
ii. Material used in-house by insurers;
iii. Communications within an insurer's own organization not intended for dissemination to the public;
iv. Individual communications with current policy holders regarding a member's personal information other than material urging the policyholders to increase or expand coverages;
v. Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;
vi. Court-approved material ordered by a court to be disseminated to policyholders;
vii. Material in connection with promotion or sponsorship of a charitable event in which only the name of the insurer is displayed;
viii. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged. The announcement shall clearly indicate that it is preliminary to the issuance of a booklet and that does not describe the specific benefits under the contract or program nor the advantages as to the purchase of the contract or program;
ix. A general announcement by the sponsor that endorses the program;
x. Health and wellness material with general health and wellness information; or
xi. Press releases and news releases not intended to generate business.

2. "Disability insurance" has the same meaning prescribed in A.R.S. § 20-253.
3. "Elimination period" means the time between the date a loss occurs and the date that benefits begin to accrue for that loss.
4. "Exclusion" means a policy term stating a risk that an insurer has not assumed.
5. "Health insurance" means:
a. Disability insurance;
b. Insurance provided by a service corporation regulated under A.R.S. § 20-821 et seq.;
c. Insurance provided by a prepaid dental plan organization regulated under A.R.S. § 20-1001 et seq.; and
d. Insurance provided by a health care services organization regulated under A.R.S. § 20-1051 et seq.
6. "Insurance administrator" or "administrator" has the meaning prescribed in A.R.S. § 20-485(A)(1).
7. "Insurer" has the same meaning prescribed in A.R.S. § 20-104.
8. "Limitation" means a policy term, other than an exclusion or reduction, that decreases the risk assumed by the insurer or the insurer's obligation to provide benefits.
9. "Person" has the meaning in A.R.S. § 20-105.
10. "Policy" means any plan, certificate, contract, agreement, statement of coverage, evidence of coverage, subscription contract, membership coverage, rider, or endorsement that provides disability benefits, health insurance, medical, surgical or hospital expense benefits, long-term care benefits, or Medicare supplement benefits in the form of a cash indemnity, reimbursement, or service.
11. "Reduction" means a policy term that reduces the amount of an insured's benefits. A reduction means that the insurer has assumed the risk of a particular loss, but the amount or period of the insurer's coverage is less than what the insurer would have paid for the loss without the reduction.
12. "Spokesperson" means a person making a testimonial about or an endorsement of an insurer's product who:
a. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or independent contractor;
b. Has been formed by the insurer, is owned or controlled by the insurer or its employees, or is a person who owns or controls an insurer;
c. Is in a policy-making position and affiliated with the insurer in any capacity described in subsections (a) or (b); or
d. Is directly or indirectly compensated for making the testimonial or endorsement.

B. Scope.
1. This Section applies to all advertisements for health insurance.
2. This Section applies to the conduct of insurers, producers, and third-party administrators.

C. General requirements. Insurers, producers, and third-party administrators shall ensure that health insurance advertisements meet the requirements of this Section.
1. Advertisements shall be truthful and not misleading. The insurer shall not use words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology.
2. An advertisement shall not omit information or use words, phrases, statements, references, or illustrations if the omission of information or use of words, phrases, statements, references, or illustrations may mislead or deceive purchasers or prospective purchasers.
3. The words and phrases used to describe a policy shall accurately describe the benefits of the policy and not exaggerate any benefit through the use of phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills" or "this policy will replace your income," or similar words and phrases.
4. If a policy covers only one disease or a list of specified diseases, any advertisement for the policy shall not imply coverage beyond the specified diseases.
5. If a policy pays varying amounts for the same loss occurring under different conditions or pays benefits only when a loss occurs under certain conditions, any advertisement for the policy shall disclose the limited conditions.
6. If an advertisement specifies payment of a particular dollar amount for hospital room and board expenses, the advertisement shall also include the maximum daily benefit and the maximum time limit for which those expenses are covered.

7. An advertisement that refers to any dollar amount, period of time for which a benefit is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable shall also disclose any related exclusions, reductions, and limitations without which the advertisement would have the capacity and tendency to mislead or deceive.
8. An advertisement covered by subsection (C)(7) shall disclose the existence of a waiting period if a policy contains a period between the effective date of the policy and the effective date of coverage under the policy. The advertisement shall disclose the existence of an elimination period.
9. An advertisement shall disclose any exclusion, reduction, or limitation applicable to a pre-existing condition; however, an insurer is not required to make disclosure in an advertisement that does not reference specific product information, benefit level, or dollar amounts.
10. If a policy has an exclusion, reduction, or limitation applicable to a preexisting condition, an advertisement shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim and shall not use the phrase "no medical examination required" or other similar phrase.
11. If an advertisement refers to renewability, cancellation, or termination of a policy, or states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, the advertisement shall disclose the provisions relating to renewability, cancellation, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner that does not minimize or obscure the qualifying conditions.
12. An advertisement shall not make any offer prohibited under A.R.S. § 20-452(4).
13. An advertisement shall not advertise any health insurance policy or form that has not been approved by the Department, unless the policy or form being advertised is exempt from approval or not subject to approval by order or statute.
14. An advertisement shall not state or imply that a product being offered is an introductory, special, or initial offer that will entitle the applicant to receive advantages not described in the policy by accepting the offer.
15. An advertisement designed to produce leads either by use of a coupon, a request to write or call the company, or subsequent advertisement before contact, shall disclose that a producer may contact the potential applicant.

D. Method of disclosure of required information. If an insurer is required by law to disclose particular information, the information shall be conspicuous and in close proximity to the statements to which the information relates, or under a prominent caption so that the required disclosure is not minimized, obscured, presented in an ambiguous fashion, or intermingled with the content of the advertisement.

E. Testimonials.
1. Testimonials used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer shall provide the Department with the full name of the author and a copy of the full testimonial if the advertisement is filed with the Department or requested by the Department. If an insurer uses a testimonial, the insurer adopts the statements in the testimonial as the insurer's own statements. If a testimonial or endorsement is used more than one year after it is given, the insurer shall obtain a written confirmation from the author that the testimonial represents the current opinion of the author.
2. The insurer shall disclose that a spokesperson has a financial interest or the proprietary or representative capacity of a spokesperson in an advertisement in the introductory portion of a testimonial or endorsement in the same form and with equal prominence as the endorsement. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, the insurer shall disclose that fact in the advertisement by language that states, "Paid Endorsement," or words of similar import in type, style, and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. For television or radio advertising, the insurer shall place the required disclosure prominently in the introductory portion of the advertisement.

F. Statistics. An advertisement with information on the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use facts that are irrelevant to the sale of insurance and shall accurately reflect all of the relevant facts specific to the advertised policy or insurer. An advertisement shall not state or imply that statistics are derived from the policy being advertised unless that is true. The insurer shall identify in the advertisement the source of any statistics used.

G. Inspection of policy. An offer in an advertisement of free inspection of a policy or offer of a premium refund does not cure misleading or deceptive statements in the advertisement.

H. Identification of plan or number of policies.
1. If an advertisement offers a choice in the amount of benefits the advertisement shall disclose that the amount of benefits depends on the policy selected and that the premium will vary with the amount of the benefits.
2. If an advertisement refers to benefits contained in more than one policy, other than a group master policy, the advertisement shall disclose that the benefits are provided only if multiple policies are purchased.

I. Disparaging comparisons and statements. An advertisement shall not make unfair, incomplete, or unsubstantiated comparisons of other insurers' policies or benefits or falsely disparage other insurers' policies, services, or business methods. A comparison is unsubstantiated if the insurer has no empirical study, analysis, or documentation supporting the comparative statement or comparison of policies or benefits.

J. Jurisdictional limits. If an insurer has an advertisement that is meant to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed, the advertisement shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."

K. Identity of insurer. The insurer shall state the name of the actual insurer in all of its advertisements. An advertisement shall clearly identify the insurer and shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device that may mislead or deceive the public as to the insurer's identity.

L. Group insurance. An advertisement shall not state or imply that prospective policyholders become group or quasi-group members and enjoy special rates or underwriting privileges, unless it is true. An advertisement to join an association, trust, or group that is also an invitation to contract for insurance coverage shall disclose that the applicant will be purchasing both membership in the association, trust, or group and insurance coverage.

M. Government approval. An advertisement shall not state or imply any of the following:
1. That a governmental agency or regulator is connected with or has provided or endorsed a policy or endorsed an insurer;
2. That a governmental agency or regulator has examined an insurer's financial condition and found it satisfactory. This subsection does not apply if an insurer is responding to a specific documented, public, false allegation about its financial condition.

N. Endorsements. An advertisement may state that an individual, group, society, association, or other organization has approved or endorsed the insurer or its policy if the organization or group has done so in writing and if any proprietary relationship between the organization and the insurer is disclosed.

O. Claims handling. An advertisement shall not contain false statements about the time within which claims are paid or statements that imply that claim settlements will be liberal or generous beyond the terms of the policy.

P. Statements about the insurer. An advertisement shall not contain false or misleading statements about an insurer's assets, corporate structure, financial standing, length of time in business, or relative position in the insurance business.

Historical Note
Former General Rule Number 2. R20-6-201 recodified from R4-14-201 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-201.01. Insurer Advertising Responsibility and Records

A. An insurer shall establish, and at all times maintain, a system of control over the content, form, and method of dissemination of all advertisements. The insurer whose policies are advertised is responsible for the advertisements, regardless of who writes, creates, designs, or presents the advertisement, except the insurer is not responsible for any advertisement placed by a person to whom the insurer gave no actual or apparent authority. Before using an advertisement about an insurer or its products, a producer shall get written approval from the insurer for use of advertisements that were not supplied by the insurer.

B. An insurer shall maintain, at its home or principal office, the following:
1. Advertisements disseminated by the insurer in Arizona or any other state, including:
   a. Each printed, published, recorded, or prepared advertisement of individual policies; and
   b. Typical printed, published, recorded, or prepared advertisements of blanket, franchise, and group policies.
2. A notation attached to each advertisement specifying the manner and extent of distribution and the form number of any policy advertised; and
3. Documentation supporting any testimonials, statistical claims, or comparisons shown in the advertising.

C. An insurer shall maintain the advertisements, notations, and supporting documentation for at least three years from the date of first dissemination.

Historical Note
New Section made by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-201.02. Procedures for Filing Advertising Materials; Transmittal Form

A. An insurer that is required to file a health insurance advertisement with the Department as specified in A.R.S. §§ 20-826(T), 20-1018, 20-1057(X), 20-1110(E), or 20-1662 shall file the advertisement with a transmittal form prescribed by the Department.

B. The transmittal form shall include the following information:
1. Identifying information of the insurer, including name, address, National Association of Insurance Commissioners' identification number, and type of insurer;
2. A contact person at the insurer with whom the Department can communicate about the advertisement;
3. Description of the type of advertisement being filed;
4. Planned use and dissemination of the advertisement, including date of first use, or a statement that the advertisement will not be used any earlier than a specified date;
5. Description of product being advertised;
6. Form number and name for the advertised product;
7. A certification from an officer of the insurer that the advertisement complies with applicable laws; and
8. The dated signature of the insurer's officer.

Historical Note
New Section made by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-202. Advertising, Solicitation, and Transaction of Life Insurance

A. The definitions in R20-6-201(A) and the following definition apply in this Section:
"Life insurance" means a life insurance contract, including all benefits payable under the policy.

B. Applicability
1. This Section applies to:
   a. All persons subject to regulation under A.R.S. Title 20; and
   b. Advertising, promotion, solicitation, negotiation, and sale of life insurance policies, regardless of the form of dissemination.
2. This Section does not apply to group insurance, franchise insurance, or to annuities without life contingencies.

C. General provisions. A life insurance advertisement shall not mislead the public by:
1. Omitting information that fairly describes the subject matter as a life insurance policy and the benefits available under the policy;
2. Placing undue emphasis on facts that, even if true, are not relevant to the sale of life insurance; or
3. Placing undue emphasis on features of incidental or secondary importance to the life insurance aspects of the policy.

D. The Department deems the following acts misleading and deceptive:
1. Using any statement, including phrases such as "investment," "investment plan," "founders plan," "charter plan," "expansion plan," "profit," "profits," or "profit sharing," in a context or under circumstances or condi-

tions that may mislead a purchaser or prospective purchaser to believe that the insurer is selling something other than a life insurance policy or will provide some benefit not included in the policy, or not available to other persons of the same class and equal expectation of life;

2. Using any phrase as the name or title of a life insurance policy if the phrase does not include the words "life insurance," unless other language in the same document expressly provides that the contract is a life insurance policy;
3. Making any statement relating to the growth or earnings of the life insurance industry or to the tax status of life insurance companies in a context that would reasonably be understood as attempting to interest a prospective applicant in the purchase of shares of stock in the insurance company rather than in the purchase of a life insurance policy;
4. Making any statement that reasonably tends to imply that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by purchasing the policy, unless the statement is made with reference to policies of domestic life insurers engaged in a program allowed under A.R.S. § 20-453;
5. Providing a policyholder with a premium receipt book, policy jacket, return envelope, or other printed or electronic material referring to the insurer's "investment department," "insured investment department," or similar terminology in a manner implying that the policy is sold, issued, or serviced by the insurer's investment department;
6. Making any statement that reasonably tends to imply that, by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive the payment of dividends, special advantages, benefits, or favored treatment unless the insurance contract specifically provides for the described payment of dividend, special advantages, benefits, or favored treatment;
7. Stating or implying that only a limited number of persons or limited class of persons may buy a particular kind of policy, unless the limitation is related to recognized underwriting practices or specifically stated in the policy or rider;
8. Describing premium payments in language that states the payment is a "deposit," unless:
   a. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or
   b. The term is used with the word "premium" in a manner as to clearly indicate the true character of the payment;
9. Providing any illustration or projection of future dividends that:
   a. Is not based on the company's actual scale for payment of current dividends, and
   b. Does not clearly indicate that the dividends are not guarantees;
10. Using the words "dividends," "cash dividends," "surplus," or similar phrases in a manner that states or implies that the payment of dividends is guaranteed or certain to occur;
11. Stating, without qualification, that a purchaser of a policy will share in a stated percentage or portion of the insurer's earnings;
12. Making any statement that projected dividends under a participating policy will be or can be sufficient at any future time to assure the receipt of benefits such as a paid-up policy without further payment of premiums unless the statement also explains:
    a. The benefits or coverage that would be provided at the future time, and
    b. The conditions under which the receipt of benefits without further payment of premiums would occur;
13. Describing a life insurance policy or premium payments in terms of "units of participation," unless accompanied by other language clearly indicating that the references are to a life insurance policy or to premium payments, as applicable.
14. Advising producers to avoid disclosing that life insurance is the subject of the solicitation or sale;
15. Stating that an insured is guaranteed certain benefits if the policy is allowed to lapse, without explaining the nonforfeiture benefits;
16. Using a dollar amount in printed material to be shown to a prospective policyholder, unless the amount is accompanied by language that:
    a. States the nature of the dollar amount,
    b. Prohibits including the use of dollar amounts not related to guaranteed values and properly projected dividend figures, and
    c. Prohibits the use of figures showing growth of stock values, or other values not a part of the life insurance contract.
17. Stating that a policy provides features not found in any other insurance policy, unless the insurer can demonstrate that other policies do not have the same feature;
18. Making any statement or implication about an insurance policy that cannot be verified by reference to the policy contract, a sample of the policy being described, or the company's officially published rate book and dividend illustrations;
19. Stating that life insurance is "loss proof" or "depression proof," except that an insurer may make statements that life insurance benefits, other than dividends, are guaranteed by the company regardless of economic conditions;
20. Making any statement that a company makes a profit as a result of policy lapses or surrenders;
21. Making comparisons to the past experience of other life insurance companies as a means of projecting possible experience for the company issuing the advertising; and
22. Conduct or statements designed to mislead a prospective applicant or purchaser.

Historical Note
Former General Rule Number 68-14. R20-6-202 recodified from R4-14-202 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-203. Form Filings; Translations

A. An insurer, rate service organization, or rating organization shall provide to the Department, at the time of filing, an English language translation of each form, advertisement, or other document or material that the insurer is required by statute or rule to file with the Department, if the filed document or material contains communication in a language other than English.

B. The translation filed under subsection (A) shall compare the foreign language version in a side-by-side format with the

English language translation. An insurer, rate service organization, or rating organization shall ensure that the translation is performed by a person with formal college-level or specialized training in the foreign language, including training in grammar and sentence syntax.

C. With each translation, an insurer, rate service organization, or rating organization shall also provide to the Department a sworn statement signed by the translator who translated the document that includes the qualifications of the translator under subsection (B) and attests that the translation is identical in substance to the English document or material.

D. If an insurer, rate service organization, or rating organization files a foreign language version of a document or material that the insurer has previously filed in English, the insurer is not required to refile the English version, but shall identify the English version, provide the side-by-side comparison under subsection (B), and file the sworn statement required under subsection (C).

Historical Note

Former General Rule Number 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-203 recodified from R4-14-203 (Supp. 95-1). New Section made by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-204. Expired

Historical Note

Former General Rule Number 71-24; Former Section R4-14-204 repealed, new Section R4-14-204 adopted effective January 1, 1981 (Supp. 80-6). R20-6-204 recodified from R4-14-204 (Supp. 95-1). Amended effective July 14, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 475, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 136, effective December 15, 2016 (Supp. 16-4).

R20-6-205. Local or Regional Retaliatory Tax Information

A. Definitions.

1. "Addition to the rate of tax" means the tax rate determined under subsection (D) to be applied under A.R.S. 20-230(A) and this Section to foreign or alien insurers domiciled in a foreign country or other state that impose local or regional taxes.
2. "Alien insurer" has the meaning prescribed in A.R.S. § 20-201.
3. "Arizona life insurer" means a domestic insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
4. "Department" means the Arizona Department of Insurance.
5. "Director" has the meaning prescribed in A.R.S. § 20-102.
6. "Domestic insurer" has the meaning prescribed in A.R.S. § 20-203.
7. "Foreign insurer" has the meaning prescribed in A.R.S. § 20-204.
8. "Foreign or alien life insurer" means a foreign or alien insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
9. "Local or regional taxes" means any tax, license, or other obligation imposed upon domestic insurers or their producers by any:
   a. City, county, or other political subdivision of a foreign country or other state; or
   b. Combination of cities, counties, or other political subdivisions of a foreign country or other state.
10. "Other Arizona insurer" means a domestic insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
11. "Other foreign or alien insurer" means a foreign or alien insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
12. "Other state" means any state in the United States, the District of Columbia, and territories or possessions of the United States, excluding Arizona.
13. "Premium Tax and Fees Report," includes the "Survey of Arizona Domestic Insurers" and the "Retaliatory Taxes and Fees Worksheet," and means the form prescribed by the Director and filed annually by insurers under A.R.S. § 20-224.

B. Scope. This Section applies to all foreign, alien, and domestic insurers and to Premium Tax and Fees Reports filed by all insurers.

C. Data to be reported by domestic insurers. As a part of its Premium Tax and Fees Report, each domestic insurer shall file a Survey of Arizona Domestic Insurers that reports the following data for the calendar year covered by the insurer's Premium Tax and Fees Report with respect to each foreign country or other state in which the insurer was required to pay any local or regional taxes:

1. Total local or regional taxes paid; and
2. Total premiums taxed under the premium taxing statute of the foreign country or other state, as reported by the insurer in any premium tax report filed under the laws of the foreign country or other state.

D. Computation of statewide and foreign countrywide additions to the rate of tax. For each foreign country or other state having one or more local or regional taxes on domestic insurers, the Department shall compute on a statewide or foreign countrywide basis an addition to the rate of tax. The Department shall compute the addition to the rate of tax payable by Arizona life insurers separately from the addition to the rate of tax payable by other Arizona insurers. The addition to the rate of tax payable by each category of Arizona domestic insurers shall be the quotient of:

1. The aggregate local or regional taxes reported as paid to the foreign country or other state by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report divided by,
2. The aggregate statewide or foreign countrywide premiums taxed under the premium taxing statute of the other state or foreign country reported by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report.

E. Publication of additions to the rate of tax. The Department shall publish additions to the rate of tax determined under A.R.S. § 20-230(A) and this Section, based upon the survey information gathered from domestic insurers for the preceding

calendar year under subsection (C). The Department shall publish the information annually on the Department web site, on or before November 1, and in the Retaliatory Taxes and Fees Worksheet for the next year's Premium Tax and Fees Report.

F. Foreign and Alien Insurers' Report of the Effect of Local or Regional Taxes. Each foreign or alien insurer domiciled in a foreign country or other state for which the Department publishes an addition to the rate of tax shall include in the "State or Country of Incorporation" column of its Retaliatory Taxes And Fees Worksheet for the calendar year covered by its Premium Tax and Fees Report an amount equal to:

1. The total premiums received in Arizona that would be taxed under the laws of the domiciliary jurisdiction, as reported in the "State or Country of Incorporation" column of its premium tax and fees report multiplied by,
2. The applicable addition to the rate of tax published by the Department for the calendar year covered by the insurer's Premium Tax and Fees Report.

G. Contesting computation. A foreign or alien insurer subject to this Section may preserve the right to contest the computation of the addition to the rate of tax by submitting a notice of appeal under A.R.S. Title 41, Chapter 6, Article 10 before or at the time the retaliatory tax is paid. Subject to A.R.S. § 20-162, the filing of a notice of appeal to contest the computation of the applicable addition to the rate of tax does not relieve a foreign or alien insurer of the obligation to timely pay the retaliatory tax, and does not stay accrual of any applicable interest and penalties.

Historical Note

Former General Rule Number 71-25; Repealed effective March 19, 1976 (Supp. 76-2). R20-6-205 recodified from R4-14-205 (Supp. 95-1). Section R20-6-205 renumbered from R20-6-206 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-206. Expired

Historical Note

Former General Rule Number 72-30. Repealed effective February 22, 1993 (Supp. 93-1). R20-6-206 recodified from R4-14-206 (Supp. 95-1). New Section adopted effective December 29, 1995 (Supp. 95-4). Amended effective November 5, 1998 (Supp. 98-4). Former R20-6-206 renumbered to R20-6-205; new R20-6-206 renumbered from R20-6-207 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

R20-6-207. Gender Discrimination

A. The following definitions apply to this Section:

1. "Applicant" means a person who is applying for a policy.
2. "Policy" means an insurance policy, plan, contract, certificate, evidence of coverage, subscription contract, or binder, including a rider or endorsement offered by an insurer.
3. "Insurer" means any company that issues a policy.

B. Applicability and scope. This Section applies to any policy or certificate delivered or issued for delivery in this state.

C. Availability requirements.

1. An insurer shall not deny availability of any insurance policy on the basis of the gender or marital status of the insured or prospective insured.
2. An insurer shall not restrict, modify, exclude, reduce, or limit the amount of benefits payable, or any term, conditions or type of coverage on the basis of an applicant's or insured's gender or marital status, except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under A.R.S. Title 20.
3. An insurer may consider marital status to determine whether a person is eligible for dependent coverage or benefits.

D. Prohibited practices. The following practices and any other practice that treats similarly situated persons differently based on gender unless the different treatment is specifically allowed by law, is prohibited.

1. Denying coverage to a person of one gender who is self-employed, employed part-time, or employed by relatives, if coverage is offered to a person of the opposite gender who is similarly employed;
2. Denying a policy rider to a person of one gender if the rider is available to a person of the opposite gender;
3. Denying maternity benefits to an applicant or insured who buys a policy for individual coverage if the insurer offers comparable family coverage policies with maternity benefits;
4. Denying, under group policies, dependent coverage to an employee of one gender if dependent coverage is available to an employee of the opposite gender;
5. Denying a disability income policy to an employed person of one gender if a policy is offered to a person of the opposite gender who is similarly employed;
6. Treating complications of pregnancy differently from any other illness or sickness covered under a policy;
7. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one gender;
8. Offering lower maximum monthly benefits to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
9. Offering more restrictive benefit periods or more restrictive definitions of disability to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
10. Establishing different conditions for a policyholder of one gender to exercise benefit options contained in the policy than for a person of the opposite gender;
11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent's benefits; and
12. Otherwise restricting, modifying, excluding or reducing the availability of any insurance contract, the amount of benefits payable, or any term, condition or type of coverage on account of gender or marital status in all lines of insurance.

Historical Note

Former General Rule Number 73-32. R20-6-207 recodified from R4-14-207 (Supp. 95-1). Former R20-6-207 renumbered to R20-6-206; new R20-6-207 renumbered from R20-6-209 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-208. Group Coverage Discontinuance and Replacement

A. Definitions. The following definitions apply in this Section:

1. "Group insurance" means an insurance benefit that meets all the following conditions:
   a. Coverage is provided through insurance policies or subscriber contracts to classes of employees or members defined in terms of conditions pertaining to employment or membership;
   b. The coverage is not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with the particular organization or group;
   c. Coverage is paid for by bulk payment of premiums to the insurer; and
   d. An employer, union, or association sponsors the plan.
2. "Health insurance coverage" means a hospital and medical expense incurred policy, a nonprofit health care service plan contract, a health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise, but does not include the following:
   a. Coverage only for accident, or disability income insurance, or any combination of accident and disability income insurance;
   b. Coverage issued as a supplement to liability insurance;
   c. Liability insurance, including general liability insurance and automobile liability insurance;
   d. Workers' compensation or similar insurance;
   e. Automobile medical payment insurance;
   f. Credit-only insurance;
   g. Coverage for onsite medical clinics; and
   h. Other insurance coverage similar to the coverage specified in subsections (2)(a) through (g), of the Health Insurance Portability and Accountability Act of 1996 (Pub.L.No. 104-191) (HIPAA), under which benefits for medical care are secondary or incidental to other insurance benefits.
   i. The following benefits, if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the coverage:
      i. Limited-scope dental or vision benefits;
      ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of those benefits;
      iii. Other similar, limited benefits specified in federal regulations issued under HIPAA.
   j. The following benefits if provided under a separate policy, certificate, or contract of insurance with no coordination between provision of benefits and any exclusion of benefits under a group health plan maintained by the same plan sponsor and if the benefits are paid for an event regardless of whether the benefits are provided under a group health plan maintained by the same plan sponsor:
      i. Coverage only for a specified disease or illness, or
      ii. Hospital indemnity or other fixed indemnity insurance.
   k. The following benefits if the benefits are offered as a separate policy, certificate, or contract of insurance:
      i. Medicare supplemental policy as defined under § 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss;
      ii. Coverage supplemental to the coverage provided under, 10 U.S.C. Title 10, Chapter 55; or
      iii. Similar supplemental coverage provided to coverage under a group health plan.
3. "Health status-related factor" means any of the following:
   a. Health status;
   b. Medical condition, including a physical or mental illness;
   c. Claims experience;
   d. Receipt of health care;
   e. Medical history;
   f. Genetic information;
   g. Evidence of insurability, including conditions arising out of acts of domestic violence; or
   h. Disability.
4. "Insurer" means an insurer that offers or provides group health insurance coverage, and includes an insurer that issues disability insurance as defined in A.R.S. § 20-253, a medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, and a health care services organization as defined in A.R.S. § 20-1051.

B. This Section applies to all group insurance issued by an insurer.

C. Effective date of discontinuance for non-payment of premium.

1. If a group insurance policy provides for automatic discontinuance of the policy after a premium remains unpaid through the grace period allowed for payment, the insurer is liable for valid claims for covered losses incurred before the end of the grace period.
2. If the insurer's actions after the end of the grace period indicate that the insurer considers the group insurance policy as continuing in force beyond the end of the grace period the insurer is liable for valid claims for losses beginning before the effective date of written notice of discontinuance to the policyholder or other entity responsible for paying premiums.
   a. The following actions indicate that the insurer considers the policy in force:
      i. Continued recognition, acknowledgement, or payment of subsequently incurred claims, or
      ii. Continued enrollment of employees or dependents.
   b. The following actions shall not indicate that the insurer considers that policy in force:
      i. Recognition, payment, or acknowledgement of a claim by an insurer or processing a denial based on eligibility or other denial reasons set forth in the group benefit plan booklet; or
      ii. Recognition, payment, or acknowledgement of claims due to the group's failure to notify the insurer that the employee or member is no longer eligible for coverage or the group policy is terminated.
3. The effective date of discontinuance shall not be before midnight at the end of the third scheduled work day after the date on which the notice of discontinuance is delivered.

D. Requirements for notice of discontinuance.

1. An insurer's notice of discontinuance shall include a request to the group policyholder to notify covered employees of the date when the group policy or contract will discontinue and to advise that, unless otherwise provided in the policy or contract, the insurer is not liable for claims for losses incurred after the date of discontinuance. If the plan involves employee contributions, the notice of discontinuance shall also advise that if the policyholder continues to collect employee contributions beyond the date of discontinuance, the policyholder is solely liable for benefits for the period which contributions were collected.
2. The insurer shall also provide the policyholder with a supply of notice forms that the policyholder can distribute to the covered employees. The notice forms shall explain the discontinuance and the effective date, and advise employees to refer to their certificates or contracts to determine their rights on discontinuance.

E. Extension of benefits.

1. A group policy shall provide a reasonable provision for extension of benefits for an employee or dependent who is totally disabled on the date of discontinuance as follows:
   a. For a group life plan with a disability benefit extension of any type such as a premium waiver extension, extended death benefit in the event of total disability, or payment of income for a specified period during total disability, the discontinuance of the group policy shall not terminate the benefit extension.
   b. For a group plan providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability or hospital confinement shall not effect benefits payable for that disability or hospital confinement.
   c. A hospital or medical expense coverage, other than dental and maternity expense, shall include a reasonable extension of benefits or accrued liability provision. A provision is reasonable if:
      i. It provides an extension of at least 12 months under "major medical" and "comprehensive medical" type coverage; or
      ii. Under other types of hospital or medical expense coverage, it provides either an extension of at least 90 days or an accrued liability for expenses incurred during a period of disability or during a period of at least 90 days starting with a specific event that occurred while coverage was in force, such as an accident.
2. An insurer shall ensure that the policy and group insurance certificates includes a description of the extension of benefits or accrued liability provision.
3. An insurer shall ensure that benefits payable during a period of extension or accrued liability are subject to the policy's regular benefit limits, such as benefits ceasing at exhaustion of a benefit period or of maximum benefits.
4. For hospital or medical expense coverage, an insurer may limit benefit payments to payments applicable to the disabling condition only.

F. Continuance of coverage in situations involving replacement of one plan by another.

1. When a group policyholder secures replacement coverage with a new insurer, self-insures, or foregoes provision of coverage, the replaced insurer is liable only to the extent of its accrued liabilities and extensions of benefits after the date of discontinuance.
2. The succeeding insurer shall cover each individual who:
   a. Was eligible for coverage under the prior plan on the date of discontinuance, and
   b. Is eligible for coverage according to the succeeding insurer's plan of benefits with respect to a class of individuals eligible for coverage.
3. For the purpose of successive health insurance coverage under subsection (F)(2), a succeeding insurer's plan of benefits shall:
   a. Not have any non-confinement rules; and
   b. Provide, as to any actively-at-work rules, that absence from work due to a health status-related factor is treated as being actively-at-work.
4. Nothing in subsection (F)(2) prohibits an insurer from performing coordination of benefits.
5. A succeeding insurer shall cover each individual not covered under the succeeding insurer's plan of benefits under subsection (F)(2) according to subsections (a) and (b) if the individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance and is a member of a class of individuals eligible for coverage under the succeeding insurer's plan. Any reference in subsection (a) or (b) to an individual who was or was not totally disabled is a reference to the individual's status immediately before the effective date of coverage for the succeeding insurer.
   a. The minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior insurer's plan reduced by any benefits payable by the prior plan.
   b. The succeeding insurer shall provide coverage until at least the earliest of the following dates:
      i. The date the individual becomes eligible under the succeeding insurer's plan as described in subsection (F)(2);
      ii. The date the individual's coverage would terminate according to the succeeding insurer's plan provisions applicable to individual termination of coverage such as at termination of employment or ceasing to be eligible dependent; or
      iii. For an individual who was totally disabled, and covered by a type of coverage for which subsection (E) requires an extension of accrued liability, the end of any period of extension of benefits or accrued liability that is required of the prior insurer under subsection (E), or if the prior insurer's policy is not subject to subsection (E), would have been required of the insurer had its policy been subject to subsection (E) at the time the prior plan was discontinued and replaced by the succeeding insurer's plan;
   c. For health insurance coverage, if an individual who was totally disabled at the time the prior insurer's plan was discontinued and replaced by the succeeding insurer's plan, and if subsection (E) requires an extension of benefits or accrued liability, the minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior

insurer's plan, reduced by any benefits paid by the prior plan.

d. If the succeeding insurer's plan has a preexisting conditions limitation, the level of benefits applicable to preexisting conditions of persons becoming covered by the succeeding insurer's plan according to subsection (F) during the period the limitation applies under the new plan shall be the lesser of:
   i. The benefits of the new plan determined without application of the preexisting conditions limitation, or
   ii. The benefits of the prior plan.

e. The succeeding insurer, in applying any deductibles, coinsurance amounts applicable to out-of-pocket maximums, or waiting periods, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. For deductibles or coinsurance amounts applicable to out-of-pocket maximums, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible or coinsurance provisions of the prior plan during the 90 days before the effective date of the succeeding insurer's plan but only to the extent these expenses are recognized under the terms of the succeeding insurer's plan and are subject to similar deductible or coinsurance provisions.

f. If the succeeding insurer is required under this Section to make a determination about the benefits in the prior plan, the succeeding insurer may ask the prior plan to provide a statement of the benefits available or other pertinent information sufficient to permit the succeeding insurer to verify the benefit determination. For the purposes of this Section, all definitions, conditions, and covered-expense provisions of the prior plan shall govern the benefit determination. The benefit determination is made as if the succeeding insurer had not replaced coverage.

Historical Note

Former General Rule Number 73-34. R20-6-208 recodified from R4-14-208 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-6-208 renumbered from R20-6-210 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-209. Life Insurance Solicitation

A. Scope.

1. This Section applies to any solicitation, negotiation, or procurement of life insurance occurring in Arizona. This Section applies to any issuer of life insurance contracts, including fraternal benefit societies.
2. Unless otherwise specifically included, the Section does not apply to:
   a. Annuities,
   b. Credit life insurance,
   c. Group life insurance,
   d. Life insurance policies issued in connection with a pension and welfare plan as defined by and subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq.; or
   e. Variable life insurance under which the death benefits and cash values vary according to unit values of investments held in a separate account.

B. In this Section, the following apply:

1. "Buyer's Guide" means a document that contains the language in the Appendix to this Section or language approved by the Director.
2. "Cash dividend" means the current illustrated dividend that can be applied toward payment of the gross premium.
3. "Equivalent Level Annual Dividend" is calculated as follows:
   a. Accumulate the annual cash dividends at 5% interest compounded annually to the end of the 10th and 20th policy years;
   b. Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in subsection (a) over the periods stipulated in subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
   c. Divide the results in subsection (b) by the number of thousands of the Equivalent Level Death Benefit to arrive at the "Equivalent Level Annual Dividend."
4. "Equivalent Level Death Benefit" means the amount of benefit of a policy or term life insurance rider calculated as follows:
   a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at 5% interest compounded annually to the end of the 10th and 20th policy years, respectively.
   b. Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (a) over the periods stipulated in subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
5. "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.
6. "Life Insurance Surrender Cost Index" means the cost index that is calculated as follows:
   a. Determine the guaranteed cash surrender value, if any, available at the end of the 10th and 20th policy years.
   b. For policies participating in dividends, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at 5% interest compounded annually to the end of the period selected and add this sum to the amount determined in subsection (a).
   c. Divide the result in subsection (b) (subsection (a) for guaranteed-cost policies) by an interest factor that converts into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (b) or subsection (a) for guaranteed cost policies, over the periods stipulated in subsection (a)). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

d. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at 5% interest compounded annually to the end of the period stipulated in subsection (a) and dividing the result by the respective factors stated in subsection (c). This amount is the annual premium payable for a level premium plan.
e. Subtract the result of subsection (c) from subsection (d).
f. Divide the result of subsection (e) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Live Insurance Surrender Cost Index.

7. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.
8. "Policy Summary" means a written statement describing elements of the policy, including:
   a. The following prominently placed title: Statement of Policy Cost and Benefit Information.
   b. The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed to receive responses to inquiries regarding the Policy Summary.
   c. The full name and home office or administrative office address of the company by which the life insurance policy is to be or has been written.
   d. The generic name of the basic policy and each rider.
   e. For the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including the years for which Life Insurance Cost Indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier, the following amounts, where applicable:
      i. The annual premium for the basic policy;
      ii. The annual premium for each optional rider;
      iii. Guaranteed amount payable upon death at the beginning of the policy year regardless of the cause of death except for suicide, or other specifically enumerated exclusions provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;
      iv. Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
      v. Cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. Dividends need not be displayed beyond the twentieth policy year; and
      vi. Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values in subsection (iv).
   f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears. If the policy loan interest rate is variable, the Policy Summary shall include the maximum annual percentage rate.
   g. Life Insurance Cost Indexes for 10 and 20 years but not beyond the premium-paying period. Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. The indexes need not be included for optional riders that are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months, and guaranteed insurability benefits, nor for basic policies or optional riders covering more than one life.
   h. The Equivalent Level Annual Dividend in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed.
   i. If the Policy Summary includes dividends, a statement that dividends are based on the insurer's current dividend scale and are not guaranteed and a statement in close proximity to the Equivalent Level Annual Dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide."
   j. A statement in close proximity to the Life Insurance Cost Indexes as follows: "An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."
   k. The date on which the Policy Summary is prepared. The Policy Summary shall consist of a separate document. All information required to be disclosed shall not be minimized or obscure. Any amounts that remain level for two or more years of the policy may be represented by a single number that clearly indicates the amounts that are applicable for each policy year. Amounts in subsection (8)(e) shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

C. Disclosure requirements.
1. The insurer shall provide to all prospective purchasers, a Buyer's Guide and a Policy Summary before accepting the applicant's initial premium or premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains an unconditional refund offer, in which case the Buyer's Guide and Policy Summary shall be delivered with the policy or before delivery of the policy.
2. The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.
3. If the Equivalent Level Death Benefit of a policy does not exceed $5,000, the requirement for providing a Policy Summary is satisfied by delivery of a written statement containing the information described in subsections (D)(8)(b), (c), (d), (e)(i) through (e)(iii), (f), (g), (j), and (k).

D. General rules.
1. Each insurer shall maintain at its home office or principal office for at least three years after its last authorized use a copy of each form the insurer authorized for use.
2. A producer shall inform a prospective purchaser, before commencing a life insurance sales presentation, that the producer is acting as a life insurance producer and inform the prospective purchaser of the full name of the insur-

ance company that the producer is representing. If an insurance producer is not involved in the sale, the insurer shall inform the prospective purchaser of the insurance company's full name.

3. An insurer or producer shall not use terms such as financial planner, investment advisor, financial consultant, or financial counseling to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is true.
4. If an insurer or producer refers to policy dividends, the reference shall include a statement that dividends are not guaranteed.
5. An insurer shall not use a system or presentation that does not recognize the time value of money through the use of appropriate interest adjustments for comparing the cost of two or more life insurance policies unless the system or presentation is used to demonstrate the cash flow pattern of a policy and the presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.
6. In a presentation of benefits, an insurer shall not display guaranteed and non-guaranteed benefits as a single sum unless they are shown separately and in close proximity.
7. An insurer shall include with a statement regarding the use of the Life Insurance Cost Indexes an explanation that the indexes are useful only for the comparison of the relative costs of two or more similar policies.
8. An insurer shall include with a Life Insurance Cost Index that reflects dividends or an Equivalent Level Annual Dividend a statement that it is based on the company's current dividend scale and is not guaranteed.
9. If an insurer reserves the right to change the premium for a basic policy or rider, the annual premium shall be the maximum annual premium.

E. An insurer's failure to provide or deliver a Buyer's Guide or a Policy Summary as provided in subsection (C) constitutes an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Appendix. Life Insurance Buyers Guide

Life Insurance Buyer's Guide

The face page of the Buyer's Guide shall read as follows:

Life Insurance Buyer's Guide

This guide can show you how to save money when you shop for life insurance. It helps you to:

–Decide how much life insurance you should buy,

–Decide what kind of life insurance policy you need, and

–Compare the cost of similar life insurance policies.

Prepared by the National Association of Insurance Commissioners

Reprinted by (Company Name)

(Month and year of printing)

The Buyer's Guide shall contain the following language at the bottom of page 2:

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.

Buying Life Insurance

When you buy life insurance, you want a policy that fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes that are described in this guide. A good life insurance producer or company will be able and willing to help you with each of these shopping steps.

If you are going to make a good choice when you buy life insurance, you need to understand what kinds are available. If one kind does not seem to fit your needs, ask about the other kinds that are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance producer or company or books on life insurance in your public library.

This guide does not endorse any company or policy.

The remaining text of the buyer's guide shall begin on page 3 as follows:

Choosing the Amount

One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

Choosing the Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the producer or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

Term Insurance

Term insurance is death protection of a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible." This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you

are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits." This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money that you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

Endowment Insurance

An endowment insurance policy pays a sum or income to you – the policyholder – if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

Finding a Low Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.

What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "non participating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance producers and companies:

1. Life Insurance Surrender Cost Index. This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.
   Life Insurance Net Payment Cost Index. This Index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a non participating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the non participating policy will not change.

How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

(1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.
(2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and

amount, you should not assume that all of that company's policies are equally good buys.

(3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its producer. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.

(4) In any event, you will need other information on which to base your purchase decision. Be sure you can afford the premiums, and that you understand its cash values, dividends and death benefits. You should also make a judgment on how well the life insurance company or producer will provide service in the future, to you as a policyholder.

(5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company that issued the old policy before you take action.

Important Things To Remember – A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums must closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS. A good life insurance producer can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you make cost comparisons of similar policies.

Don't buy life insurance unless you intend to stick with it. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the producer or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). R20-6-209 recodified from R4-14-209 (Supp. 95-1). Former R20-6-209 renumbered to R20-6-207; new R20-6-209 renumbered from R20-6-211 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner

A. Definitions. The following definitions apply in this Section:
1. "Readable insurance policy" means a policy that can be read and reasonably understood by a person without special knowledge or training.
2. "Policy" means a contract or agreement for insurance, or an insurance certificate regardless of the name used, and includes all clauses, endorsements, and papers attached or incorporated.

B. Scope. This Section applies to private passenger motor vehicle policies, homeowner policies, personal line dwelling policies, for four family units or less, and mobile homeowner policies delivered or issued for delivery in Arizona.

C. Compliance.
1. An insurer shall test the readability of its policy by use of the Flesch Readability Formula as set forth in Rudolf Flesch, The Art of Readable Writing (1949, as revised 1974).
2. An insurer shall not use a policy unless the policy has a total readability score of 40 or more on the Flesch scale.
3. An insurer shall include with each policy form filing required to be filed with the Director a checklist for the line of insurance setting forth the Flesch score.

D. Readability guidelines.
1. General organization of text.
   a. A policy shall be divided into logically arranged sections for ease of locating content.
   b. Each section shall be self-contained as to provisions relating solely to that section (for example, an exclusion section shall not be mixed with other parts of a policy).
   c. General policy provisions applying to all or several like coverages shall be located in a common area.
   d. The policy shall not contain non-essential provisions.
   e. Defined words and terms shall be placed in a separate section at the beginning of the policy.
2. Visual aids to readability. The insurer shall ensure that each policy meets the following format requirements:
   a. Type size shall be at least eight point.
   b. The font shall be block print rather than script, and legible.
   c. Captions and headings shall be distinguishable from the general text.
   d. White space separating coverages, policy sections, and columns shall be sufficient to make a distinct separation.
   e. Defined words and terms shall be distinguishable from the general text.
3. Language usage. The insurer shall ensure that each policy:
   a. Is written in everyday, conversational language;
   b. Uses short, simple sentences and words in common usage;
   c. Uses an easy-to-read style, personal pronouns, and present tense active verbs.

Historical Note

Adopted effective May 28, 1979 (Supp. 79-1). R20-6-210 recodified from R4-14-210 (Supp. 95-1). Former R20-6-210 renumbered to R20-6-208; new R20-6-210 renumbered from R20-6-212 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness

A. Definitions. The following definitions apply in this Section:
1. "Policy" means a contract or agreement for or effecting insurance, or a certificate of insurance, regardless of the name used, and includes all clauses, riders, endorsements, and attached papers.
2. "Person" has the same meaning prescribed in A.R.S. § 20-105.

B. Scope. This Section applies to all policies delivered or issued for delivery in this state.

C. Prohibition. An insurer shall not engage in the following prohibited acts or practices that constitute unfair discrimination between individuals of the same class:

1. Refusal to insure or refusal to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual solely because of blindness or partial blindness; or
2. Charging an individual a different rate for the same coverage solely because of blindness or partial blindness.

D. In this subsection, "refusal to insure" includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed if the insured loses eyesight. An insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness if the insured was blind or partially blind when the policy was issued.

E. For all other conditions, including the underlying cause of the blindness or partial blindness, a person who is blind or partially blind is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as a sighted person.

Historical Note

Adopted effective August 1, 1977 (Supp. 77-4). Amended effective March 27, 1976 (Supp. 78-2). Correction, Historical Note for Supp. 77-4 should read adopted effective January 1, 1979 filed August 1, 1977. Historical Note for Supp. 78-2 should read Appendix amended effective January 1, 1979 filed March 27, 1978 (Supp. 79-5). Editorial correction, (D)(7)(a), title now shown in italics (Supp. 81-1). R20-6-211 recodified from R4-14-211 (Supp. 95-1). Former R20-6-211 renumbered to R20-6-209; new R20-6-211 renumbered from R20-6-213 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and available at the Department of Insurance and Financial Institutions, Division of Insurance, 100 N. 15th Ave., Suite 261, Phoenix, AZ 85007-2630 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197:

1. For the purposes of meeting the requirements of A.R.S. § 20-1241.03(C): Life Insurance and Annuities Replacement Model Regulation (MDL 613), Appendix A – Important Notice: Replacement of Life Insurance or Annuities, 2015, and no future editions.
2. For the purposes of meeting the requirements of A.R.S. § 20-1241.07(A): Life Insurance and Annuities Replacement Model Regulation (MDL 613), Appendix B – Notice Regarding Replacing Your Life Insurance Policy or Annuity?, 2015, and no future editions.
3. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(B)(2): Life Insurance and Annuities Replacement Model Regulation (MDL 613), Appendix C – Important Notice: Replacement of Life Insurance or Annuities, 2015, and no future editions.

Historical Note

Adopted effective March 27, 1978 (Supp. 78-2). Editorial correction see subsection (A) citation to A.R.S. (Supp. 78-4). Editorial correction see subsections (B) and (F) citation to A.R.S. (Supp. 78-6). R20-6-212 recodified from R4-14-212 (Supp. 95-1). Former R20-6-212 renumbered to R20-6-210; new R20-6-212 renumbered from R20-6-215 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

R20-6-212.01. Buyer's Guide for Annuities

An insurer shall use the following publication of the National Association of Insurance Commissioners (and no future editions), which are incorporated by reference and available at the Department of Insurance and Financial Institutions, Division of Insurance, 100 N. 15th Ave., Suite 261, Phoenix, AZ 85007-2630 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197:

For the purpose of meeting the requirements of A.R.S. § 20-1242.02 regarding a Buyer's Guide: Buyer's Guide for Deferred Annuities, - Fixed, 2013, and no future editions.

Historical Note

Section R20-6-212.01 renumbered from R20-6-215.01 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

R20-6-212.02. Standards for Annuity Illustrations

A. Definitions. The definitions in A.R.S. § 20-1242 and this subsection apply to this Section.

"Illustration" means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.

"Indexing Method" means point-to-point, dialing averaging or monthly averaging.

"Index Term" means the period over which indexed-based interest is calculated.

"Market Value Adjustment" or "MVA" means a feature that is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

"Registered product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

B. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this Section and:

1. Is clearly labeled as an illustration;
2. Includes a statement referring customers to the disclosure document and buyer's guide provided to them at time of purchase for additional information about their annuity; and
3. Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of the illustration.

C. An illustration furnished to an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

D. The illustration shall not be provided unless accompanied by the disclosure document referenced in A.R.S. § 20-1242.02.

E. When using an illustration, the illustration shall not:
1. Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
2. State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
3. Be incomplete.

F. Costs and fees of any type shall be individually noted and explained.

G. An illustration shall conform to the following requirements:
1. The illustration shall be labeled with the date on which it was prepared;
2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");
3. The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;
4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue-age plus the number of years the contract is assumed to have been in force;
5. The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;
6. Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
7. Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;
8. Except as provided in subsection (G)(22) of this Section, the non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;
9. In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent 10 calendar years; one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the least index value growth (the "low scenario"); one to reflect the historical performance of the index for the continuous period of 10 calendar years out of the last 20 calendar years that would result in the most index value growth (the "high scenario"). The following requirements apply:
   a. The most recent 10 calendar years and the last 20 calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;
   b. If any index utilized in determination of an account value has not been in existence for at least 10 calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of these indexes has not been in existence for at least 10 calendar years, the allocation to such indexed account or accounts shall be assumed to be zero;
   c. If any index utilized in determination of an account value has been in existence for at least 10 calendar years but less than 20 calendar years, the 10 calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;
   d. The non-guaranteed element or elements, such as caps, spreads, participation rates, or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element or elements;
   e. If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:
      i. The allocation used in the illustration shall be the same for all three scenarios; and
      ii. The 10 calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.
   f. The geometric mean annual effective rate of the account value growth over the 10 calendar year period shall be shown for each scenario;
   g. If the most recent 10 calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection (I) of this Section, the most recent 10 calendar year historical experience of the index shall be used for each subsequent 10 calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
   h. The low and high scenarios:
      i. Need not show surrender values (if different than account values);
      ii. Shall not extend beyond 10 calendar years (and therefore are not subject to the requirements of subsection (I) of this Section beyond subsection (I)(1)(a) of this Section); and
      iii. May be shown on a separate page;
   i. For the low and high scenarios, a graphical presentation shall also be included comparing the movement of the account value over the 10 calendar year period for the low scenario, the high scenario and the most recent 10 calendar year scenario; and
   j. The low and high scenarios should reflect the irregular nature of the index performance and should trigger

every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;

10. The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page 1 for guaranteed elements");
11. The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
12. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest, and application of any market value adjustment, as applicable;
13. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
14. Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
    a. The benefits and values are not guaranteed;
    b. The assumptions on which they are based are subject to change by the insurer; and
    c. Actual results may be higher or lower;
15. Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps, or spreads for fixed indexed annuities;
16. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
17. Illustrations shall be concise and easy to read;
18. Key terms shall be defined and then used consistently throughout the illustration;
19. Illustrations shall not depict values beyond the maximum annuitization age or date;
20. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
21. Illustrations shall show both annuity income rates per $1,000.00 and the dollar amounts of the periodic income payable.
22. For participating immediate and deferred income annuities:
    a. Illustrations may not assume any future improvement in the applicable dividend scale (or scales, if more than one dividend scale applies, such as for a flexible premium annuity);
    b. Illustrations must reflect the equitable apportionment of dividends, whether performance meets, exceeds, or falls short of expectations;
    c. If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;
    d. If the dividend scale is based on an investment cohort method, the illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:
        i. Any assumptions as to future investment performance in the dividend formula must be consistent with assumptions that are reflected in the marketplace within the normal range of analyst forecasts and investor behavior; these assumptions may not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and must be consistent with assumptions that the issuer uses with respect to other lines of business; and
        ii. The illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, based on U.S. Treasury bonds. For the purposes of this grading, the assumed long-term rates should not exceed the rates calculated using the formula in subsection (G)(22)(d)(iii), based on the time to maturity or reinvestment (the "Tenor") of the investments supporting the cohort of polices.
        iii. Maximum long-term interest rates should be calculated for tenors of three months (or less), five years, 10 years, and 20 years (or more), using U.S. Treasury rates. For each tenor, the maximum long-term interest rate will vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median bond rate over the last 600 months and the average bond rate over the last 120 months, rounded to the nearest quarter of one percent (0.25%).
        iv. The maximum long-term interest rate for a tenor should be recalculated once per year, in January, using historical rates as of December 31 of the calendar year two years prior to the calendar year of the calculation date. The historical rate for each month is the rate reported for the last business day of the month.
        v. Grading to the maximum long-term interest rates should take place over no less than 20 years from issue if U.S. Treasury rates as of the illustration date are below the long-term rates, or, no more than 20 years from issue if U.S. Treasury rates as of the illustration date are above the long-term rates.
        vi. When the 10-year U.S. Treasury rate is less than the 10-year maximum long-term interest rate, an additional illustrated dividend scale should be presented. This additional illustrated dividend scale shall assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates and illustrate dividends no less than half of the dividends illustrated under the current dividend scales. If the assumption that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates conflicts with the illustration, i.e.

half of the current dividends are greater than would be permitted by the assumption, then the reinvestment U.S. Treasury rates should equal the initial investment U.S. Treasury rates.

vii. The illustration should include a disclosure that is substantially similar to the following:
The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current rates to long-term interest rates, over a period of [20] years. By regulation, the long-term assumed interest rates cannot not and do not exceed the rates listed in column (c) of the table below.

viii. If the illustration contains an additional dividend scale pursuant to subsection (G)(22)(d)(vi), then the illustration should also include a disclosure that is substantially similar to the following:
The additional illustrated dividend scale is based on interest rates that are assumed not to increase and do not exceed the interest rates in column (b) of the table below.

Column A	Column B	Column C
Tenor	**Current Interest Rate**	**Long Term**
	Treasury Rate as of 12/31/2016	**Mean Reversed Treasury Rate**
3 Month (or less)	0.51%	3.00%
5 Year	1.93%	4.50%
10 Year	2.45%	5.00%
20 Years (or more)	3.06%	5.50%

H. An annuity illustration shall include a narrative summary that includes all the following unless provided at the same time in a disclosure statement:

1. A brief description of any contract features, riders or options, guaranteed and/or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;
2. A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;
3. Identification and a brief definition of column headings and key terms used in the illustration;
4. A statement containing in substance the following:
   a. For other than fixed indexed annuities:
   This illustration assumes the annuity's current non-guaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.
   The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;
   b. For fixed indexed annuities:
   This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.
   The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;
5. Additional explanations as follows:
   a. Minimum guarantees shall be clearly explained;
   b. The effect on contract values of contract surrender prior to maturity shall be explained;
   c. Any conditions on the payment of bonuses shall be explained;
   d. For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;
   e. For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and
   f. A brief description of the types of annuity income options available shall be explained, including:
      i. The earliest or only maturity date for annuitization (as the term is defined in the contract);
      ii. For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age 70 or 10 years after issue, but in no case later than the maximum annuitization age or date in the contract;
      iii. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
      iv. The periodic income amount based on the currently available periodic income rates for the annuity income option in subsection (H)(5)(f)(ii) or in subsection (H)(5)(f)(iii), if desired.

I. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

1. The first 10 contract years or the surrender charge period if longer than 10 years, including any renewal surrender charge period or periods;
2. Every tenth contact year up to the later of 30 years or age 70; and
3. Required annuitization age or required annuitization date.

J. If the annuity contains a market value adjustment ("MVA"), the following provisions apply to the illustration:

1. The MVA shall be referred to as such throughout the illustration;
2. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

3. The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;
4. A statement, containing in substance the following, shall be included:
   When you make a withdrawal, the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If the interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.
5. Illustrations shall describe both the upside and the downside aspects of the contract features relating to the MVA;
6. The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;
7. Actual MVA floors and ceilings as listed in the contract shall be illustrated; and
8. If the MVA has significant characteristics not addressed by subsections (J)(1) through (J)(6), the effect of such characteristics shall be shown in the illustration.

K. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time as the disclosure statement:

1. An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:
   a. The index(es) which will be used to determine the index-based interest;
   b. The Indexing Method;
   c. The Index Term;
   d. The participation rate, if applicable;
   e. The cap, if applicable; and
   f. The spread, if applicable;
2. The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity:
3. The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
4. If the product allows the contract holder to make allocations to a declared-rate segment, then the narrative shall include a brief description of:
   a. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the index-based segments; and
   b. Differences in guarantees applicable to the declared-rate segment and the index-based segments.

L. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:

1. The assumed growth rate of the index in accordance with subsection (G)(9);
2. The assumed values for the participation rate, cap and spread, if applicable; and
3. The assumed allocation between index-based segments and the declared-rate segment, if applicable, in accordance with subsection (G)(9).

M. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including but not limited to, changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1053 of the Internal Revenue Code, rollovers and transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

N. Annuity Illustration Examples. Illustrations A through C are examples only and do not reflect specific characteristics of any actual product for sale by any company.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

Illustration A. Annuity Illustration Example

ABC Life Insurance Company
Company Product Name
Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)
An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy
(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

Sex: Male	Initial Premium Payment: $100,000.00
Age at Issue: 54	Planned Annual Premium Payments: None
Annuitant: John Doe	Tax Status: Nonqualified
Oldest Age at Which Annuity Payments Can Begin: 95	Withdrawals: None Illustrated

Initial Interest Guarantee Period	5 Years
Initial Guaranteed Interest Crediting Rates	
First Year (reflects first year only interest bonus credit of 0.75%):	4.15%
Remainder of Initial Interest Guarantee Period:	3.40%
Market Value Adjustment Period:	5 Years
Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period*:	3%

* After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values
This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:
- Periodic payments for Annuitant's life
- Periodic payments for Annuitant's life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant's life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for annuitant's life with payments guaranteed for 10-year period.

Assumed Age When Payments Start: 70

	Account Value	Monthly Annuity Income Rate/$1,000 of Account Value*	Monthly Annuity Income
Based on Rates Guaranteed in the Contract	$164,798	$5.00	$823.99
Based on Rates Currently Offered by the Company	$171,976	$6.50	$1,117.84

*If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

Historical Note
New Appendix A made by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

Illustration B. Annuity Illustration Example

ABC Life Insurance Company
Company Product Name
Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)
An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy
Contact us at Policyownerservice@ABCLife.com or 555-555-5555

		Values Based on Guaranteed Rates				Value Based on Assumption that Initial Guaranteed Rates Continue		
Contract Year/Age	Premium Payment	Interest Crediting Rate	Account Value	Cash Surrender Value Before MVA	Minimum Cash Surrender Value After MVA	Interest Crediting Rate	Account Value	Cash Surrender Value Before and After MVA
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	**(9)**
1 / 55	$100,000	4.15%	$104,150	$95,818	$92,000	4.15%	$104,150	$95,818
2 / 56	0	3.40%	107,691	100,153	93,000	3.40%	107,691	100,153
3 / 57	0	3.40%	111,353	104,671	95,614	3.40%	111,353	104,671
4 / 58	0	3.40%	115,139	109,382	98,482	3.40%	115,139	109,382
5 / 59	0	3.40%	119,053	114,291	114,291	3.40%	119,053	114,291
6 / 60	0	3.00%	122,625	118,946	118,946	3.40%	123,101	119,408
7 / 61	0	3.00%	126,304	123,778	123,778	3.40%	127,287	124,741
8 / 62	0	3.00%	130,093	130,093	130,093	3.40%	131,614	131,614
9 / 63	0	3.00%	133,996	133,996	133,996	3.40%	136,089	136,089
10 / 64	0	3.00%	138,015	138,015	138,015	3.40%	140,716	140,716
11 / 65	0	3.00%	142,156	142,156	142,156	3.40%	145,501	145,501
16 / 70	0	3.00%	164,798	164,798	164,798	3.40%	171,976	171,976
21 / 75	0	3.00%	191,046	191,046	191,046	3.40%	203,268	203,268
26 / 80	0	3.00%	221,474	221,474	221,474	3.40%	240,255	240,255
31 / 85	0	3.00%	256,749	256,749	256,749	3.40%	283,972	283,972
36 / 90	0	3.00%	297,643	297,643	297,643	3.40%	335,643	335,643
41 / 95	0	3.00%	345,050	345,050	345,050	3.40%	396,717	396,717

Column Descriptions

(1) **Ages** shown are measured from the Annuitant's age at issue.

(2) **Premium Payments** are assumed to be made at the beginning of the Contract Year shown.

Values Based on Guaranteed Rates

(3) **Interest Crediting Rates** shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.

(4) **Account Value** is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.

(5) **Cash Surrender Value Before MVA** is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

Years Measured from Premium Payment:	1	2	3	4	5	6	7	8+
Surrender Charges:	8%	7%	6%	5%	4%	3%	2%	0%

(6) **Minimum Cash Surrender Value After MVA** is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your initial guaranteed interest rate, the MVA will DECREASE the amount you receive. The charts below provide additional information concerning the MVA.

Values Based on Assumption that Initial Guaranteed Rates Continue

(7) **Interest Crediting Rates** are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.
(8) **Account Value** is calculated the same way as Column (4).
(9) **Cash Surrender Value Before and after MVA** is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case the MVA would be zero, and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take no withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustrations.

The values in this illustration are not guaranteed or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

Historical Note

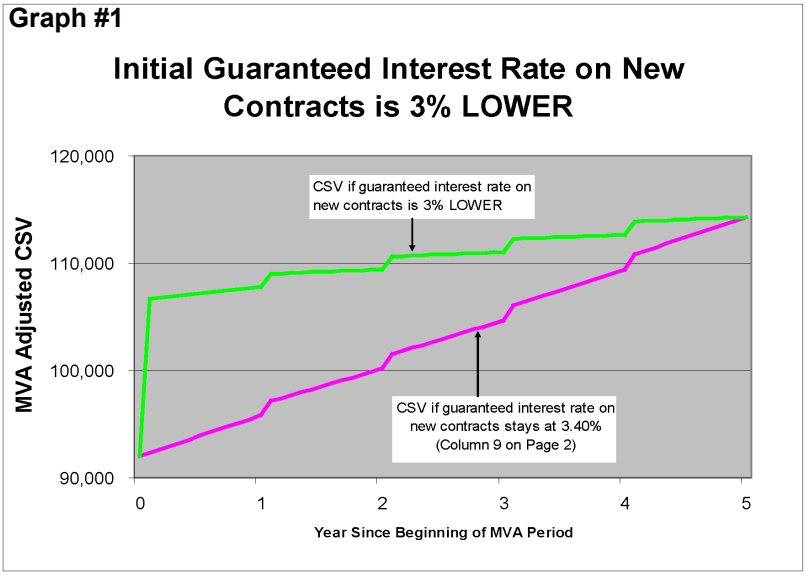
New Appendix B made by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

Illustration C. MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

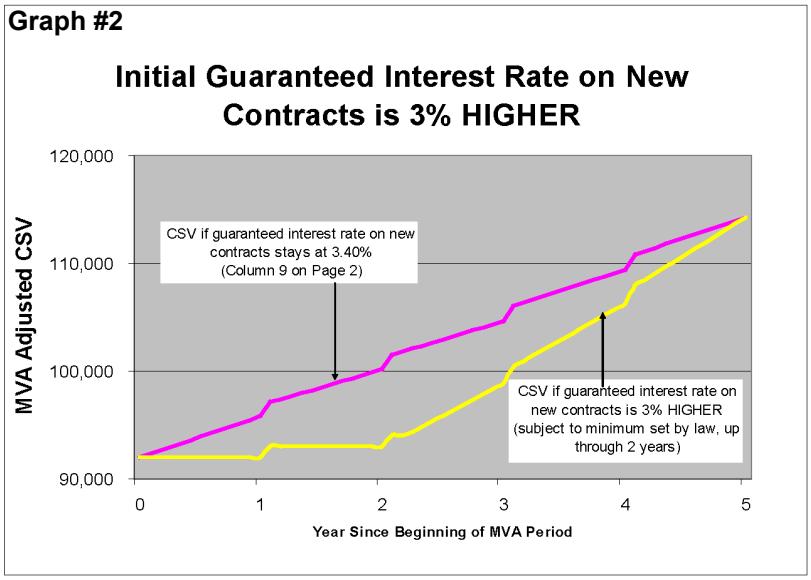
The graphs below show MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on the illustration spreadsheet above ($100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below.

Graph #1 shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (upper line). The lower line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on the illustration spreadsheet above (referenced as Page 2 in the graph)).



Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on the illustration spreadsheet above (referenced as Page 2 in the graph)), which in this scenario's limits the decrease for the first 2 years (lower line). The upper line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on the illustration spreadsheet above).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.



Historical Note

Appendix C made by final rulemaking at 28 A.A.R. 454 (February 25, 2022), effective April 5, 2022 (Supp. 22-1).

R20-6-213. Life and Disability Insurance Policy Language Simplification

A. Definitions. The following definitions apply in this Section:
1. "Company" or "insurer" means any life or disability insurance company, benefit insurer, benefit stock insurer, prepaid dental plan organizations, health care service organizations, and all similar type organizations.
2. "Director" means the Director of Insurance of Arizona.
3. "Policy" or "policy form" means any policy, contract, plan or agreement of life or disability insurance, including credit life insurance and credit disability insurance, delivered or issued for delivery in the state by any company subject to this rule; and any certificate issued under a group insurance policy delivered or issued for delivery in this state.

B. Applicability.
1. This Section and R20-6-212 apply to all life and disability insurance policies delivered or issued for delivery in this state by any company but do not apply to:
   a. Any policy that is a security subject to federal jurisdiction;
   b. Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy however, this shall not exempt any certificate issued under a group policy delivered or issued for delivery in this state; or
   c. Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
2. Except as provided in R20-6-210, no other rule of this state setting language simplification standards shall apply to any policy forms.

C. Minimum policy language simplification standards.
1. Except as stated in subsection (B), an insurer shall not deliver or issue for delivery a policy form that has not been approved by the Director unless:
   a. The text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);
   b. It is printed, except for specification pages, schedules, and tables, in no less than 10 point type, one point leaded;
   c. The style, arrangement and overall appearance of the policy do not give undue prominence to any portion of the text of the policy or to any endorsements or riders; and
   d. The policy, if the policy has more than 3,000 words printed on three or fewer pages of text or if the policy has more than three pages regardless of the number of words, contains a table of contents or an index of the principal sections of the policy.
2. An insurer shall measure a Flesch reading ease test score as follows:
   a. For policy forms containing 10,000 words or less of text, an insurer shall analyze the entire form. For policy forms containing more than 10,000 words, an insurer may analyze the readability of two, 200-word samples per page instead of the entire form. The insurer shall separate the samples by at least 20 printed lines.
   b. The insurer shall count the number of words and sentences in the text, then divide the total number of words by the total number of sentences, then multiply that figure by a factor of 1.015.
   c. The insurer shall count and divide the total number of syllables by the total number of words, then multiply that figure by a factor of 84.6.
   d. The sum of the figures computed under subsections (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.
   e. For subsections (b), (c), and (d), the insurer shall use the following procedures:
      i. A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word;
      ii. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and
      iii. A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
   f. The term "text" as used in this subsection shall include all printed matter except the following:
      i. The name and address of the insurer, the name, number or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules or tables; and
      ii. Policy language that is drafted to conform to the requirements of a federal law, regulation, or agency interpretation, policy language required by a collectively bargained agreement, medical terminology, words defined in the policy, and policy language required by law or regulation, if the insurer identifies the language or terminology excepted by this subsection and certifies, in writing, that the language or terminology is entitled to be excepted by this subsection.
3. Any other reading test may be approved by the Director for use as an alternative to the Flesch reading test if it is comparable in result to the Flesch reading ease test.
4. Filings subject to this subsection shall be accompanied by a certificate signed by an officer of the insurer stating that the filing meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved under subsection (G) of this Section. To confirm the accuracy of any certification, the Director may require the submission of further information to verify the certification in question.
5. At the option of the insurer, riders, endorsements, applications and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

D. The Director may authorize a lower score than the Flesch reading ease score required in subsection (C)(1)(a) if a lower score:
1. Provides a more accurate reflection of readability of a policy form;
2. Is warranted by the nature of a particular policy form or type or class of policy forms; or
3. Is caused by certain policy language drafted to conform to the requirements of any state statute, rule, or agency interpretation of law.

Historical Note

Adopted effective November 21, 1977 (Supp. 77-6). Amended effective March 27, 1978 (Supp. 78-2). Amended subsection (E), deleted subsection (F) and added new subsections (F) and (G) effective December 3, 1986 (Supp. 86-6). R20-6-213 recodified from R4-14-213 (Supp. 95-1). Former R20-6-213 renumbered to R20-6-211; new R20-6-213 renumbered from R20-6-216 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Corrected error in R20-6-213(D) that referenced subsection (E)(1)(a), which was relabeled as (C)(1)(a) in Supp. 07-2 (Supp. 08-1).

R20-6-214. Coordination of Benefits

A. Applicability.
1. This Section applies to all:
   a. Group disability insurance policies;
   b. Group subscriber contracts of hospital and medical service corporations and health care services organizations;
   c. Group disability policies of benefit insurers; and
   d. Group-type contracts that contain a coordination of benefits provision, are not available to the general public, and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization. Group-type contracts that meet this description are included regardless of whether denominated as "franchise," "blanket," or some other designation.
2. This Section does not apply to:
   a. Individual or family policies or individual or family subscriber contracts except as provided for in subsection (A)(1);
   b. Group or group-type hospital indemnity benefits, written on a non-expense incurred basis, of $30 per day or less unless characterized as reimbursement-type benefits and designed or administered to give the insured the right to elect indemnity-type benefits, instead of the reimbursement type benefits at the time of claim; or
   c. School accident type coverages, written on a blanket, group, or franchise basis.

B. Definitions. In this Section, the following definitions apply:
1. "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service provided.
   a. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered is deemed to be both an allowable expense and a benefit paid.
   b. A plan that takes Medicare or similar government benefits into consideration when determining the application of its coordination of benefits provision does not expand the definition of an allowable expense.
2. "Claim determination period" means an appropriate period of time such as "calendar year" or "benefit period" as defined in the policy.
3. "Plan," within the coordination of benefits provisions of a group policy or subscriber contract, means the types of coverage that the insurer may consider in determining whether overinsurance exists with respect to a specific claim.
4. "School accident-type coverage" means coverage of grammar school and high school students for accidents only, including athletic injuries, either on a 24-hour basis or "to-and-from school," for which the parent pays the entire premium.

C. Order-of-benefit determination.
1. When a claim under a plan with a coordination of benefit provision involves another plan that also has a coordination of benefit provision, the insurer shall make the order-of-benefit determination as follows:
   a. The plan that covers the person claiming benefits other than as a dependent shall determine benefits before those of the plan that covers the person as a dependent.
   b. The plan of a parent whose birthday occurs earlier in a calendar year shall cover a dependent child before the benefits of a plan of a parent whose birthday occurs later in a calendar year. The word "birthday" as used in this subsection refers only to month and day in a calendar year, not the year in which the person was born.
   c. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in the following order:
      i. First, the plan of the parent with custody of the child;
      ii. Then, the plan of the spouse of the parent with custody of the child; and
      iii. Finally, the plan of the parent not having custody of the child.
   d. Notwithstanding subsection (c), if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first.
2. The benefits of a plan that covers a person as an employee (or as that employee's dependent) are determined before those of a plan that covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this provision and if, as a result, the plans do not agree on the order of benefits, this subsection does apply.
3. If none of the provisions of subsection (C) determines the order of benefits, the benefits of the plan that covered a claimant longer are determined before those of the plan that covered that person for the shorter time.
4. If one of the plans is issued out of this state and determines the order of benefits based upon the gender of a parent and, as a result, the plans do not agree on the order of benefits, the plan with the gender rule shall determine the order of benefits.

D. Excess and other nonconforming provisions. A plan with an order of benefit determination provision that complies with this Section, a complying plan, may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses an order-of-benefit determination provision that is inconsistent with this Section, a noncomplying plan, on the following basis:
1. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.
2. If the complying plan is the secondary plan, it shall pay or provide its benefits first, as the secondary plan. The pay-

ment shall be the limit of the complying plan's liability, except as provided in subsection (4).

3. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay benefits accordingly. The complying plan shall adjust any payments it makes based on the assumption whether information becomes available as the actual benefits of the noncomplying plan.
4. If the noncomplying plan pays benefits so that the claimant receives less in benefits than the claimant would have received had the noncomplying plan paid or provided its benefits as the primary plan, the complying plan shall advance to or on behalf of the claimant an amount equal to the difference. The complying plan shall not have a right to reimbursement from the claimant.

Historical Note
Adopted effective October 26, 1979 (Supp. 79-5). R20-6-214 recodified from R4-14-214 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-6-214 renumbered from R20-6-217 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-215. Renumbered

Historical Note
Adopted effective September 7, 1981 (Supp. 81-3). Amended subsections (D) through (H), deleted Agent's Statement and Exhibit D effective March 30, 1983 (Supp. 83-2). R20-6-215 recodified from R4-14-215 (Supp. 95-1). Amended by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215 renumbered to R20-6-212 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-215.01. Renumbered

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215.01 renumbered to R20-6-212.01 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-216. Renumbered

Historical Note
Adopted effective as set forth in subsection (H) (Supp. 80-6). R20-6-216 recodified from R4-14-216 (Supp. 95-1). Former R20-6-216 renumbered to R20-6-213 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

R20-6-217. Renumbered

Historical Note
Adopted effective September 14, 1982 (Supp. 82-3). Amended subsections (C) and (D), deleted (F) effective January 1, 1987, filed December 16, 1986 (Supp. 86-6). R20-6-217 recodified from R4-14-217 (Supp. 95-1). Former R20-6-217 renumbered to R20-6-214 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

Editor's Note: The following Section expired under A.R.S. § 41-1056(E) on September 30, 2001 at 8 A.A.R. 491. The Notice of Rule Expiration was not received until January 9, 2002. Therefore, the repeal of the rule noted in the Historical Note is moot (Supp. 02-1).

R20-6-218. Repealed

Historical Note
Adopted effective November 9, 1984 (Supp. 84-6). R20-6-218 recodified from R4-14-218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5443, effective November 16, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1); refer to the Editor's Note before the Section.

ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES

R20-6-301. Expired

Historical Note
Former General Rule Number 3. R20-6-301 recodified from R4-14-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

R20-6-302. Expired

Historical Note
Former General Rule 62-11. R20-6-302 recodified from R4-14-302 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

R20-6-303. Termination of Certificate of Authority and Release of Deposit

A. Domestic Insurers. To request termination of a certificate of authority and, if applicable, release of statutory deposit, a domestic insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
4. A plan of extinguishment for its outstanding liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no outstanding liabilities to policyholders or claimants under subsection (C);
5. A certified copy of the insurer's Board of Directors resolution or other documentation of the insurer's official action taken according to the insurer's statutorily required organizational documents approving the insurer's:
   a. Withdrawal from the insurance business,
   b. Dissolution of the insurer,
   c. Merger with an insurer authorized in Arizona to transact the insurer's previously written and active lines of business of the insurer requesting termination, or
   d. Transfer of domicile to another state or country.

Sample Form A

NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY

The _____Insurance Company urges you to read this policy carefully and trusts that upon doing so you will fully understand, and will be pleased with, its coverage. If, however, questions arise or information is desired, do not hesitate to consult the selling agent. In addition, should the policy for any reason be unsatisfactory, by surrendering it within ten days following receipt to our office at _____ or to the selling agent, immediately full premium will be refunded and the policy will be cancelled and deemed void and as never in force and effect.

Sample Form B

IMPORTANT NOTICE

If for any reason this policy is unsatisfactory, it may be returned for cancellation within ten days following receipt – in which case the entire premium will be refunded.

(Insurer's name and address)

Historical Note

Former General Rule 61-7. R20-6-501 recodified from R4-14-501 (Supp. 95-1).

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

R20-6-601. Regulations Governing Bail Transactions

A. General provisions

1. Effective date
   a. These regulations are effective November 1, 1960. On and after date, no bail transaction or severable portion thereof shall be conducted, directly or indirectly except in full conformity herewith.
   b. No surety insurer shall furnish for use and no bail bond agent shall use any forms or documents which contain any provisions contrary to these regulations on or after the effective date hereof.
2. Authority. Authority for these regulations is A.R.S. §§ 20-142, 20-143 and 20-257 and A.R.S. Chapter 2, Article 3.
3. Public interest served. These regulations serve the public interest by prohibiting inequities in bail transactions and by establishing standards of licensing and conduct for bail bond agents.
4. Regulations as severable. These regulations shall be construed as severable, such that, where one or more Sections are held invalid, such remaining Sections will not be adversely affected.
5. Penalty. Violation of these regulations will subject the guilty party to the penalties of A.R.S. §§ 20-114, 20-220 and 20-316 and to the enforcement procedures of A.R.S. §§ 20-152 and 20-160 through 20-166.

B. Definitions

1. "Bail transaction" defined. As used in these regulations, the term "bail transaction" includes solicitation and inducement, preliminary negotiation and effectuation of a contract of surety insurance and the transaction of matters subsequent thereto and arising therefrom – all in connection with the release of persons arrested or confined.
2. "Bail bond agent" defined. As used in these regulations, the term "bail bond agent" means any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.
3. "Arrestee" defined. As used in these regulations, the term "arrestee" means any person arrested or detained whose release on bail is solicited or procured or concerning whose release negotiations are commenced.
4. "Director" defined. As used in these regulations, the term "Director" means the Director of Insurance of the state.

C. Licensing

1. Application for license. Each application for original or renewal license as a bail bond agent shall be on a form furnished by the Director, and each applicant for such license shall furnish such supplementary information and supporting statements as the Director may require.
2. Prohibited associations. A bail bond license shall not be issued to, renewed for or maintained by any person who associates regularly with criminals, gamblers or persons of poor repute – except to the extent such association is required by business or professional duty and responsibility.
3. Transactions by unlicensed persons prohibited. No bail bond agent shall directly or indirectly permit any person on his behalf to solicit or negotiate bail transactions unless such person is duly licensed by the Director.
4. Employees. Employees of bail bond agents performing only clerical duties need not be licensed hereunder and shall be deemed not engaged in bail transactions.

D. Conduct of bail bond agents

1. Disclosure of business. Every bail bond agent shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting.
2. Control of employees. A bail bond agent shall exercise direct supervision over his employees and keep informed of their actions as his employees.
3. Prohibited employees. No bail bond agent shall have in his employ at any time any criminal, gambler or person of poor repute.
4. Acting for attorney. No bail bond agent shall receive, or collect for an attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee, unless a receipt is given therefor.
5. Informants prohibited. No bail bond agent shall for any purpose, directly or indirectly, enter into an arrangement of any kind or have an understanding with a law enforcement officer, with a newspaper employee, with a messenger service or employee thereof, with a trusty in a jail, with other person incarcerated in a jail, or with any person whatever, to inform or notify any bail bond agent directly or indirectly of:
   a. The existence of a criminal complaint;
   b. The fact of an arrest; or

c. The fact that an arrest of any person is pending or contemplated; or
d. Any information pertaining to matters set forth in (a), (b), and (c) hereof or to the persons involved therewith.

6. Compliance with rules of public authority. No bail bond agent shall solicit any person in a bail transaction in a prison or jail or other place of detention, court or public institution connected with the administration of justice unless said bail bond agent has fully complied with every rule, regulation and ordinance issued by each public authority governing the conduct of persons in or about said premises.
7. Representations to public authority
   a. No bail bond agent shall make any misleading or untrue representation to a court or to a public official with respect to a bail transaction, nor for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred.
   b. Every bail bond agent shall truthfully and fully answer every question asked him by the Director or his representative respecting his bail transactions and matters relating to the conduct of his bail business. Any bail bond agent may have his attorney present when he answers any such question.
8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.

E. Charges, collateral, refunds and rebates
1. Rates
   a. No bail bond agent shall issue or deliver a bail bond except at the premium rates most recently filed and approved by the Director in accordance with A.R.S. § 20-357.
   b. Every bail bond agent shall post the premium rates of the surety insurer he represents in a conspicuous manner at his place of business.
2. Charges permitted. No bail bond agent shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
   a. To pay the premium at the rates established by the surety insurer and approved by the Director.
   b. To provide collateral.
   c. To reimburse himself for actual and reasonable expenses incurred in connection with the individual bail transaction, including:
      i. Guard fees after the first 12 hours following release of an arrestee on bail;
      ii. Notary fees, recording fees, necessary long distance telephone expenses, telegram charges, and travel expenses for other than local community travel.
      iii. Any other actual expenditure necessary to the bail transaction which is not usually and customarily incurred in connection with the ordinary operation and conduct of bail transactions.
3. Delivery of documents to arrestee
   a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:
      i. The name of the surety insurer and the name and business address of the bail bond agent.
      ii. The amount of bail and the premium thereof.
   b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.
4. Collateral
   a. Any bail bond agent who receives collateral in connection with a bail transaction shall do so in a fiduciary capacity and, prior to any forfeiture of bail, shall keep such collateral separate and apart from any other funds, assets or property of such bail bond agent.
   b. Any collateral received shall be returned to the person who deposited it with the bail bond agent or any assignee as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Where such collateral has been deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated, or, if any bail bond agent fails to cooperate fully with any authorized official to secure the termination of such liability, immediately upon the accrual of any right to secure an order of termination of liability.
   c. When such collateral has been deposited as security for unpaid premium or charges and, if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the bail bond agent, collateral other than cash may be levied upon in the manner provided by law and cash collateral up to the amount of such unpaid premium on charges may be applied in payment thereof.
   d. If collateral received by a bail bond agent is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon application of the collateral to the forfeiture subject, however, to any claim of the bail bond agent for unpaid premium or charges as provided in subparagraph (c) of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond agent and arrestee or his indemnitor.
5. Premium refund upon surrender of arrestee. No bail bond agent shall surrender an arrestee to custody prior to the time specified in the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, or material misrepresentation by the arrestee or his indemnitor with respect to the execution of the bail bond agreement, or a material and substantial increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges permitted under these regulations or any part thereof, and failure to furnish collateral required by the bail bond agent, shall not be considered a material and substantial increase in the hazard assumed.

6. Rebating prohibited. No bail bond agent shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail bond agent any commission or valuable consideration on or in connection with a bail transaction. This Section shall not prohibit payments by a bail bond agent to an unlicensed person of charges by such persons for services of the kind specified in paragraph (2) subsection (E) of this Section.

Historical Note
Former General Rule 60-5. R20-6-601 recodified from R4-14-601 (Supp. 95-1).

R20-6-602. Nationwide Inland Marine Definition

A. Applicability. This rule applies to risks and coverages which may be classified or identified as Marine, Inland Marine or Transportation insurance but shall not be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances.
This rule shall not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and license whether used separately, in combination or otherwise.

B. Marine and/or transportation policies may cover under the following conditions:
1. Imports.
   a. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.
   b. An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:
      i. Sold and delivered by the importer, factor or consignee; or
      ii. Removed from place of storage and placed on sale as part of the importer's stock in trade at a point of sale or distribution; or
      iii. Delivered for manufacture, processing or change in form to premises of the importer or of another for any such purposes.
2. Exports.
   a. Exports may be covered wherever the property may be located without restriction as to time, provided the coverage of each issuing company includes hazards of transportation.
   b. An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this rule respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e.g., cotton.
3. Domestic shipments.
   a. Domestic shipments on consignment, for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided the coverage of each issuing company includes hazards of transportation, and further provided that in no event shall the policy cover domestic shipments on consignment on premises owned, leased or operated by the consignor.
   b. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, and further provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by assured or purchaser.
4. Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, their furniture and furnishings, fixed contents and supplies held in storage. The foregoing includes:
   a. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.
   b. Piers, wharves, docks, slips, dry docks and marine railways.
   c. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.
   d. Power transmission and telephone and telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.
   e. Radio and television communication equipment in use as such including towers and antennae with auxiliary equipment, and appurtenant electrical operating and control apparatus.
   f. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.
5. Personal Property Floater Risks covering individuals and/or generally
   a. Personal Effects Floater Policies
   b. The Personal Property Floater
   c. Government Service Floater
   d. Personal Fur Floaters
   e. Personal Jewelry Floaters
   f. Wedding Present Floaters for not exceeding 90 days after the date of the wedding.
   g. Silverware Floaters.
   h. Fine Arts Floaters, covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit.
   i. Stamp and Coin Floaters.
   j. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
   k. Mobile Articles, Machinery and Equipment Floaters, excluding vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use, covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
   l. Installment Sales and Leased Property Policies covering property pertaining to a household and sold

under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest.

m. Live Animal Floaters.

6. Commercial Property Floater Risks covering property pertaining to a business, profession or occupation.
   a. Radium Floaters.
   b. Physicians' and Surgeons Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.
   c. Pattern and Die Floaters.
   d. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
   e. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
   f. Salesmen's Samples Floaters.
   g. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
   h. Live Animal Floaters.
   i. Builders Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies, being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.
      i. Such coverage shall be limited to Builders Risks or Installation Risks where Perils in addition to Fire and Extended Coverage are to be insured.
      ii. If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.
   j. Mobile Articles, Machinery and Equipment Floaters, excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
   k. Property in transit to and from and in custody of bailees not owned, controlled or operated by the bailor. Such policies shall not cover bailee's property at his premises.
   l. Installment sales and leased property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest. This Section is not intended to include machinery and equipment under certain "lease-back" contracts.
   m. Garment Contractors Floaters.
   n. Furriers or Fur Storer's Customer's Policies, i.e., policies under which certificates or receipt are issued by furriers or fur storers covering specified articles the property of customers.
   o. Accounts Receivable Policies, Valuable Papers and Records Policies.
   p. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
      i. Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
      ii. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
      iii. That such policies cover in transit and do not extend beyond the termination of the dealer's interest.
      iv. That such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
   q. Sign and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.
   r. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
   s. Policies covering personal property which, when sold to the ultimate purchaser, may be covered specifically, by the owner, under Inland Marine Policies including:
      i. Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
      ii. Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
      iii. Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
      iv. Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other

similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.

v. Stamp and Coin Dealers covering property of philatelic and numismatic nature.

vi. Jewelers' Block Policies.

vii. Fine Arts Dealers.

Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies and tenant insureds interest in improvements of buildings.

t. Wool Growers Floaters.

u. Domestic Bulk Liquids Policies, covering tanks and domestic bulk liquids stored therein.

v. Difference in Conditions Coverage excluding fire and extended coverage perils.

w. Electronic Data Processing Policies.

C. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:

1. Storage of assured's merchandise, except as hereinbefore provided.
2. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
3. Furniture and fixtures and improvements and betterments to buildings.
4. Monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

Historical Note

Former General Rule 59-4; Amended effective August 30, 1985 (Supp. 85-4). R20-6-602 recodified from R4-14-602 (Supp. 95-1).

R20-6-603. Repealed

Historical Note

Former General Rule 69-18; Repealed effective July 27, 1981 (Supp. 81-4). R20-6-603 recodified from R4-14-603 (Supp. 95-1).

R20-6-604. Definitions

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

"Actual loss ratio" means incurred claims divided by earned premiums at rates in use.

"Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

"Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.

"Earned premiums at prima facie rates" means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.

"Earned premiums at rates in use" means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

"Evidence of individual insurability" means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

"Experience" means an insurer's earned premiums and incurred claims during an experience period.

"Experience period" means a period of time for which an insurer reports income and expense information on the insurer's credit insurance business.

"Final adjusted rates" means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

"Incurred claims" means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

"Plan of credit insurance" means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

"Preexisting condition" means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

"Prima facie adjusted loss ratio" means incurred claims divided by earned premiums at prima facie rates.

"Prima facie rates" means the rates established by the Director as prescribed in R20-6-604.03.

"Reasonableness standard" means the requirement in A.R.S. § 20-1610(B) that an insurer's premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.

"Rule of Anticipation" means the product of the gross single premium per $100 of indebtedness for a debtor's remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

Exhibit A. Repealed

Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.01. Rights and Treatment of Debtors

A. Creditor Obligations.
1. Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which the debtor is eligible and of the premium and charges for each plan.
2. Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor's right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
3. Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.

B. Creditor and insurer obligations regarding insurance on refinanced debt.
1. If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.
2. An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
3. The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
4. If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limitation only to the portion of the new loan that exceeds the previous loan.

C. Required policy provisions.
1. Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
   a. For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
   b. For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
2. Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.

D. Creditor and insurer obligations when debtor prepays debt.
1. Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
2. If a debt is fully prepaid because of the debtor's death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
3. If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:
   a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
   b. Is not required to refund premiums for any period for which credit disability benefits are payable.

E. Benefits payable on revolving account. If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.02. Satisfying the Reasonableness Standard

A. An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.

B. An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

C. While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.

D. An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:

1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.03. Determination of Prima Facie Rates

A. The Director shall, by order, establish prima facie rates as prescribed in this Section.

B. At least once every three years, the Director shall:

1. Determine the rate of expected claims on a statewide basis;
2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.

C. The Director shall mail a copy of the notice and proposed order to:

1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and
2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.

D. Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.

E. The Director shall:

1. Consider written and oral comments; and
2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.04. Credit Life Insurance Rates and Provisions

A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.

B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.

C. A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:

1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
2. Have no exclusions other than for:
   a. Suicide within six months after the effective date of coverage, or
   b. A preexisting condition;
3. Have no age restrictions, except the following permissible exclusions:
   a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
   b. An age restriction for a revolving credit life insurance policy that:
      i. Excludes a class of debtors determined by age, or
      ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.05. Credit Disability Insurance Rates and Provisions

A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.

B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.

C. A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:

1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
2. Include a definition of disability that is no more restrictive than the following:
   a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
   b. After the first 12 months of disability, the inability of the insured to perform the essential functions of

any occupation for which the insured is reasonably suited by virtue of education, training, or experience;

3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;
4. Have no exclusions other than for disabilities resulting from:
   a. Normal pregnancy,
   b. Intentionally self-inflicted injury, or
   c. A preexisting condition;
5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge;
6. Have no age restrictions, except the following permissible exclusion:
   An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.06. Refund Methods

A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
1. For insurance paid by a single premium, the Rule of Anticipation method; and
2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.

B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.

C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.

D. An insurer is not required to refund any amount less than $5.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.07. Experience Reports

A. By April 1 of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
1. In this Section, a "class of business" means:
   a. Credit unions;
   b. Banks, savings and loan institutions, and mortgage companies;
   c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
   d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
   e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).
2. The report shall include the following information:
   a. Mode of premium payment,
   b. Plan of benefits description,
   c. Earned premiums,
   d. Incurred claims,
   e. Loss ratios, and
   f. For credit life insurance, mean insurance in force.

B. For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.08. Use of Prima Facie Rates; Rate Deviations

A. Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.
1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
2. The filing shall specify the accounts to which the rates apply.
3. The rates may be:
   a. Applied uniformly to all accounts of the insurer; or
   b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.

B. Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.

C. Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).

D. Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.09. Supervision of Consumer Credit Insurance Operations

A. At least once every three years, an insurer transacting credit insurance in Arizona shall review the credit insurance operations of each creditor with whom the insurer does business to ensure that each creditor is complying with applicable credit insurance laws. The insurer shall review the following:
1. The creditor does not charge rates in excess of the prima facie rates or any deviated rates for which the insurer obtains approval;
2. The creditor makes benefit payments as prescribed in the policy; and
3. The creditor refunds unearned premiums as prescribed in R20-6-604.06.

B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-604.10. Prohibited Transactions

A. The practices listed in this Section are deemed unfair trade practices under A.R.S. § 20-442. An insurer that commits any of the following practices is subject to penalties as prescribed in A.R.S. § 20-456:

1. Offering or providing a creditor with any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than payment of commissions;
2. Agreeing to deposit with a bank or financial institution, the insurer's money or securities as a substitute for a deposit of money or securities that the financial institution would otherwise require from the creditor as a compensating balance or deposit offset for a loan or other advancement; or
3. Depositing money or securities without interest or at a lesser rate of interest than the creditor, bank, or financial institution is currently paying on other similar deposits.

B. This Section does not prohibit an insurer from maintaining demand deposits or premium deposit accounts that are reasonably necessary for use in the ordinary course of the insurer's business.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

R20-6-605. Emergency Expired

Historical Note

Former General Rule 72-26. Repealed effective December 4, 1986 (Supp. 86-6). Adopted as an emergency effective January 9, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days; re-adopted as an emergency with changes effective March 26, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days (Supp. 90-1). Re-adopted as an emergency without change effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. R20-6-605 recodified from R4-14-605 (Supp. 95-1).

R20-6-606. Repealed

Historical Note

Adopted effective July 1, 1980 (Supp. 80-3). Amended effective June 1, 1981. See also subsection (G) (Supp. 81-1). Amended subsections (D), (E)(3)(a), (F)(2)(b), (3)(a), (4)(e), (G), and (H) effective January 11, 1982 (Supp. 82-1). Amended subsections (G) and (H) as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Amended and readopted as an emergency effective November 18, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Corrected and readopted as an emergency effective February 10, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Amended effective August 4, 1989 (Supp. 89-3). Amended and adopted as an emergency effective September 13, 1989 (Supp. 89-3). Emergency expired (Supp. 89-4). Amended effective November 19, 1990 (Supp. 90-4). Repealed by emergency action effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Repealed again by emergency action effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Repealed effective May 28, 1992 (Supp. 92-2). R20-6-606 recodified from R4-14-606 (Supp. 95-1).

R20-6-607. Reasonableness of Benefits in Relation to Premium Charged

A. Applicability. This rule shall apply to individual disability insurance (as defined in A.R.S. § 20-253) policy forms and rates.

B. When rate filing is required. Every individual policy form, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.

C. General contents of all rate filings. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the ratio, hereinafter called "anticipated loss ratio," of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this state and that the benefits are reasonable in relation to the premiums.

D. Previously approved forms. Filings of rate revisions for a previously approved policy, rider or endorsement form shall also include the following:

1. A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums including the anticipated loss ratio for the form.
2. A statement as to whether the filing applies only to new business, only to in-force business, or both, and the reasons.
3. A history of the experience under existing rates, including at least the data indicated in subsection (E). The history may also include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. All additional data must be reconciled, as appropriate, to the required data. Additional data might include:
   a. Substitution of actual claim run-offs for claim reserves and liabilities,
   b. Determination of loss ratios with the increase in policy reserves (other than unearned premium reserves) added to benefits rather than subtracted from premiums,
   c. Substitution of net level policy reserves for preliminary term policy reserves,
   d. Adjustment of premiums to an annual mode basis, or
   e. Other adjustments or schedules suited to the form and to the records of the company.
4. The date and magnitude of each previous rate change, if any.

E. Experience records. Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for

each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit to the NAIC annual statement convention blank. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except the data for calendar years prior to the most recent five years may be combined.

F. Evaluation experience data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
4. The mix of business by risk classification.

G. Anticipated loss ratio standard. With respect to a new form or a currently approved form, except currently approved noncancelable policy forms, under which the average annual premium (as defined below) is expected to be at least $700, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

	Renewal Clause			
Type of Coverage	**OR**	**CR**	**GR**	**NC**
Medical expense	60%	55%	55%	50%
Loss of income and other	60%	55%	50%	45%

For a policy form including riders and endorsements, under which the expected average annual premium per policy is $200 or more but less than $700, subtract 5 percentage points from the numbers in the table above, or if less than $200, subtract 10 percentage points.

The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the factional premium loading shall not affect the average annual premium or anticipated loss ratio calculation.)

The above anticipated loss ratio standards do not apply to a class of business which is regulated by specific statutes or regulations mandating loss ratios for such business, e.g., Medicare Supplement and Credit Life and Disability.

Definitions of Renewal Clause

OR – Optionally Renewable: renewal is at the option of the insurance company.

CR – Conditionally Renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR – Guaranteed Renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC – Non-Cancelable: renewal cannot be declined nor can rates be revised by the insurance company.

H. Rate revisions. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided both the following loss ratios meet the standards in subsection (G) above.

1. The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;
2. The anticipated loss ratio derived by dividing (a) by (b) where:
   a. Is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this regulation, whichever is later, to the effective date of the revision, and the present value of future benefits; and
   b. Is the sum of the accumulated premiums from the original effective date of the form or the effective date of the regulation, whichever is later, to the effective date of the revision, and the present value of future premiums. Such present values shall be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.

I. Anticipated loss ratios lower than those indicated in subsections (H)(1) and (H)(2) will require justification based on the special circumstances that may be applicable.

1. Examples of coverages requiring special consideration are as follows:
   a. Accident only;
   b. Short term nonrenewable, e.g., airline trip, student accident;
   c. Specified peril, e.g., common carrier; and
   d. Other special risks.
2. Examples of other factors requiring special consideration are as follows:
   a. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
   b. Extraordinary expenses;
   c. High risk of claim fluctuation because of the low loss frequency of the catastrophic, or experimental nature of the coverage;
   d. Product features such as long elimination periods, high deductibles and high maximum limits;
   e. The industrial or debit method of distribution; and
   f. Forms issued prior to the effective date of this rule. Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
3. Notwithstanding the foregoing paragraphs to the contrary, hospital indemnity and cancer and other dread diseases policies shall develop the loss ratios pursuant to subsection (G).

J. Severability provision. 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 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.

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:

R20-6-1917. Geographic Availability in an Urban Area

An HCSO shall provide each enrollee living in an urban area of the HCSO's service area the following:

1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;
2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1918. Geographic Availability in a Suburban Area

Each HCSO shall provide each enrollee member living in a suburban area within the HCSO's service area the following:

1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;
2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and
3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1919. Geographic Availability in a Rural Area

An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the enrollee's home.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1920. Travel Requirements

A. An HCSO may require an enrollee to travel a greater distance in-area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.

B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area because the services are not available in the area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1921. Enforcement Consideration

In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:

1. Whether seasonal shifts in demand affect access and availability of covered services;
2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
3. Whether an enrollee has refused to accept covered services the HCSO has offered in the time-frames or locations required of the HCSO by this Article;
4. Whether an enrollee has requested and obtained covered services from a contracted provider whose location, or appointment availability, or capacity result in the HCSO's non-compliance; and
5. Whether market factors indicate that on a short-term basis, compliance is not possible. Market factors include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

ARTICLE 20. CAPTIVE INSURERS

R20-6-2001. Reserved

R20-6-2002. Fees; Examination Costs

A. A corporation applying for a license to do business as a captive insurer, under A.R.S. § 20-1098, shall pay a nonrefundable fee of $1,000.00 to the Department for issuance of the license. A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of $1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.

B. A captive insurer shall pay a nonrefundable annual renewal fee of $5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of $2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.

C. A captive insurer shall pay a nonrefundable fee of $200.00 to the Department at the time of filing for issuance of an amended certificate of authority.

D. In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2478, effective July 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 2977, effective September 13, 2005 (Supp. 05-3). Subsection (A) corrected at request of the Department, Office File No. M11-252, filed July 20, 2011 (Supp. 11-3).

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

Article 21, consisting of R20-6-2101 through R20-6-2104, made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2101. Definitions

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee

justification on the date the health insurer revises the rate increase filing or files a new rate increase; or

c. If the health insurer selects this option, and R20-6-607 did not apply to the rate increase the Department determined to be unreasonable, and the smaller increase is a threshold rate increase, the health insurer shall submit to the Department and to CMS a new preliminary justification at least 60 days prior to the date the health insurer intends to implement the smaller increase in Arizona.

3. Option to implement the rate increase determined unreasonable. Within 10 business days after the health insurer either implements the rate increase that the Department determined unreasonable, or receives from CMS the Department's determination, the health insurer shall:
   a. Submit, to the Department and to CMS, a final justification in response to the Department's determination. The information in the final justification shall be the same as the information submitted by the insurer under R20-6-2302(A)(1) and (2) in the preliminary justification supporting the rate increase; and
   b. Prominently post on its website, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
      i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
      ii. The health insurer's final justification for implementing the rate increase.
   c. Continue to make the information in subsection (3)(b) available to the public on its website for at least three years.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2305. Threshold Rate Increase Documentation Requirements

A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
2. The health insurer's data related to past projections and actual experience.

B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
1. The impact of medical trend changes by major service categories;
2. The impact of utilization changes by major service categories;
3. The impact of cost-sharing changes by major service categories;
4. The impact of benefit changes;
5. The impact of changes in enrollee risk profile;
6. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
7. The impact of changes in reserve needs;
8. The impact of changes in administrative costs related to programs that improve health care quality;
9. The impact of changes in other administrative costs;
10. The impact of changes in applicable taxes, licensing or regulatory fees;
11. Medical loss ratio;
12. The health insurance insurer's capital and surplus; and
13. Other relevant documentation at the discretion of the Director.

C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
1. The health insurer submits the preliminary justification required under R20-6-2302, or
2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

R20-6-2401. Definitions

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.
1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.
5. "A.R.S. § 20-3113 Disclosure" means a written, dated document that contains the following information:
   a. The name of the billing health care provider;
   b. A statement that the health care provider is not a contracted provider;
   c. The estimated total cost to be billed by the health care provider or the provider's representative for the health care services being provided;
   d. A notice that the enrollee or the enrollee's authorized representative is not required to sign the A.R.S. § 20-3113 Disclosure to obtain health care services;
   e. A notice that if the enrollee or the enrollee's authorized representative signs the A.R.S. § 20-3113 Disclosure, they may have waived any rights to request

arbitration of a qualifying surprise out-of-network bill.

6. "Balance bill" means all charges that exceed the enrollee's cost sharing requirements and the amount paid by the insurer.
7. "Date of service" means the latest date on which the health care provider rendered a related health care service that is the subject of a qualifying surprise out-of-network bill.
8. "Days" as used in this Article means calendar days unless specified as business days and does not include the day of the filing of a document.
9. "Department" means the Arizona Department of Insurance or an entity with which it contracts to administer the out-of-network claim dispute resolution process.
10. "Enrollee's authorized representative" means a person to whom an enrollee has given express written consent to represent the enrollee, the enrollee's parent or legal guardian, a person appointed by the court to act on behalf of the enrollee or the enrollee's legal representative. An enrollee's authorized representative shall not be someone who represents the provider's interests.
11. "Final resolution of a health care appeal" means that a member has a final decision under the review process provided by A.R.S. Title 20, Chapter 15, Article 2.
12. "Informal Settlement Teleconference" means a teleconference arranged by the Department that is held to settle the enrollee's qualifying surprise out-of-network bill prior to an Arbitration being scheduled. The parties to the Informal Settlement Teleconference are: (a) the enrollee or the enrollee's authorized representative; (b) the health insurer; and (c) the provider or the provider's representative.
13. "Qualifying surprise out-of-network bill" is a surprise out-of-network bill for health care services provided on or after January 1, 2019, that is disputed by the enrollee and:
    a. Is for health care services covered by the enrollee's health plan;
    b. Is for health care services provided in a network health care facility;
    c. Is for health care services performed by a provider who is not contracted to participate in the network that serves the enrollee's health plan;
    d. The enrollee has resolved any health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, that the enrollee may have had against the insurer following the health insurer's initial adjudication of the claim;
    e. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the surprise out-of-network bill or the health care services provided;
    f. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least $1,000.00; and
    g. One of the following applies:
        i. The bill is for emergency services, including under circumstances described by A.R.S. § 20-2803(A);
        ii. The bill is for health care services directly related to the emergency services that are provided during an inpatient admission to any network facility;
        iii. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure:
        iv. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure within a reasonable amount of time before the enrollee received the service;
        v. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative chose not to sign the Disclosure;
        vi. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative signed the Disclosure but the amount actually billed to the enrollee is greater than the estimated cost provided in the signed Disclosure.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2402. Request for Arbitration

A. Request for Arbitration. An enrollee may request dispute resolution of a surprise out-of-network bill by filing a timely Request for Arbitration with the Department on a Request for Arbitration form available on the Department's website.

B. Deadline for filing a Request for Arbitration with the Department. A Request for Arbitration must be received by the Department within one year after the date of service listed on the surprise out-of-network bill. If the enrollee filed a health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, the one year deadline is tolled from the date the enrollee filed the health care appeal to the date of the final resolution of the appeal.

C. Evaluation of the Request for Arbitration by the Department. Within 15 days after receipt of a Request for Arbitration, the Department shall do one of the following:
1. Determine that the surprise out-of-network bill is a qualifying surprise out-of-network bill and notify the enrollee, health insurer and health care provider that the Request for Arbitration qualifies for Arbitration;
2. Determine that the surprise out-of-network bill is not a qualifying surprise out-of-network bill and notify the enrollee of the reason for the Department's determination;
3. Determine that the Request for Arbitration is incomplete; or

4. Return the Request for Arbitration to the enrollee without making a determination if the enrollee's request should instead be filed as a health care appeal within the meaning of A.R.S. Title 20, Chapter 15, Article 2.

D. Request for additional information for an incomplete Request for Arbitration. If the Department determines that the Request for Arbitration is incomplete, the Department may send a written request for additional information to the enrollee, health insurer, health care provider or health care provider's billing company.

E. Time to respond to the Department's Request for Additional Information. The enrollee, health insurer, health care provider or the health care provider's billing company shall have 15 days from the date of the request to respond to the Department's Request for Additional Information.

F. Failure to respond to the Department's Request for Additional Information.
1. If the enrollee fails to respond to the Department's Request for Additional Information, the Department shall deny the enrollee's Request for Arbitration.
2. If either the health insurer or the health care provider or health care provider's billing company fail to respond to the Department's Request for Additional Information, the Department shall deem that the enrollee's Request for Arbitration qualifies for arbitration.

G. Receipt of Additional Information. Upon receipt of the additional information requested by the Department under subsection (D) of this Section, the Department shall determine, within seven days, whether the enrollee's Request for Arbitration qualifies for Arbitration and send the notice required under subsection (C)(1) or subsection (C)(2) of this Section, whichever applies.

H. Final Determination. The Department's determination whether an enrollee's Request for Arbitration qualifies for Arbitration is a final decision and not an appealable agency action within the meaning of A.R.S. § 41-1092(3). A claim that is the subject of a qualifying surprise out-of-network bill is not subject to the timely payment of claims law during the pendency of the Arbitration.

I. Enrollee's payment responsibility.
1. Notwithstanding any informal settlement or Arbitrator's Final Written Decision, the enrollee is responsible for only the following:
   a. The amount of the enrollee's cost sharing requirements; and
   b. Any amount received by the enrollee from the enrollee's health insurer as payment for the health care services at issue in a qualifying surprise out-of-network bill.
2. A health care provider may not issue, either directly or indirectly through its billing company, any additional balance bill to the enrollee for the same health care services.

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2403. Informal Settlement Teleconference

A. Deadline to arrange the Informal Settlement Teleconference. Upon a determination that an enrollee has made a Request for Arbitration that qualifies for Arbitration, the Department shall arrange an Informal Settlement Teleconference between the parties within 30 days of notifying the enrollee that the enrollee's Request for Arbitration qualifies for Arbitration required by Section R20-6-2402(C)(1).

B. Notice of Informal Settlement Teleconference. At least 14 days prior to the scheduled date, the Department shall send a Notice of Informal Settlement Teleconference to the enrollee, the enrollee's authorized representative, the health insurer, the health care provider and the health care provider's representative informing them of the date, time and instructions on how to participate in the Informal Settlement Teleconference.

C. Health Insurer documentation. On or before the Informal Settlement Teleconference, the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the qualifying surprise out-of-network bill.

D. Consequences of non-participation in the Informal Settlement Teleconference. If a party fails to participate in the Informal Settlement Teleconference, it shall be subject to the following consequences:
1. If the health insurer, provider or provider's representative fails to participate in an Informal Settlement Teleconference scheduled by the Department, the participating party may notify the Department which shall promptly schedule the Arbitration. The non-participating party shall pay the entire cost of the Arbitration.
2. If the enrollee or the enrollee's authorized representative fails to participate in the original Informal Settlement Teleconference, the original Informal Settlement Teleconference is terminated.
3. If the enrollee or the enrollee's authorized representative fails to participate in a rescheduled Informal Settlement Teleconference, the enrollee's Request for Arbitration is terminated.

E. One-time opportunity for the enrollee to reschedule the Informal Settlement Teleconference. If the enrollee or the enrollee's representative fails to participate in the Informal Settlement Teleconference originally scheduled by the Department, the enrollee may request that the Department reschedule the Informal Settlement Conference. The enrollee's request to reschedule must be received by the Department within 14 days after the originally scheduled Informal Settlement Teleconference. Failure to submit a request to the Department to reschedule the Informal Settlement Teleconference within the 14 day period terminates the enrollee's Request for Arbitration.

F. Notification to the Department after the Informal Settlement Teleconference. Within seven days after the date of the Informal Settlement Teleconference, the health insurer shall:
1. Notify the Department whether a settlement was reached between the parties; and
2. If a settlement was reached, notify the Department of the terms of the settlement on a form prescribed by the Department.

G. Failure to settle. If the parties fail to settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the Department shall arrange for the Arbitration.

H. Settlement. If the parties settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the health insurer shall remit its portion of the payment to the health care provider within 30 days after the Informal Settlement Teleconference. A claim that is reprocessed by a health insurer as a result of informal settlement is not in violation of A.R.S. § 20-3102(L).

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2404. Arbitrators

A. Contracted entities. The Department shall contract with one or more persons to provide Arbitrators. The Department must have a list of at least four Arbitrators to assign to Arbitrations. The Department shall publish the list of contracted entities and a list of each entity's qualified Arbitrators on its website.

B. Arbitrator Qualifications. Any person contracting with the Department must be able to provide Arbitrators who possess at least three years of experience in health care services claims.

C. Alternative Arbitrators. A health insurer and provider may mutually agree to use an Alternative Arbitrator if either the health insurer or the health care provider objects to an Arbitrator appointed by the Department.

D. Appointment of an Arbitrator.

1. The Department shall appoint an Arbitrator for each Arbitration.
2. If the health insurer and health care provider do not agree to the Arbitrator appointed by the Department, they shall either:
   a. Mutually agree to use an Alternative Arbitrator; or
   b. Participate in the following procedure:
      i. The Department shall assign three Arbitrators.
      ii. The health insurer shall strike one Arbitrator.
      iii. The health care provider shall strike one Arbitrator.
      iv. If one Arbitrator remains, the Department shall appoint the remaining Arbitrator to the Arbitration.
      v. If the health insurer and health care provider strike the same Arbitrator, the Department shall randomly assign the Arbitrator from the remaining two Arbitrators.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2405. Before the Arbitration

A. Enrollee's duties. Before the Arbitration, the enrollee shall:

1. Pay or make arrangements in writing to pay to the health care provider the amount stated by the health insurer in the Informal Settlement Teleconference which shall be the total amount of the enrollee's cost sharing requirements due for the health care services that are the subject of the qualifying surprise out-of-network bill.
2. Pay to the health care provider any amount that the enrollee has received from the health insurer as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.

B. Health insurer's duties. Before the Arbitration, the health insurer shall remit any amount due to the health care provider if the health care insurer pays for out-of-network services directly to health care providers and the health insurer has not remitted any amounts due.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2406. The Arbitration

A. Conduct of Arbitration. An Arbitration of a qualifying out-of-network surprise bill shall be conducted:

1. Telephonically unless the parties agree otherwise;
2. With or without the enrollee's participation;
3. Within 120 days after the Department's Notice of Arbitration unless agreed otherwise by the parties; and
4. For a maximum duration of four hours unless agreed otherwise by the parties.

B. Arbitrator's Determination. The Arbitrator or Alternative Arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.

C. Allowable Evidence. The Arbitrator or Alternative Arbitrator shall allow each party to provide relevant information for evaluating the qualifying surprise out-of-network bill including:

1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care provider performed the health care services;
2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the health care provider performed the services;
3. The amount Medicare and Medicaid pay for the health care services at issue;
4. The health care provider's direct pay rate for the health care services at issue, if any, under A.R.S. § 32-3216;
5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area; and
6. Any other reliable sources of information, including databases, that provide the amount paid for the health care services at issue in the county where the health care provider performed the services.

D. Final Written Decision. Within 10 business days following the Arbitration, the Arbitrator or Alternative Arbitrator shall issue a Final Written Decision and provide a copy to the enrollee, the health insurer, the health care provider, the health care provider's billing company (if applicable) and the health care provider's authorized representative (if applicable).

E. Payment of the claim. The health insurer shall remit its portion of the payment awarded by the Arbitrator or Alternative Arbitrator to the health care provider within 30 days of the date of the Final Written Decision. A claim that is reprocessed by a health insurer as a result of the Arbitration is not in violation of A.R.S. § 20-3102(L).

F. Payment of the Costs of Arbitration. The health insurer and health care provider shall make payment arrangements with the Arbitrator or Alternative Arbitrator to pay their respective shares of the costs of the Arbitration within 30 days after the date of the Final Written Decision. The respective shares of the costs of Arbitration are determined as follows:

1. The enrollee is not responsible for any portion of the cost of the Arbitration.
2. The health insurer and the health care provider shall share the costs of the Arbitration equally unless one of the following exceptions applies:
   a. The health insurer and health care provider agree to share the costs of the Arbitration in non-equal portions.
   b. The health insurer pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.

c. The health care provider or the health care provider's representative pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.

G. Confidentiality. In connection with the Arbitration of a qualifying surprise out-of-network bill, all of the following apply:

1. All pricing information provided by a health insurer or health care provider is confidential.
2. Pricing information provided by a health insurer or health care provider may not be disclosed by the Arbitrator, Alternative Arbitrator or any other party participating in the Arbitration.
3. Pricing information provided by a health insurer or health care provider may not be used by anyone, except the party providing the information, for any purpose other than to resolve the qualifying surprise out-of-network bill.
4. All information received by the Department in connection with the Arbitration is confidential and may not be disclosed to any person except the Arbitrator or Alternative Arbitrator.

H. Arbitrator's Report. At the conclusion of each Arbitration, the Arbitrator shall produce a report to the Department that contains the following information:

1. Date of Arbitration;
2. Date the Arbitrator issued the Final Written Decision;
3. Whether the parties settled the qualifying surprise out-of-network bill during the Arbitration;
4. The initial amount billed by the health care provider;
5. The payment amount awarded to the health care provider; and
6. Any other information the Department may request an Arbitrator to report prior to an Arbitration.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

Authorizing Statute: A.R.S. § 20-143

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.

Implementing Statute for R20-6-205: A.R.S. § 20-230(A)

20-230. Retaliation

A. When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions are imposed on insurers domiciled in this state doing business, or that might seek to do business in such other state or country, or on the agents of such insurers, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed on similar insurers domiciled in such other state or foreign country under the statutes of this state, as long as such laws continue in force or are so applied, the same obligations, prohibitions and restrictions of whatever kind shall be imposed on similar insurers domiciled in such other state or foreign country doing business in this state. Any tax, license or other obligation imposed by any city, county or other political subdivision of a state or foreign country on insurers of this state or their agents shall be deemed to be imposed by such state or foreign country within the meaning of this section. For the purpose of this section, the director shall compute the burden of any tax, license or other obligation imposed by any city, county or other political subdivision of a state or foreign country on insurers of this state or their agents on an aggregate statewide or foreign countrywide basis as an addition to the rate of tax payable by Arizona insurers in such state or foreign country. The addition to the rate of tax payable by Arizona life insurers shall be calculated separately from the addition to the rate of tax payable by other Arizona insurers. In each case, the addition to the rate of tax payable by Arizona insurers shall be calculated by dividing the aggregate of the tax obligations paid by Arizona insurers to any such city, county or other political subdivision of such state or foreign country by the aggregate of their taxable premiums under the premium taxing statute of such state or foreign country. The director may issue rules to carry out the purpose of this section. This section does not apply to ad valorem taxes on real or personal property or to personal income taxes or to assessments on or credits to insurers for the payment of claims of policyholders of insolvent insurers. This subsection does not apply to insurers that do business in this state and that are domiciled in another state or foreign country that does not impose retaliatory taxes, or whose laws, on a reciprocal basis, exempt from retaliatory taxes similar insurers domiciled in this state doing business, or that might seek to do business in the other state or foreign country.

B. If an insurer domiciled in this state is refused authority to transact insurance in another state on a plan and in a manner that is permitted for domestic insurers of such other state, notwithstanding that the insurer of this state is fully qualified for such authority in accordance with the applicable laws of such other state, and if such refusal is not accompanied by a written statement of the grounds therefor, then and thereafter, and for as long as such refusal shall continue, the director may refuse to grant an initial certificate of authority, but not a renewal of an existing certificate of authority, to any insurer domiciled in such other state that may seek to transact in this state a like kind or kinds of insurance.

Implementing Statute for R20-6-604: A.R.S. § 20-1615

20-1615. Rules

In the manner prescribed by section 20-143, the director may make reasonable rules as the director deems appropriate for proper administration of this article.

Implementing Statute for R20-6-801: A.R.S. § 20-461(C)

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.

Implementing Statute for R20-6-1003 and Appendix B: A.R.S. § 20-1691.02

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.

Implementing Statute for R20-6-2002: A.R.S. § 20-1098.14

20-1098.14. Rules

The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.

Implementing Statute for R20-6-2401: A.R.S. §§ 20-142(B), 20-3111 through 20-3119

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.

20-3111. Definitions

In this article, unless the context otherwise requires:

1. "Arbitration" means a dispute resolution process in which an impartial arbitrator determines the dollar amount a health care provider is entitled to receive for payment of a surprise out-of-network bill.

2. "Arbitrator" means an impartial person who is appointed to conduct an arbitration.

3. "Billing company" means any affiliated or unaffiliated company that is hired by a health care provider or health care facility to coordinate the payment of bills with health insurers and to generate or bill and collect payment from enrollees on the health care provider's or health care facility's behalf.

4. "Contracted provider" means a health care provider that has entered into a contract with a health insurer to provide health care services to the health insurer's enrollees at agreed on rates.

5. "Cost sharing requirements" means an enrollee's applicable out-of-network coinsurance, copayment and deductible requirements under a health plan based on the adjudicated claim.

6. "Emergency services" has the same meaning prescribed in section 20-2801.

7. "Enrollee" means an individual who is eligible to receive benefits through a health plan.

8. "Health care facility" has the same meaning prescribed in section 36-437.

9. "Health care provider" means a person who is licensed, registered or certified as a health care professional under title 32 or a laboratory or durable medical equipment provider that furnishes services to a patient in a network facility and that separately bills the patient for the services.

10. "Health care services" means treatment, services, medications, tests, equipment, devices, durable medical equipment, laboratory services or supplies rendered or provided to an enrollee for the purpose of diagnosing, preventing, alleviating, curing or healing human disease, illness or injury.

11. "Health insurer" means a disability insurer, group disability insurer, blanket disability insurer, hospital service corporation or medical service corporation that provides health insurance in this state.

12. "Health plan" means a group or individual health plan that finances or furnishes health care services and that is issued by a health insurer.

13. "Network facility" means a health care facility that has entered into a contract with a health insurer to provide health care services to the health insurer's enrollees at agreed on rates.

14. "Surprise out-of-network bill" means a bill for a health care service that was provided in a network facility by a health care provider that is not a contracted provider and that meets one of the requirements listed in section 20-3113.

20-3112. Applicability

This article does not apply to:

1. Health care services that are not covered by the enrollee's health plan.

2. Limited benefit coverage as defined in section 20-1137.

3. Charges for health care services that are subject to a direct payment agreement under section 32-3216 or 36-437.

4. Health plans that do not include coverage for out-of-network health care services, unless otherwise required by law.

5. State health and accident coverage for full-time officers and employees of this state and their dependents that is provided pursuant to title 38, chapter 4, article 4.

6. A self-funded or self-insured employee benefit plan if the regulation of that plan is preempted by the employee retirement income security act of 1974 (P.L. 93-406; 88 Stat. 829; 29 United States Code section 1144(b)).

20-3113. Surprise out-of-network bill; requirements; notice

A. A bill for a health care service that was provided in a network facility by a health care provider that is not a contracted provider must meet one of the following requirements to qualify as a surprise out-of-network bill:

1. The bill was for emergency services, including under circumstances described by section 20-2803, subsection A and health care services directly related to the emergency services that are provided during an inpatient admission to any network facility.

2. The bill was for a health care service that was not provided in the case of an emergency and the health care provider or the provider's representative did not provide to the enrollee, or did not provide to the enrollee within a reasonable amount of time before the enrollee received the services, a written dated disclosure that contained the following information:

(a) Notice that contains the name of the billing health care provider and that states the health care provider is not a contracted provider.

(b) The estimated total cost to be billed by the health care provider or the provider's representative.

(c) Notice that the enrollee or the enrollee's authorized representative is not required to sign the disclosure to obtain medical care but if the enrollee or the enrollee's representative signs the disclosure, the enrollee may have waived any rights to dispute resolution under this article.

3. The bill was for a health care service that was not provided in the case of an emergency and the enrollee received the disclosure prescribed in paragraph 2 of this subsection, but the enrollee or the enrollee's authorized representative chose not to sign the disclosure.

B. Notwithstanding any provision of this article, a health insurer and any health plan offered by a health insurer shall comply with chapter 17, article 1 of this title.

20-3114. Dispute resolution; settlement teleconference; arbitration; surprise out-of-network bills

A. An enrollee who has received a surprise out-of-network bill and who disputes the amount of the bill may seek dispute resolution of the bill by filing a request for arbitration with the department not later than one year after the date of service noted in the surprise out-of-network bill, except as otherwise provided in this section, if all of the following apply:

1. The enrollee has resolved any health care appeal pursuant to chapter 15, article 2 of this title that the enrollee may have had against the health insurer following the health insurer's initial adjudication of the claim. The one-year time period for requesting arbitration is tolled from the date that the enrollee files a health care appeal until the date of final resolution of the appeal.

2. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the same surprise out-of-network bill or the health care services provided.

3. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least one thousand dollars.

B. If an enrollee requests dispute resolution of a surprise out-of-network bill, the enrollee or the enrollee's authorized representative shall participate in an informal settlement teleconference and may participate in the arbitration of the bill. If the enrollee or enrollee's authorized representative fails to attend the informal settlement teleconference, the conference shall be terminated and the enrollee, within fourteen days after the first scheduled informal settlement teleconference, may request that the department reschedule the informal settlement teleconference. If the enrollee does not request that the department reschedule the informal settlement teleconference, the enrollee forfeits the right to arbitrate the surprise out-of-network bill. The health care provider or the provider's representative and the health insurer shall participate in the informal settlement teleconference and the arbitration.

C. An enrollee may not seek dispute resolution of a bill if the enrollee or the enrollee's authorized representative signed the disclosure prescribed in section 20-3113, subsection A, paragraph 2 and the amount actually billed to the enrollee is less than or equal to the estimated total cost provided in the disclosure.

20-3115. Conduct of arbitration proceedings

A. The department shall develop a simple, fair, efficient and cost-effective arbitration procedure for surprise out-of-network bill disputes and specify time frames, standards and other details of the arbitration proceeding, including procedures for scheduling and notifying the parties of the settlement teleconference required by subsection E of this section. The department shall contract with one or more entities to provide arbitrators who are qualified under section 20-3116 for this process. Department staff may not serve as arbitrators.

B. An enrollee may request arbitration of a surprise out-of-network bill by submitting a request for arbitration to the department on a form prescribed by the department, which shall include contact, billing and payment information regarding the surprise out-of-network bill and any other information the department believes is necessary to confirm that the bill qualifies for arbitration. The form shall be made available on the department's website.

C. Within fifteen days after receipt of a request for arbitration, the department shall do one of the following:

1. Determine that the surprise out-of-network bill qualifies for arbitration under this article and notify the enrollee, health insurer and health care provider that the request qualifies.

2. Determine that the surprise out-of-network bill does not qualify for arbitration under this article and notify the enrollee that the surprise out-of-network bill does not qualify and state the reason for the determination.

3. If the department cannot determine whether the surprise out-of-network bill qualifies for arbitration, request in writing any additional information from the enrollee, health insurer or health care provider or its billing company that is needed to determine whether the surprise out-of-network bill qualifies for arbitration and all of the following apply:

(a) The enrollee, health insurer or health care provider or its billing company shall respond to the department's request for additional information within fifteen days after the date of the department's request.

(b) Within seven days after receipt of the additional requested information, the department shall determine whether the surprise out-of-network bill qualifies for arbitration and send the notices required under this subsection.

(c) If the health insurer or health care provider or its billing company fails to respond within the time frame specified in subdivision (a) of this paragraph to a department request for information, the department shall deem the request for arbitration as eligible for arbitration. If the enrollee

fails to respond within the time frame specified in subdivision (a) of this paragraph, the request for arbitration is denied.

D. The determination by the department of whether a surprise out-of-network bill qualifies for arbitration is a final and binding decision with no right of appeal to the department. The department's determination is solely an administrative remedy and does not bar any private right or cause of action for or on behalf of any enrollee, provider or other person. The court shall decide the matter, including any interpretation of statute or rule, without deference to any previous determination that may have been made on the question by the department.

E. In an effort to settle the surprise out-of-network bill before arbitration, the department shall arrange an informal settlement teleconference within thirty days after the department sends the notices required by this section. The department is not a party to and may not participate in the informal settlement teleconference. As part of the settlement teleconference the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the adjudicated claim. The insurer shall notify the department whether the informal settlement teleconference resulted in settlement of the disputed surprise out-of-network bill and, if settlement was reached, notify the department of the terms of the settlement within seven days.

F. If after proper notice from the department or contracted entity either the health insurer or health care provider or the provider's representative fails to participate in the teleconference, the other party may notify the department to immediately initiate arbitration and the nonparticipating party shall be required to pay the total cost of the arbitration.

G. On receipt of notice that the dispute has not settled or that a party has failed to participate in the teleconference, the department shall appoint an arbitrator and shall notify the parties of the arbitration and the appointed arbitrator. The department's notice shall specify whether one party is responsible for the total cost of the arbitration pursuant to subsection F of this section. The health insurer and health care provider must agree on the arbitrator and may mutually agree to use an arbitrator who is not on the department's list. If either the health insurer or health care provider objects to the arbitrator, and the parties are unable to agree on a mutually acceptable alternative arbitrator, the department or contracted entity shall randomly assign three arbitrators. The health insurer and the health care provider shall each strike one arbitrator, and the last arbitrator shall conduct the arbitration unless there are two arbitrators remaining, in which case the department or contracted entity shall randomly assign the arbitrator.

H. Before the arbitration:

1. The enrollee shall pay or make arrangements in writing to pay the health care provider the total amount of the enrollee's cost sharing requirements that is due for the health care services that are the subject of the surprise out-of-network bill as stated by the health insurer in the settlement teleconference.

2. The enrollee shall pay any amount that has been received by the enrollee from the enrollee's health insurer as payment for the out-of-network health care services that were provided by the health care provider.

3. If a health insurer pays for out-of-network health care services directly to a health care provider, the health insurer that has not remitted its payment for the out-of-network health care services shall remit the amount due to the health care provider.

I. Arbitration of any surprise out-of-network bill shall be conducted telephonically unless otherwise agreed by all of the required participants.

J. Arbitration of the surprise out-of-network bill shall take place with or without the enrollee's participation.

K. The arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services. The arbitrator shall allow each party to provide information the arbitrator reasonably determines to be relevant in evaluating the surprise out-of-network bill, including the following information:

1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care services were performed.

2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the services were performed.

3. The amount that medicare and medicaid pay for the health care services at issue.

4. The health care provider's direct pay rate for the health care services at issue, if any, under section 32-3216.

5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area.

6. Any other reliable databases or sources of information on the amount paid for the health care services at issue in the county where the services were performed.

L. Except on the agreement of the parties participating in the arbitration, the arbitration shall be conducted within one hundred twenty days after the department's notice of arbitration.

M. Except on the agreement of the parties participating in the arbitration, the arbitration may not last more than four hours.

N. The arbitrator shall issue a final written decision within ten business days following the arbitration hearing. The arbitrator shall provide a copy of the decision to the enrollee, the health insurer and the health care provider or its billing company or authorized representative.

O. All pricing information provided by health insurers and health care providers in connection with the arbitration of a surprise out-of-network bill is confidential and may not be disclosed by the arbitrator or any other party participating in the arbitration or used by anyone, other than the providing party, for any purpose other than to resolve the surprise out-of-network bill.

P. All information received by the department or contracted entity in connection with an arbitration is confidential and may not be disclosed by the department or contracted entity to any person other than the arbitrator.

Q. A claim that is the subject of an arbitration request is not subject to article 1 of this chapter during the pendency of the arbitration. A health insurer shall remit its portion of the payment resulting from the informal settlement teleconference or the amount awarded by the arbitrator within thirty days after resolution of the claim.

R. A claim that is reprocessed by an insurer as a result of a settlement, arbitration decision or other action under this article is not in violation of section 20-3102, subsection L.

S. Notwithstanding any informal settlement or the arbitrator's decision under this article, the enrollee is responsible for only the amount of the enrollee's cost sharing requirements and any amount received by the enrollee from the enrollee's health insurer as payment for the out-of-network health care services that were provided by the health care provider, and the health care provider may not issue, either directly or through its billing company, any additional balance bill to the enrollee related to the health care service that was the subject of the informal settlement teleconference or arbitration.

T. Unless all the parties otherwise agree or unless required by subsection F of this section, the health insurer and the health care provider shall share the costs of the arbitration equally, and the enrollee is not responsible for any portion of the cost of the arbitration. The health insurer and health care provider shall make payment arrangements with the arbitrator for their respective share of the costs of the arbitration.

20-3116. Arbitrator qualifications

To qualify as an arbitrator, a person shall have at least three years' experience in health care services claims and shall comply with any other qualifications established by the department.

20-3117. Dispute resolution; notice of rights

A. The department in conjunction with the appropriate health care boards shall prescribe the notice outlining an enrollee's rights to dispute surprise out-of-network bills under this article.

B. Health insurers shall include the notice prescribed pursuant to subsection A of this section in each explanation of benefits or other similar claim adjudication notice that is issued to enrollees and that involves covered services provided by a noncontracted health care provider.

C. If an enrollee contacts a health care provider, a provider's representative or a billing company regarding a dispute involving a surprise out-of-network bill, the health care provider, the provider's representative or the billing company shall provide written notice as prescribed in subsection A of this section to the enrollee of the dispute resolution process.

D. The department shall post on its website information for health care consumers regarding what constitutes a surprise out-of-network bill, how to try to avoid a surprise out-of-network bill and how the dispute resolution process may be used to resolve a surprise out-of-network bill.

20-3118. Surprise out-of-network bills; annual report

A. On or before December 31, 2019 and each December 31 thereafter, the department shall report on the resolution of disputed surprise out-of-network bills. The report shall include:

1. The total number of inquiries regarding dispute resolution of surprise out-of-network bills.

2. The total number of requests that did not qualify for dispute resolution and the reasons why the disputed bills did not qualify.

3. The number of requests that qualified for dispute resolution.

4. The most common requests for dispute resolution by health care provider specialty area.

5. The most common requests for dispute resolution by health care service.

6. The number of requests for dispute resolution by geographic area in this state.

7. The most common requests for dispute resolution based on the type of health care facility in which the health care services were provided.

8. The number of requests for dispute resolution that were settled during a settlement teleconference.

9. The number of requests for dispute resolution that were settled during arbitration.

10. The number of times a health insurer, a health care provider or the provider's representative or an enrollee failed to attend the settlement teleconference.

11. The average percentage by which disputed surprise out-of-network bills were reduced from the initially billed amount.

12. Any additional information that the department determines is relevant in evaluating the effectiveness of the dispute resolution process.

B. The department shall submit the report to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of the report to the secretary of state.

20-3119. Right of civil action

An enrollee who is aggrieved by an arbitration decision regarding a disputed surprise out-of-network bill may file a civil action in superior court not later than one year after the date of the disputed decision to obtain appropriate relief with respect to the same surprise out-of-network bill.

C-6.

ARIZONA MEDICAL BOARD
Title 4, Chapter 16

Amend: R4-16-401

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 5, 2023**

SUBJECT: **ARIZONA MEDICAL BOARD**
Title 4, Chapter 16

Amend: R4-16-401

Summary:

This regular rulemaking from the Arizona Medical Board (Board) relates to one (1) rule in Title 4, Chapter 16 related to Medical Assistant Training Requirements. The purpose of the Board is to "promote the safe and professional practice of allopathic medicine." Laws 2012, Ch. 10, § 3. The primary duty of the Board is to "protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state." A.R.S. § 32-1403(A). Here the Board is amending rule 401 to comply with statute and to allow for medical assistant training programs designed and offered by physicians.

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

The Board cites both authorizing and implementing statutes.

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

The rulemaking does not establish a new fee or contain a fee increase.

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

The Board states no study was reviewed or relied upon during the course of this rulemaking.

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

According to the Board, the economic impact of the rule amendment will be minimal because it simply makes the rule consistent with statute. A physician who wishes to exercise the option provided by the legislature and provide on-the-job training to a medical assistant will incur the cost of doing so but the rulemaking does not establish requirements other than those defined by the legislature.

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?

According to the Board, the rulemaking is neither intrusive nor costly. No alternative methods were considered.

6. What are the economic impacts on stakeholders?

There are currently 28,352 licensed physicians in Arizona. The Board is unable to estimate the number of physicians who may choose to provide on-the-job training to a medical assistant. Arizona physicians are not required to report any information to the Board regarding their employment and training of medical assistants. The Board does not license medical assistants but estimates there are 19,970 working in Arizona.

A physician who chooses to provide on-the-job training to a medical assistant will incur the cost of developing the training, ensuring it meets the statutory requirements, and providing the required supervision. The physician will benefit from having a medical assistant able to provide services, under supervision, during the process of training. A medical assistant receiving on-the-job training will benefit from being employed while training.

The Board incurred the cost of this rulemaking. The Board does not enforce training requirements for medical assistants. A physician or physician assistant is required to ensure a medical assistant is trained before offering employment. The Board will benefit from having rules that are consistent with statute.

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

The Board states no changes were made between the proposed and final rulemakings.

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

The Board states they received two written comments, both in support of the rulemaking, but one did request to broaden the definition of an approved training program. The Board states that broadening the definition of an approved training program would be inconsistent with statute as A.R.S. § 32-1456(D), specifically provides that an on-the-job training program be designed and offered by a physician.

In addition, a request was made to require medical assistants to pass an examination or have their credentials certified. The Board responded that an examination is not required by statute and that Medical Assistants are not certified by the state of Arizona.

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 permit or license.

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

The Board indicates that no federal laws apply and therefore the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Arizona Medical Board (Board) relates to one (1) rule in Title 4, Chapter 16 related to Medical Assistant Training Requirements. As stated above, the Board is amending the rule to comply with statute and allow for medical assistant training programs designed and offered by physicians.

The Board 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 Medical Board
1740 W. Adams, Phoenix, AZ 85007 • website: www.azmd.gov
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2707

August 23, 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 16. Arizona Medical Board

Dear Ms. Sornsin:

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

A. Close of record date: The rulemaking record was closed on June 16, 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 for this rulemaking was provided by Brian Norman, of the Governor's office, in an e-mail dated September 29, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated August 22, 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 not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on any in its evaluation of or justification for the 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 the rule in this rulemaking will not 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,

Patricia C. McSorley

Patricia McSorley
Executive Director

Encl.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

1. Identification of the rulemaking:

   Under Laws 2021, Chapter 259, the legislature amended A.R.S. § 32-1456 to require the Board to make a rule providing for a medical assistant training program designed and offered by a physician. The Board fulfills the statutory requirement in this rulemaking. An exemption from Executive Order 2022-01 for this rulemaking was provided by Brian Norman, of the Governor's Office, in an e-mail dated September 29, 2022. As required under A.R.S. § 41-1039(B), approval to submit this rule package to GRRC was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated August 22, 2023.

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

      Until the rulemaking is complete, the Board will not be in compliance with its statutory responsibilities.

   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 an agency to fail to fulfill responsibilities established by the legislature.

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

      When the rulemaking is complete, the Board will be in compliance with its statutory responsibilities.

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

   The economic impact of the rule amendment will be minimal because it simply makes the rule consistent with statute. A physician who wishes to exercise the option provided by the legislature and provide on-the-job training to a medical assistant will incur the cost of doing so but the rulemaking does not establish requirements other than those defined by the legislature.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

Name: Patricia McSorley, Executive Director
Address: Arizona Medical Board
1740 W Adams Street, Suite 4000
Phoenix, AZ 85007
Telephone: (480) 551-2700
Fax: (480) 551-2704
E-mail: patricia.mcsorley@azmd.gov
Web site: www.azmd.gov

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

Physicians who wish to provide on-the-job training to a medical assistant, a medical assistant to whom a physician provides on-the-job training, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 28,352 licensed physicians in Arizona. The Board is unable to estimate the number of physicians who may choose to provide on-the-job training to a medical assistant. Arizona physicians are not required to report any information to the Board regarding their employment and training of medical assistants. The Board does not license medical assistants but estimates there are 19,970 working in Arizona.

A physician who chooses to provide on-the-job training to a medical assistant will incur the cost of developing the training, ensuring it meets the statutory requirements, and providing the required supervision. The physician will benefit from having a medical assistant able to provide services, under supervision, during the process of training. A medical assistant receiving on-the-job training will benefit from being employed while training.

The Board incurred the cost of this rulemaking. The Board does not enforce training requirements for medical assistants. A physician or physician assistant is required to ensure a medical assistant is trained before offering employment. The Board will benefit from having rules that are consistent 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. Its cost and benefit are described in item 4. The Board will not need an additional full-time employee to implement or enforce the amended rule.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:
No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:
Physicians who choose to provide on-the-job training to a medical assistant 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 will have no direct impact on private or public employment. The statutory change allowing on-the-job training of medical assistants may enable some individuals to obtain employment as a medical assistant sooner than would otherwise be possible.

7. Impact on small businesses[2]:

a. Identification of the small business subject to the rulemaking:
Physicians who choose to provide on-the-job training to a medical assistant are small businesses subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:
The rule imposes no administrative or other costs for compliance. The rule simply provides an option specified in statute.

c. Description of methods that may be used to reduce the impact on small businesses:
The rule, which the Board is amending to make it consistent with a legislative change, has no direct impact on businesses, regardless of size. All impact results from the statutory change. As a result, it is not possible for the Board to reduce the impact on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:
The rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:
The rulemaking is neither intrusive nor costly. No alternative methods were considered.

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

PREAMBLE

1.	**Articles, Parts, and Sections Affected**	**Rulemaking Action**
	R4-16-401	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. § 32-1404(D)

Implementing statute: A.R.S. § 32-1456(D)

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. 3489, October 28, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3411, October 28, 2022

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

Name: Patricia McSorley, Executive Director

Address: Arizona Medical Board
1740 W Adams Street, Suite 4000
Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.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 259, the legislature amended A.R.S. § 32-1456 to require the Board to make a rule providing for a medical assistant training program designed and offered by a physician. The Board fulfills the statutory requirement in this rulemaking. An exemption from Executive Order 2022-01 for this rulemaking was provided by Brian Norman, of the Governor's Office, in an e-mail dated September 29, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated August 22, 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 a study in its evaluation of or justification for the 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 economic impact of the rule amendment is minimal because it simply makes the rule consistent with statute. A physician who wishes to exercise the option provided by the legislature and provide on-the-job training to a medical assistant will incur the cost of doing so.

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

No changes were made between the proposed and final rulemakings.

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

The Board received two written comments about the rulemaking. Nineteen individuals attended the oral proceeding on December 7, 2022. Most did not make comments. The comments made are addressed in the following table.

COMMENT	BOARD ANALYSIS	BOARD RESPONSE
Sean Housley of Lilac Ob-Gyn supported the amendment because he believes it will help to alleviate the dramatic undersupply of MAs.	The Board appreciates the comment.	No change
Kenzo Sanga of Honor Health asked that the definition of "approved training program" in R4-16-101be broadened to include programs designed and offered by any provider—a physician, surgeon, PA, nurse practitioner, nurse midwife, etc. and that someone who is qualified in this manner before the rule is amended be "grandfathered" as an MA.	The suggested change is inconsistent with A.R.S. § 32-1456(D), which specifically provides that an on-the-job training program be designed and offered by a physician.	No change
Donald Balisa of the American Association of Medical Assistants asked that language in R4-16-401(A)(2) regarding successfully passing a medical assistant examination administered by a certifying organization be added to R4-16-401(A)(3) regarding training designed and provided by a physician.	The suggested change is inconsistent with A.R.S. § 32-1456(D), which requires the entry-level competencies of an MA to be verified but does not require passing an examination.	No change
Karen Everitt of Mutual Insurance Company of Arizona expressed concern because the	The physician designed training does not require passing an examination. It requires only	No change

physician designed training "…still would allow a participant to pass a certifying exam or would be the equivalent of the education required through the certification process…"	that entry-level competencies be verified. Arizona does not certify MAs and does not require they be certified by any other entity.	
P Freeborn commented that the certification requirements for MAs be optional rather than required.	Medical Assistants are not certified by the state of Arizona and are not required to be certified by any other entity.	No change

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:

No. Medical assistants are not licensed or certified by the Board, are not certified by the state of Arizona, and are not required to be certified by any other entity.

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

No federal law is directly applicable to 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

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:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

ARTICLE 4. MEDICAL ASSISTANTS

Section

R4-16-401. Medical Assistant Training Requirements

ARTICLE 4. MEDICAL ASSISTANTS

R4-16-401. Medical Assistant Training Requirements

A. After the effective date of this Section, a supervising physician or physician assistant shall ensure that before a medical assistant is employed, the medical assistant completes ~~either~~ one of the following:

1. An approved training program identified in R4-16-101; ~~or~~
2. An unapproved training program and successfully passes the medical assistant examination administered by a certifying organization accredited by either the National Commission for Certifying Agencies or the American National Standards Institute~~.~~; or
3. A training program that meets the requirements of A.R.S. § 32-1456(D) and is designed and offered by a physician.

B. This Section does not apply to any person who:

1. Before February 2, 2000:
   a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
   b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or
2. Completes a United States Armed Forces medical services training program.

32-1404. Meetings; quorum; committees; rules; posting

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1456. Medical assistants; allowable tasks; training; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.

2. Administer injections.

B. The board by rule may prescribe other medical procedures that a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may do the following tasks:

1. Perform billing and coding.

2. Verify insurance.

3. Make patient appointments.

4. Perform scheduling.

5. Record a doctor's findings in patient charts and transcribe materials in patient charts and records.

6. Perform visual acuity screening as part of a routine physical.

7. Take and record patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements. The training requirements for a medical assistant may be satisfied through a training program that meets all of the following:

1. Is designed and offered by a physician.

2. Meets or exceeds any of the approved training program requirements specified in rule.

3. Verifies the entry-level competencies of a medical assistant as prescribed by rule.

4. Provides written verification to the individual of successful completion of the training program.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner or possesses written verification of successful completion of a training program provided pursuant to subsection D of this section.

[00:08:02.680] – Kristina Jensen

Okay, we are at 11:00. This is the time and place for discussion and public comment on the proposed rules for medical assistants.

[00:08:21.110] - Kristina Jensen

Got a couple people still joining the zoom session.

[00:08:40.810] - Kristina Jensen

Good morning, everyone. Good morning. So, as I was saying, we are going to get started here and having not done this by zoom previously with this many people wanting to speak on the topic, I think the easiest thing for me to do is just go through the list of names and ask if you have a comment. And if you would like to submit any documents, I'll give you an email address to submit those. And I'm still letting a couple of people in, so let's hang on for just a moment.

[00:09:19.810] – Kristina Jensen

And I didn't say but I'm Kristina Jensen. I'm the deputy director for the Arizona Medical Board.
Okay. We're still getting a few more, but I give it a couple more minutes. I trust everyone can hear me.
Okay, thank you.

[00:10:25.780] - Speaker 2

Yeah.

[00:10:52.480] – Kristina Jensen

Okay, for those of you that just joined and missed a couple of the comments that I'd made, I'm Kristina Jensen, I'm the deputy director for the medical board. We're at eleven A.m. now, on December 7. This is the time and place for comments on the proposed changes to the rules surrounding medical assistance. I'm going to go through the list of names and ask you if you have any comments. We are recording this and I won't be taking any questions. This is strictly to collect public comment and bring it to the board. So the first person up on my list is Amy Frederick. Do you wish to make a statement?

[00:11:54.240] – Amy Frederick

Hi, can you hear me okay?

[00:11:55.830] - Kristina Jensen

Yes.

[00:11:57.090] – Amy Frederick

No. I guess I was confused on this meeting. I thought we were going to hear the information back on the ruling of what was going to be upheld with the new changes going into effect. So clearly we would like it to follow it and have that lesser certification upheld as far as the different schooling. But if you could also, I think you said you were going to get the email out so we could send documentation. I would definitely like that.

[00:12:38.510] - Speaker 1

Absolutely. It's on the website if you don't catch it by my speaking and it's communications@AZMD gov.

[00:12:53.540] – Amy Frederick

Thank you so much.

[00:12:54.830] - Kristina Jensen

Absolutely, thank you. The next person on my list is Alyssa Jones. Would you care to speak on the medical assistance?

[00:13:07.110] – Alyssa Jones

I'm kind of in the same boat as Amy. I was thinking that this is going to be more of an informational meeting, but obviously having the lesser certification requirements would be ideal or creating an individual requirement per clinical provider. I don't know how to properly say that, but something to that effect to help, you know, obviously we're in a shortage and it would change things significantly for a lot of people.

[00:13:53.540] - Kristina Jensen

So Alyssa, did you get the email address then so you know where to send any written comments to?

[00:14:01.630] – Alyssa Jones

Yes, the communications@azmd.gov

[00:14:06.350] - Kristina Jensen

Correct.

[00:14:07.220] – Alyssa Jones

Perfect, thank you.

[00:14:09.810] - Kristina Jensen

Thank you very much. Next on the list, Marissa Guerrero. Would you like to make a comment today about the proposed changes to the rules?

[00:14:23.540] – Marissa Guerrero

Not at this time.

[00:14:25.260] - Kristina Jensen

Okay, thank you very much. Next on the list is B coppola.

BCoppola: Hi guys, sorry, I'm currently driving but I don't have any additional comments at this moment. Thank you.

Kristina Jensen - Thank you very much. I have a user, C as in Charlie 12609. Okay, no comments there. The next person on the list is d Balasa.

[00:15:16.360] – Donald Balisa

Yes. Thank you. My name is Donald Balisa. I'm the CEO and legal counsel of the American Association of Medical Assistant. We would like to request that in point number three, a three, the new language and training program that meets the requirements of the statute and is designed and offered by a physician. Our opinion would be that the language immediately above in some .2 should also be inserted at the end of this, namely the language starting with successfully into or and actually so it would read a training program that meets the requirements of the statute and is designed and offered by a physician, and the medical assistant successfully passes the medical assistant examination. Administered by a certifying organization accredited by either the NCCA or antsy. And our recommendation is that that be inserted after the current language of a three.

[00:16:33.090] - Kristina Jensen

Thank you very much. Do you have any further comments?

[00:16:37.210] – Donald Balisa

The rationale being that it would really make sense because of point number two, addressing unapproved training program completion and passing a test. That training program offered by a physician should also be followed by the passing of an examination by a Certifying body that's accredited.

[00:17:09.840] - Kristina Jensen

Okay, thank you very much. Do you have anything further?

[00:17:12.930] - Speaker 5

Nothing further.

[00:17:14.710] - Kristina Jensen

Thank you for speaking.

[00:17:19.440] - Kristina Jensen

Okay, moving down the list, and please forgive me if I mispronounce your name. It's g calvillo. Yes.

[00:17:35.610] – g calvillo

No questions at this time.

[00:17:37.100] - Kristina Jensen

Thank you. Thank you very much. Next on the list jane Langley. No questions ever. Okay, thank you. Next is Karen Everett.

[00:18:03.390] – Karen Everitt

Hi, I'm Karen Everit from Mutual Insurance Company of Arizona (MICA), and my comment is general in nature and not specific to the language. With the national shortage of medical assistance that does not appear to be getting better. We are concerned that the requirements for the physician designed training that still would allow a participant to pass a certifying exam or would be the equivalent of the education required through the certification process is still unobtainable by most. Practices in Arizona and does not necessarily alleviate medical practices in the state of the expense and time requirements for medical assistance or potential medical assistance to go through such training. We do support, however, establishing competency and ensuring the safety of patients in the state through appropriate training and appropriate use of medical assistance in the practices.

[00:20:01.500] - Kristina Jensen

Did you have anything further to add to your comments?

[00:20:05.000] – Karen Everitt

No, that's it. Thank you.

[00:20:07.010] - Kristina Jensen

Thank you for speaking. Moving on down the list, we have Kelsey. Kelsey, would you like to speak?

[00:20:23.360] - Kelsie

Hi, I have no additional comments or questions.

[00:20:27.190] - Kristina Jensen

Okay, thank you for attending. Next on the list, Linda.

[00:20:35.510] – Lynda Ojeda

Hi, I would like to know where can we find a list of the proposed changes in articles?

[00:20:42.560] - Kristina Jensen

If you look at azmd.gov, at the top, there's a tab that says Medical Assistant, and within that tab there's a link for you to look at. It has the proposed rule package.

[00:21:00.040] – Lynda Ojeda

Okay, thank you so much.

[00:21:02.530] - Kristina Jensen

Absolutely. Next is M. Martin. M. Martin, did you want to speak on the medical assistant rules? I can come back now. This one, I'm going to have to just spell it out. I'm not sure if it's a first and last or one name. M-L-I-S-L-A-S-

[00:21:56.640] – M Lislas

I don't have any comments or questions at this time.

[00:21:57.290] – Kristina Jensen

Okay. Thank you for attending. Molly Adrian. Nothing for me. Thank you. Thank you. P. Freeborn. Good morning. My only commas are that certification requirements for the Nas to be moved to optional and not required. Thank you. Thank you. Philip Williams.

[00:22:40.090] - PFreeborn

I don't have a lot to add, and I'm looking at the website now, and I guess I would ask for more clarification of why the rule change is proposed and what is kind of the history that led to the proposed change.

[00:22:59.140] – Kristina Jensen

The rule change is proposed because there was a change in statute and the rules need to comport with the statute change, which added a physician's ability to have a medical assistant training program. Does that answer your question?

[00:23:21.680] - PFreeborn

I think it does.

[00:23:23.630] – Kristina Jensen

Okay, thank you. Next is S. Jones.

[00:23:32.480] – S Jones

Nothing for me? Thank you.

[00:23:34.800] – Kristina Jensen

Thank you. And I have another one. V-O-S-O-R-I-O. Nothing for me? Thank you. Okay. Have I at least touched on each of you and requested information? If I missed somebody, please let me know. Okay, looks like we've done a pretty good job. So what we're going to do is I'll take this recording, we'll put it into a transcript form for the board to review, and then we will continue through the rule process. I thank you all for your interest and input. And if there is nothing further, we'll just conclude this meeting. Thank you. Thank you very much. Have a good day.

Dear Executive Director McSorley et. al.,

Thank you for the opportunity to provide input regarding the proposed amendment to R4-16-401.

The providers of our practice are in favor of the amendment. We emphatically support any temporary or permanent action which might help to ease the current dramatic undersupply of Medical Assistants. Perhaps due to COVID-19, we are unable to find an adequate supply of Medical Assistants in the marketplace. We appreciate that the proposed amendment will help with this concern.

Further, we underscore our support for any *additional action* which might responsibly ease the regulatory (or otherwise) restriction on the supply of Medical Assistants in Arizona.

Respectfully yours,
Sean Housley, Practice Administrator
Lilac Ob-Gyn
main: 480-459-2555
desk: 480-571-3737
www.lilacobgyn.com

Kenzo Sanga <ksanga@honorhealth.com>
Fri, Mar 18, 1:48 PM
to communications@azmd.gov

Situation

Employment of medical assistants is projected to grow 18 percent from 2020 to 2030 (720,900 to 853,500), which is at a much faster pace than the average for all occupations.
About 104,400 openings for medical assistants are projected each year, on average, over the decade. Many of those openings are expected to result from the need to replace workers who transfer to different occupations or exit the labor force.
Healthcare continues to struggle with staffing shortages of Medical Assistants (MAs). The MA-shortage negatively affects patient care and access (e.g., longer wait times, clinic closures, etc.).
Background

The Covid-19 pandemic has contributed to unprecedented staffing shortages in healthcare. This shortage of healthcare workers is being felt nationwide, including in Arizona. The MA shortage is noticeable and is disrupting patient care. For example, HonorHealth Medical Group (HHMG) urgent care clinics are being closed due to inadequate staffing, and patients are being rescheduled for virtual visits because MAs are limited. MAs are vital to every HHMG clinic, and there is a minimum MA number to provide patient care effectively and safely.
It is imperative to provide better access and options for available medical assistant training education programs accepted by the Board of Medical Examiners (BOMEX). This will help provide a wide range of MA training education programs to allow more people to enter the workforce quickly.
According to the National Student Clearinghouse, enrollment in community colleges, where many allied health professionals utilize as an educational resource to aid in entering the professional workforce for the

first time or look to change career paths, was down 10% in 2020 compared to 2019.
There are approximately 25 medical assistant education/training programs offered in Arizona; however, only seven schools in Arizona currently meet BOMEX criteria.
Cost of MA Certification and renewal continue to burden the MA workforce, and cost may discourage students from entering the MA workforce.
Assessment

Increasing the MA workforce is restricted by the current and recommended BOMEX guidelines required.
Effective policymaking requires better data collection and improved information infrastructure.
Recommendation

Rewrite R4-16-101. Definitions. to adopt a definition that is less restrictive to allow for a wide range of opportunities for education to become an MA within healthcare organizations. Broaden the qualifications of an “approved training program” and include programs that are:
Designed and offered by a provider (licensed physician or surgeon, physician assistant, nurse practitioner, or nurse midwife).
OR

Meets or exceeds any of the approved training program requirements specified in the rule.
AND

Verifies the entry-level competencies of medical assistants as prescribed by rule.
Rewrite R4-16-401. Medical Assistant Training Requirements to “grandfather” MAs who graduated from training programs who meet the new qualifications listed above prior the revision of the rule.

Kenzo Sanga, MSN, RN

Director of Outpatient Clinical Education

Medical Group

Phone: (480) 788-6406

KSanga@honohealth.com

C-7.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6

Amend: R9-6-1101, R9-6-1102, R9-6-1103, R9-6-1104

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **Oct 4, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6

Amend: R9-6-1101, R9-6-1102, R9-6-1103, R9-6-1104

Summary:

This expedited rulemaking from the Arizona Department of Health Services (DHS) or (Department) seeks to amend four (4) rules in Title 9, Chapter 6 related to STD Related Testing and Notification. Arizona Revised Statutes § 36-136(I)(1) requires DHS to "define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases." This includes requirements for court-ordered sexually transmitted disease (STD)-related testing. A.R.S. § 13-1415. This rulemaking intends to make the rules more clear, concise, and understandable, by updating language from "sexually transmitted diseases" or "STD" to "sexually transmitted infections" or "STI."

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

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A).The Department indicates the rules satisfy the

criteria for expedited rulemaking under ARS 41-1027 (A)(7), as the rulemaking amends rules to address issues identified in a five-year-review report approved by the Council on April 4, 2023.

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

The Department cites both authorizing and implementing statutes.

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

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

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

The Department states that no changes were made between the proposed and final rulemaking.

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

The Department states there are no federal rules applicable to the subject of the rule.

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

This rule does not require the issuance of a regulatory permit or license.

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

The Department did not review or rely on any study for this rulemaking

9. Conclusion

This expedited rulemaking from the Arizona Department of Health Services seeks to amend four rules in Title 9, Chapter 6 related to STD Related Testing and Notification. As stated above, this rulemaking intends to make the rules more clear, concise, and understandable, by updating language from "sexually transmitted diseases" or "STD" to "sexually transmitted infections" or "STI."

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

September 25, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, 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. 6, Article 11, Expedited Rulemaking - Communicable Diseases and Infestations

Dear Ms. Sornsin:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1052.

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

1. The close of record date: September 11, 2023

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of regulated persons. In the rulemaking, the Department is changing the rules to repeal obsolete requirements, as specified in A.R.S. § 41-1027(A)(6), and making other changes described in a course of action stated in a five-year-review report, as specified in A.R.S. § 41-1027(A)(7). In addition, the Department is making changes to update the language of the rules to language more commonly used in the healthcare field to further reduce the regulatory burden on regulated entities.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6 relates to a five-year review report approved by the Council on April 4, 2023.

4. A list of all items enclosed:

a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule;
b. Statutory authority; and
c. Current rules

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

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

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES –

COMMUNICABLE DISEASES AND INFESTATIONS

PREAMBLE

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

R9-6-1101	Amend
R9-6-1102	Amend
R9-6-1103	Amend
R9-6-1104	Amend

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Implementing statutes: A.R.S. § 36-136(I)(1)

3. **The effective date of the rules:**

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

4. **Citations to all related notices published in the *Register* that pertain to the record of the final expedited rulemaking:**

Notice of Docket Opening: 29 A.A.R. 1581, July 14, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1729, August 11, 2023

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

Name: Eugene Livar, Assistant Director

Address: Arizona Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 500
Phoenix, AZ 85007-3248

Telephone: (602) 364-3846

E-mail: Eugene.Livar@azdhs.gov

or

Name: Stacie Gravito, Interim Office Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to "define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases." A.R.S. § 13-1415 specifies requirements for court-ordered sexually transmitted disease (STD)-related testing. In accordance with A.R.S. § 41-1039(A), on June 13, 2023, the Governor's Office approved the Department's request to amend the STD-related Testing and Notification rules to address issues identified in a five-year-review-report and make the rules more clear, concise, and understandable, including updating language from "sexually transmitted diseases" or "STD" to "sexually transmitted infections" or "STI." In many cases, the terms "STI" and "STD" are used interchangeably, however using the terms "sexually transmitted infections" or "STI" are usually the more scientifically accurate terms, since not everyone with an infection develops symptoms, and there is technically no disease without symptoms. STIs are infections that have not yet developed into diseases and can include bacteria, viruses, or parasites, such as pubic lice, usually transmitted during sexual activities through an exchange of bodily fluids or skin-to-skin contact where the infection is active. Nonsexual activities in which bodily fluids are exchanged can also transmit STIs. For example, people who share needles can infect each other with HIV. Sexually transmitted diseases, or STDs, on the other hand, result from STIs, suggesting a more serious problem. All STDs start as infections. Pathogens enter the body and begin multiplying. When these pathogens disrupt normal body functions or damage structures in the body, they become STDs. However, some STIs may never develop into diseases. According to the American Sexual Health Association, a growing number of public health experts believe the term STD can mislead people because "disease" suggests a person has an obvious medical problem, which is not always the case. The changes to be made during this rulemaking will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to outdated terminology without compromising health and safety. This rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A)(7) to implement a course of action proposed in a

five-year-review report. The Department believes amending these rules will eliminate confusion and reduce regulatory burden.

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

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

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

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

No comments were received about this rulemaking.

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

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

There are no federal rules applicable to the subject of the rule.

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

other states:

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES – COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 11. ~~STD-RELATED~~ STI-RELATED TESTING AND NOTIFICATION

Sections

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES –

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 11. ~~STD-RELATED~~ STI-RELATED TESTING AND NOTIFICATION

R9-6-1101. Definitions

In this Article, unless otherwise specified:

1. "Primary syphilis" means the initial stage of syphilis infection characterized by the appearance of one or more open sores in the genital area, anus, or mouth of an infected individual.
2. "Secondary syphilis" means the stage of syphilis infection occurring after primary syphilis and characterized by a rash that does not itch, fever, swollen lymph glands, and fatigue in an infected individual.
3. ~~"Sexually transmitted diseases" means the same as in A.R.S. § 13-1415.~~
4. ~~"STD" means a sexually transmitted disease or other disease that may be transmitted through sexual contact.~~
3. "Sexually transmitted infections" or "STI" means the same as "sexually transmitted diseases" in A.R.S. § 13-1415 or other diseases that may be transmitted through sexual contact.

R9-6-1102. Health Care Provider Requirements

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an ~~STD~~ STI, the ordering health care provider or the ordering health care provider's designee shall:

1. Describe the test results to the subject;
2. Provide or arrange for the subject to receive the following information about the ~~STD~~ STI for which the subject was tested:
    a. A description of the ~~disease~~ infection or syndrome caused by the ~~STD~~ STI, including its symptoms;
    b. Treatment options for the ~~STD~~ STI and where treatment may be obtained;
    c. A description of how the ~~STD~~ STI is transmitted to others;
    d. A description of measures to reduce the likelihood of transmitting the ~~STD~~ STI to others and that it is necessary to continue the measures until the infection is eliminated;
    e. That it is necessary for the subject to notify individuals who may have been infected by the subject that the individuals need to be tested for the ~~STD~~ STI;
    f. The availability of assistance from local health agencies or other resources; and

g. The confidential nature of the subject's test results;

3. Report the information required in R9-6-202 to a local health agency; and
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to R9-6-381.

R9-6-1103. Local Health Agency Requirements

A. For each ~~STD~~ STI case, a local health agency shall:

1. Comply with the requirements in:
   a. R9-6-317(A)(1) and (2) for each chancroid case reported to the local health agency, and
   b. R9-6-381(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
2. Offer or arrange for treatment for each ~~STD~~ STI case that seeks treatment from the local health agency for ~~symptoms of~~:
   a. Chancroid,
   b. Chlamydia infection,
   c. Gonorrhea, or
   d. Syphilis;
3. Provide information about the following to each ~~STD~~ STI case that seeks treatment from the local health agency:
   a. A description of the ~~disease~~ infection or syndrome caused by the applicable ~~STD~~ STI, including its symptoms;
   b. Treatment options for the applicable ~~STD~~ STI;
   c. A description of measures to reduce the likelihood of transmitting the ~~STD~~ STI to others and that it is necessary to continue the measures until the infection is eliminated; and
   d. The confidential nature of the ~~STD~~ STI case's test results; and
4. Inform the ~~STD~~ STI case that:
   a. A chlamydia or gonorrhea case must notify each individual, with whom the chlamydia or gonorrhea case has had sexual contact within 60 days preceding the onset of chlamydia or gonorrhea symptoms up to the date the chlamydia or gonorrhea case began treatment for chlamydia or gonorrhea infection, of the need for the individual to be tested for chlamydia or gonorrhea; and
   b. The Department or local health agency will notify, as specified in subsection (B), each contact named by a chancroid or syphilis case.

B. For each contact named by a chancroid or syphilis case, the Department or a local health agency shall:

1. Notify the contact named by a chancroid or syphilis case of the contact's exposure to chancroid or syphilis and of the need for the contact to be tested for:
    a. Chancroid, if the chancroid case has had sexual contact with the contact within 10 days preceding the onset of chancroid symptoms up to the date the chancroid case began treatment for chancroid infection; or
    b. Syphilis, if the syphilis case has had sexual contact with the contact within:
        i. 90 days preceding the onset of symptoms of primary syphilis up to the date the syphilis case began treatment for primary syphilis infection;
        ii. Six months preceding the onset of symptoms of secondary syphilis up to the date the syphilis case began treatment for secondary syphilis infection; or
        iii. 12 months preceding the date the syphilis case was diagnosed with syphilis if the syphilis case cannot identify when symptoms of primary or secondary syphilis began;
2. Offer or arrange for each contact named by a chancroid or syphilis case to receive testing and, if appropriate, treatment for chancroid or syphilis; and
3. Provide information to each contact named by a chancroid or syphilis case about:
    a. The characteristics of the applicable ~~STD~~ STI,
    b. The syndrome caused by the applicable ~~STD~~ STI,
    c. Measures to reduce the likelihood of transmitting the applicable ~~STD~~ STI, and
    d. The confidential nature of the contact's test results.

C. For each contact of a chlamydia or gonorrhea case who seeks treatment from a local health agency for ~~symptoms of~~ chlamydia or gonorrhea, the local health agency shall:

1. Offer or arrange for treatment for chlamydia or gonorrhea;
2. Provide information to each contact of a chlamydia or gonorrhea case about:
    a. The characteristics of the applicable ~~STD~~ STI,
    b. The syndrome caused by the applicable ~~STD~~ STI,
    c. Measures to reduce the likelihood of transmitting the applicable ~~STD~~ STI, and
    d. The confidential nature of the contact's test results.

R9-6-1104. Court-ordered ~~STD-related~~ STI-related Testing

A. A health care provider who receives the results of a test, ordered by the health care provider to detect an ~~STD~~ STI and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.

B. A health care provider who receives the results of a test, ordered by the health care provider to detect an ~~STD~~ STI and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.

C. When a court orders a test under A.R.S. § 13-1415 to detect a ~~sexually-transmitted disease~~ sexually transmitted infection, the prosecuting attorney who petitioned the court for the order shall provide to the Department:

1. A copy of the court order, including an identifying number associated with the court order;
2. The name and address of the victim; and
3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.

D. A person who tests a specimen of blood or another body fluid from a subject to detect a sexually-transmitted disease as authorized by a court order issued under A.R.S. § 13-1415 shall:

1. Be a certified laboratory, as defined in A.R.S. § 36-451;
2. Use a test approved by the U.S. Food and Drug Administration for use in ~~STD-related~~ STI-related testing; and
3. Report the test results for each subject to the submitting entity within five working days after obtaining the test results.

E. A submitting entity that receives the results of a test to detect a ~~sexually-transmitted disease~~ sexually transmitted infection that was performed as a result of a court order issued under A.R.S. § 13-1415 shall:

1. Notify the Department within five working days after receiving the results of the test to detect a ~~sexually-transmitted disease~~ sexually transmitted infection;
2. Provide to the Department:
    a. A written copy of the court order,
    b. A written copy of the results of the test to detect a ~~sexually-transmitted disease~~ sexually transmitted infection, and
    c. The name and telephone number of the submitting entity or submitting entity's designee; and
3. Either:
    a. Comply with the requirements in:
        i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
        ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or

b. Provide to the Department or the local health agency in whose designated service area the subject is living:
   i. The name and address of the subject;
   ii. A written copy of the results of the test to detect a ~~sexually-transmitted disease~~ sexually transmitted infection, if not provided as specified in subsection (E)(2)(b); and
   iii. Notice that the submitting entity did not provide notification as specified in subsection (E)(3)(a).

F. If the Department or a local health agency is notified by a submitting entity as specified in subsection (E)(3)(b), the Department or local health agency shall comply with the requirements in:
1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.

G. When the Department receives the results of a test to detect a ~~sexually-transmitted disease~~ sexually transmitted infection that was performed for a subject as a result of a court order issued under A.R.S. § 13-1415, the Department shall:
1. Provide to the victim:
   a. A description of the results of the test to detect the ~~sexually-transmitted disease~~ sexually transmitted infection,
   b. The information specified in R9-6-802(D), and
   c. A written copy of the test results for the ~~sexually-transmitted disease~~ sexually transmitted infection; or
2. Provide to the local health agency in whose designated service area the victim is living:
   a. The name and address of the victim,
   b. A written copy of the results of the test to detect the ~~sexually-transmitted disease~~ sexually transmitted infection, and
   c. Notice that the Department did not provide notification as specified in subsection (G)(1).

H. If a local health agency is notified by the Department as specified in subsection (G)(2), the local health agency shall:
1. Provide to the victim:
   a. A description of the results of the test to detect the ~~sexually-transmitted disease~~ sexually transmitted infection;

b. The information specified in R9-6-802(D); and

c. A written copy of the test results for the ~~sexually-transmitted disease~~ sexually transmitted infection; or

2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect the ~~sexually-transmitted disease~~ sexually transmitted infection.

Statutory Authority

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.

32-3207. Health professionals disease hazard; testing; petition; definition

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

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.

36-3207. Health care directives; effect on insurance and medical coverage

A. A person shall not require a person to execute or prohibit a person from executing a health care directive as a condition for providing health care services or insurance.

B. An insurer shall not refuse to pay for goods or services under a patient's insurance policy because the decision to use the goods or services was made by the patient's surrogate.

C. If a patient's death follows the withholding or withdrawing of any medical care pursuant to a surrogate's decision not expressly precluded by the patient's health care directive, that death does not constitute a homicide or a suicide and does not impair or invalidate an insurance policy, an annuity or any other contract that is conditioned on the life or death of the patient regardless of any terms of that contract.

C-8

NATUROPATHIC PHYSICIANS MEDICAL BOARD
Title 4, Chapter 18

Amend: R4-18-602, R4-18-602, R4-18-603

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 24, 2023**

SUBJECT: **NATUROPATHIC PHYSICIANS MEDICAL BOARD**
Title 4, Chapter 18, Article 6

Amend: R4-18-602, R4-18-602, R4-18-603

Summary:

This regular rulemaking from the Naturopathic Physicians Medical Board (Board) seeks to amend three (3) rules in Title 4, Chapter 18, Article 6 related to Naturopathic Medical Assistants. The rules currently require that all Naturopathic Medical Assistants complete training through an accredited institution or organization recognized by the American Association of Naturopathic Physicians. The Board seeks to enact rules permitting Naturopathic Medical Assistants to satisfy their training requirements through a program designed and offered by a physician pursuant to A.R.S. § 32-1559 (D).

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 establish a new fee or contain a fee increase.

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

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

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

The Board indicates that the current medical assistant training requires the assistant to provide proof of completion of an approved medical assistant program, provided by an accredited institution or organization recognized by the American Association of Naturopathic Physicians. A recent sunset review conducted by the Auditor General's office made a recommendation that the Board move forward with rules outlining the ability for a medical assistant to satisfy training through a physician and the Board has chosen to move forward with drafting of the rules. Stakeholders include the Board, naturopathic medical assistant applicants and entities currently providing approved medical assistant training.

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 states that there is no apparent less intrusive or less costly alternative to achieving the proposed rulemaking.

6. What are the economic impacts on stakeholders?

The Board indicates possible loss of revenue to entities currently providing approved medical assistant training but a benefit to a naturopathic medical assistant applicant who would no longer be required to pay for an approved medical assistant education.

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

The Board indicates that there were no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Board indicates that it did not receive any comments.

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 it issues certificates to dispense to qualified naturopathic medical assistants and that use of a general permit allowing for specific activities is not applicable.

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 the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Naturopathic Physicians Medical Board seeks to amend three (3) rules in Title 4, Chapter 18, Article 6 to permit Naturopathic Medical Assistants to complete a training program designed and offered by a physician.

The Board 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
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1740 W. Adams, Ste. 3002 Phoenix, AZ 85007
Phone: 602-542-8242, Email: info@nd.az.gov Website nd.az.gov
Katie Hobbs - Governor

September 14, 2023

Governors Regulatory Review Counsel
100 N. 15th Avenue, Ste. 302
Phoenix, AZ 85007

Re: Notice of Final Rulemaking

Chairperson Sornsin and Members of the Council,

The State of Arizona Naturopathic Physicians Medical Board is requesting approval of the attached Notice of Final Rulemaking.

Pursuant to R1-6-201(A.)(1.), the following information is provided.
a. The close of the record relating to the rule was June 5, 2023.
b. The rule does not relate to a 5-year review report.
c. The rule does not establish a new fee.
d. The rule does not contain a fee increase.
e. The rule does not request an immediate effective date.
f. The preamble reflects the Board did not rely on a study to justify the rule.
g. Implementation of the rule does not require an increase in Board staff.
h. Documents enclosed.
Notice of Final Rulemaking
Emails granting Board authority to proceed with the rulemaking submission
EIS

Regards,

Gail Anthony

Gail Anthony, Executive Director
State of Arizona Naturopathic Physician Medical Board
Gail.anthony@nd.az.gov
602 542-8242

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

PREAMBLE

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

R4-18-601	Amend
R4-18-602	Amend
R4-18-603	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. § 32-1504(A)

Implementing statute: A.R.S. § 32-1559

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Agency requests a general effective date.

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):

The Agency requests a general effective date.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 810, March 31, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 991, May 5, 2023

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

Name: Gail Anthony, Executive Director

Address: State of Arizona Naturopathic Physicians Medical Board

1740 W. Adams, Ste. 3002

Phoenix, AZ 85007

Telephone: (602) 542-8242

E-mail: Gail.anthony@nd.az.gov

Web site: https://nd.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Board currently certifies 18 naturopathic medical assistants. Arizona Revised Statutes (A.R.S.) § 32-1559 was revised by Laws 2021, allowing the State of Arizona Naturopathic Physicians Medical Board to draft rules relating to Medical Assistant Training. A.R.S. § 32-1559 (D) states in part, the medical assistant training "*may*" be satisfied through a training program that meets all of the following: 1. Is designed and offered by a physician; 2. Meets or exceeds any of the approved training program requirements specified in rule; 3. Verifies the entry-level competencies of a naturopathic medical assistant as prescribed by rule; 4. Provides written verification to the individual of successful completion of the program. After seeking legal advice, the word "*may*" was interpreted to mean the Board had an option as to allow training to be offered by a physician. The Board's current medical assistant training requires the assistant provide proof of completion of an approved medical assistant program, provided by an accredited institution or organization recognized by the American Association of Naturopathic Physicians. A recent sunset review conducted by the Auditor General's office, made a recommendation that the Board move forward with rules outlining the ability for a medical assistant to satisfy training through a physician. Based on the Auditor General recommendation, the Board has chosen to move forward with drafting of rules. The Board will seek to promulgate rules related to this subject matter through regular rulemaking according to A.R.S. Title 41, Chapter 6.

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 for this rulemaking.

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

Not applicable

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

Currently the Board regulates 18 naturopathic medical assistants. The number of naturopathic medical

assistants certified by the Board has never increased above 25. The Board receives approximately one to two applications a year for naturopathic medical assistant certification. The current naturopathic medical assistant application fee is $100.00, the maximum the Board can charge pursuant to A.R.S. § 32-1527(10). The certification requires a yearly renewal with a cost of $150.00. A.R.S. § 32-1527(6) allows for a maximum amount of $400.00 to be charged for the renewal application. There is no harm to the public resulting from the current rule. There is no estimated change in frequency of applications submitted to the Board due to the change in rule.

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

The amount of certified medical assistants has increased from 16 to 18 between the time of the proposed rulemaking and the GRRC submission.

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

The Notice of Proposed Rulemaking was filed with the Secretary of State on April 17, 2023. The notice appeared in the May 5, 2023Arizona Administrative Register. The Board chose a 30-day comment period that closed June 5, 2023. No comments were received by the Board during the comment period.

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

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Board issues medical assistant certification to a qualified applicant to conduct identified activities as a naturopathic medical assistant. Use of a general permit allowing for specific activities is not applicable.

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

Not applicable.

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

The Board did not receive such an analysis from any person.

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

This rule does not incorporate any referenced material into the rule as specified in A.R.S.§ 41-1028.

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:

This rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

R4-18-601. Definitions

R4-18-602. Medical Assistant Qualification and Training Requirements

R4-18-603. Application for Medical Assistant Certification

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

R4-18-601. Definitions

In addition to the definitions in A.R.S. § 32-1501 and R4-18-101, the following definitions apply to this Article:

1. "Approved medical assistant training program" means a course of study for medical assistants that is provided:
    a. At an institution that is accredited by:
        i. The Commission on Accreditation of Allied Health Education Programs,
        ii. The Commission for the Accrediting Bureau of Health Education Schools, or
        iii. An accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States, or
    b. By an organization recognized by the American Association of Naturopathic Physicians.
2. "Employ" means to compensate by money or other consideration for work performed.
3. "Medical history" means an account of an individual's past and present physical and mental health including the individual's illness, injury, or disease.
4. "Medication" means a drug as defined in A.R.S. § 32-1501 or a natural substance as defined in A.R.S. § 32-1581.
5. "Naturopathic practice" means a place where the practice of naturopathic medicine as defined in A.R.S. § 32-1501 takes place.
6. "Training" means classroom and clinical instruction completed by an individual as part of an approved medical assistant training program, or training designed and offered by a licensed naturopathic physician, that meets or exceeds the standards of one of the approved medical assistant training programs listed in subsection (1)(a) through (b).
7. "Treatment" means any of the acts included in the practice of naturopathic medicine as defined in A.R.S. § 32-1501.

R4-18-602. Medical Assistant Qualification and Training Requirements

~~An individual shall complete an approved medical assistant program to qualify for certification as a medical assistant.~~ A licensed Naturopathic Physician who provides direct supervision to a medical assistant, shall ensure that the medical assistant satisfies one of the following training requirements before the medical assistant is employed:

1. Completes an approved medical assistant training program;

2. Completes a medical assistant training program designed and offered by a licensed Naturopathic Physician that meets the requirements outline in A.R.S. § 32-1559 (D)(1) through (4), and passes a medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists; or

3. Completes a medical services training program of The Armed Forces of the United States;

4. A licensed Naturopathic Physician must obtain approval of the medical assistant training program prior to providing the training, by submitting the required application to the Board.

R4-18-603. Application for Medical Assistant Certification

A. An applicant for a medical assistant certificate shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:
   a. The applicant's legal name, mailing address, telephone number, and Social Security number;
   b. The applicant's date and place of birth;
   c. The applicant's height, weight, and eye and hair color;
   d. The name, address, and telephone number of the applicant's employer, if applicable;
   e. The name of the licensed naturopathic physician who will supervise the applicant;
   f. The name and address of the institution where the applicant completed an approved medical assistant training program; or
   g. If the training was completed in a program provided by a licensed naturopathic physician, the following must be submitted;
      i. A letter outlining the training provided and signed by the naturopathic physician who provided the training.
      ii. Proof of passing the required medical assistant examination administered by either The American Association of Medical Assistants or The American Medical Technologists; or
      iii. Proof of completion of a medical services training program of The Armed Forces of the United States.

2. A copy of a certificate of completion from an approved medical assistant training program or a letter of completion from an approved medical assistant training program signed by the person in charge of the approved medical assistant training program;
3. A completed and legible fingerprint card; and
4. The fees required by the Board under A.R.S. § 32-1527.

STATE OF ARIZONA
NATUROAPTHIC PHYSICIANS MEDICAL BOARD
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 32, PROFESSIONS AND OCCUPUCANTION
CHAPTER 14, ARTICLE 6.

1. **An identification of the proposed rulemaking**.

The Board currently certifies 18 naturopathic medical assistants. Arizona Revised Statutes (A.R.S.) § 32-1559 was revised by Laws 2021 Chapter 259, allowing the State of Arizona Naturopathic Physicians Medical Board to draft rules relating to Medical Assistant Training. A.R.S. 32-1559 (D) states in part, the medical assistant training "may" be satisfied through a training program that meets all of the following: 1. Is designed and offered by a physician, 2. Meets or exceeds any of the approved training program requirements specified in rule, 3. Verifies the entry-level competencies of a naturopathic medical assistant as prescribed by rule, 4. Provides written verification to the individual of successful completion of the program. After seeking legal advice, the word "may" was interpreted to mean the board had an option as to allow for training to be offered by a physician. The Board's current medical assistant training requires the assistant provide proof of completion of an approved medical assistant program provided by an accredited institution or organization recognized by the American Association of Naturopathic Physicians. A recent sunset review conducted by the Auditor General's office, made a recommendation that the board move forward with rules outlining the ability for a medical assistant to satisfy training through a physician. Based on the Auditor General recommendation, the Board has chosen to move forward with drafting of rules. The Board will seek to promulgate rules related to this subject matter through regular rulemaking according to A.R.S. Title 41, Chapter 6.

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

Persons affected:
The rulemaking affects naturopathic medical assistant applicants.

Cost Bearer:
There are no anticipated costs associated with any of the proposed amendments.

Beneficiaries:
Applicants for naturopathic medical assistant certification.

3. **A cost benefit analysis of the following:**

(a.) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. 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 EIS shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the Council.

There should be no economic impact to the agency. No new FTE's are required to implement the proposed rule changes.

(b.) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.
None apparent.

(c.) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.
None apparent.

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

Any economic impact would be felt by entities currently providing approved medical assistant training. Loss of revenue would be seen in the event a naturopathic medical assistant chose to participate in unapproved training.

5. **A statement of the probable impact of the rulemaking on small business.**

(a.) An identification of the small business subject to the rulemaking.
None identified

(b.)Administrative/other costs required for compliance with the rulemaking.
None identified.

(c.) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses with reasons for the agency's decision to use or not to use each method.
None identified

(d.)The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.
The only foreseeable benefit to this rule would be for the naturopathic medical assistant applicant who would not be required to pay for an approved medical assistant education.

6. **A statement of the probable effect on the state revenues.**
None apparent.

7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**
None apparent.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.**
For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.
A.R.S. § 32-1504(A), A.R.S. § 32-1559.

11. Whether applicant, in lieu of disciplinary action by any agency, in any state, district or territory of the United States or another country, has entered into a consent agreement or stipulation with a licensing agency;
12. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
13. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States, or another country;
14. Whether applicant has ever been found medically incompetent;
15. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
16. Whether applicant has a medical condition, that in any way, impairs or limits applicant's ability to practice medicine;
17. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
18. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training

A holder of a certificate to engage in clinical training shall renew the certification by submitting before the expiration date of the certificate a completed clinical training renewal form. A holder of a certificate to engage in preceptorship training shall renew the certification on or before July 1, by submitting a completed preceptorship renewal form.

1. Applicant must submit a completed application form provided by the Board for renewal of certification that allows the Board to determine whether the holder of the certificate continues to meet the requirements of A.R.S. Title 32 Chapter 14. The form must be signed, dated, and shall include;
   a. Applicant's full name and any former names used by applicant;
   b. Applicant's certificate number, and original issue date;
2. The fees specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program

A chief medical officer applying on behalf of a school of naturopathic medicine for a certificate to conduct clinical training, or on behalf of a preceptorship training program, shall submit to the Board the fee indicated in R4-18-107 and an application form provided by the Board, signed and dated by the chief medical officer, that contains:

1. The chief medical officer's name, mailing address, and telephone number;
2. The name and address of the training program and of each facility where training will be conducted;
3. The name, professional degree, license number, and licensing agency for each physician who will be providing supervision in the training program; and
4. A mission statement outlining the goals of the training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-504. Annual Renewal of Certificate to Conduct a Clinical or Preceptorship Training Program

A certificate to conduct clinical or preceptorship training shall be renewed before the anniversary date, by submitting the appropriate fee listed in R4-18-107 and a completed form.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

R4-18-601. Definitions

In addition to the definitions in A.R.S. § 32-1501 and R4-18-101, the following definitions apply to this Article:

1. "Approved medical assistant program" means a course of study for medical assistants that is provided:
   a. At an institution that is accredited by:
      i. The Commission on Accreditation of Allied Health Education Programs,
      ii. The Commission for the Accrediting Bureau of Health Education Schools, or
      iii. An accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States, or
   b. By an organization recognized by the American Association of Naturopathic Physicians.
2. "Employ" means to compensate by money or other consideration for work performed.
3. "Medical history" means an account of an individual's past and present physical and mental health including the individual's illness, injury, or disease.
4. "Medication" means a drug as defined in A.R.S. § 32-1501 or a natural substance as defined in A.R.S. § 32-1581.
5. "Naturopathic practice" means a place where the practice of naturopathic medicine as defined in A.R.S. § 32-1501 takes place.
6. "Training" means classroom and clinical instruction completed by an individual as part of an approved medical assistant program.
7. "Treatment" means any of the acts included in the practice of naturopathic medicine as defined in A.R.S. § 32-1501.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-602. Medical Assistant Qualification
An individual shall complete an approved medical assistant program to qualify for certification as a medical assistant.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-603. Application for Medical Assistant Certification
An applicant for a medical assistant certificate shall submit an application packet to the Board that contains the following:
1. An application form provided by the Board, signed and dated by the applicant that contains:
   a. The applicant's name, mailing address, telephone number, and Social Security number;
   b. The applicant's date and place of birth;
   c. The applicant's height, weight, and eye and hair color;
   d. The name, address, and telephone number of the applicant's employer, if applicable;
   e. The name of the licensed physician who will supervise the applicant;
   f. The name and address of the institution where the applicant completed an approved medical assistant program;
2. A copy of a certificate of completion from an approved medical assistant program or a letter of completion from an approved medical assistant program signed by the person in charge of the approved medical assistant program;
3. A completed and legible fingerprint card; and
4. The fees required by the Board under A.R.S. § 32-1527.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-604. Renewal of Medical Assistant Certificate
An applicant for a renewal certificate shall submit to the Board:
1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains the applicant's:
   a. Name,
   b. Social Security number,
   c. Residence and naturopathic practice addresses, and
   d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1527.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-605. Authorized Procedures for Medical Assistants
A. A medical assistant may perform the following under the direct supervision of a physician:
1. Obtain a patient's medical history;
2. Obtain a patient's vital signs;
3. Assist a physician in performing a physical examination, surgical procedure, or treatment;
4. Perform a diagnostic test ordered by a physician including:
   a. An electrocardiogram;
   b. A peripheral vein puncture;
   c. A capillary puncture;
   d. Urine analysis;
   e. A hematology test; or
   f. Respiratory function testing;
5. Administer a medication:
   a. By mouth; or
   b. By subcutaneous or intra-muscular injection if the medical assistant received training on performing this type of administration from an approved medical assistant training program;
6. Monitor and remove an intravenous administration of a medication established by a supervising physician if the medical assistant received training on monitoring and removing an intravenous administration from an approved medical assistant training program.
7. Perform physiotherapy, which includes the following:
   a. Whirlpool treatment,
   b. Diathermy treatment,
   c. Electronic stimulation treatment,
   d. Ultrasound therapy,
   e. Massage therapy,
   f. Traction,
   g. Transcutaneous nerve stimulation,
   h. Colon hydrotherapy, or
   i. Hot and cold pack treatment.

B. A medical assistant shall not:
1. Diagnose a medical condition;
2. Design or modify a treatment program;
3. Prescribe a medication or natural substance;
4. Provide a patient with a prognosis;
5. Unless authorized by law, perform:
   a. An ionizing radiographic procedure,
   b. A surgical procedure,
   c. A central venous catheterization,
   d. An acupuncture needle insertion, or
   e. Manipulative therapy;
6. Administer or establish an intravenous medication;
7. Perform any procedure that requires precise placement of a needle into a patient by single or multiple injections including:
   a. Sclerotherapy,
   b. Prolotherapy,
   c. Mesotherapy, or
   d. Neurotherapy; or
8. Employ the medical assistant's supervising physician or have any financial interest in a naturopathic practice where the supervising physician is employed.

C. While assisting a naturopathic physician or performing a procedure delegated to the medical assistant, the medical assistant shall wear a clearly visible tag that states the individual is a medical assistant.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

R4-18-701. Time-frames for Board Decisions
A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license, certification, or approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend a substantive review and overall time-frame by no more than 25 percent of the overall time-frame listed in Table 1.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license, certification, and approval granted by the Board is listed in Table 1.
1. The administrative completeness review time-frame begins on the day the Board receives the application form and the appropriate fee.

32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.

2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.

3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.

4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.

5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.

6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.

7. Adopt rules relating to the dispensing of natural substances, drugs and devices.

8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.

9. Adopt and use a seal.

10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.

2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.

3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.

4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.

5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director to represent the board at the annual meeting of these organizations.

6. Adopt rules for conducting licensing examinations required by this chapter.

7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

32-1559. Naturopathic medical assistants; certification; supervision; duties; training; use of title

A. A person who wishes to be certified as a naturopathic medical assistant shall submit an application as prescribed in section 32-1524.

B. A certified naturopathic medical assistant may assist a doctor of naturopathic medicine who is licensed under this chapter.

C. The board by rule may prescribe naturopathic medical treatment procedures that a naturopathic medical assistant certified under this section may perform under the direct supervision of a doctor of naturopathic medicine who is licensed under this chapter if the board determines that these procedures:

1. May be competently performed by the assistant.

2. Do not exceed the procedures that the supervising doctor of naturopathic medicine has been licensed by this state to perform.

D. The board by rule shall prescribe naturopathic medical assistant training requirements. The training requirements for a naturopathic medical assistant may be satisfied through a training program that meets all of the following:

1. Is designed and offered by a physician.

2. Meets or exceeds any of the approved training program requirements specified in rule.

3. Verifies the entry-level competencies of a naturopathic medical assistant as prescribed by rule.

4. Provides written verification to the individual of successful completion of the program.

E. A naturopathic medical assistant may perform clerical tasks without direct supervision if the tasks do not involve treating a person's condition or other procedures that are prohibited under this chapter.

F. A person shall not use the title "medical assistant" or a related abbreviation unless that person is working as a naturopathic medical assistant pursuant to this section or possesses written verification of successful completion of a training program provided pursuant to subsection D of this section.

NATUROPATHIC PHYSICIANS MEDICAL BOARD
Title 4, Chapter 18

New Section: Article 10, R4-18-1001, R4-18-1002, R4-18-1003, R4-18-1004

Amend: R4-18-902, R4-18-903

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 24, 2023**

SUBJECT: **NATUROPATHIC PHYSICIANS MEDICAL BOARD**
Title 4, Chapter 18, Articles 9 & 10

New Section: Article 10, R4-18-1001, R4-18-1002, R4-18-1003, R4-18-1004

Amend: R4-18-902, R4-18-903

Summary:

This regular rulemaking from the Naturopathic Physicians Medical Board (Board) seeks to amend two (2) rules in Title 4, Chapter 18, Article 9 regarding Certificates to Dispense and establish a new article with five (5) rules at Title 4, Chapter 18, Article 10 regarding Dispensing of a Natural Substance, Drug or Device.

The Board is seeking to amend the qualifications required for a Certificate to Dispense under Article 9. The qualifications currently reference two Board approved methods of training in the safe administration of natural substances, drugs, or devices, including graduation from an approved school of naturopathic medicine or completion of an approved 60 hour pharmacological course. The amendment proposes including an alternative of passing The North American Board of Naturopathic Examiners (NABNE) add on Parenteral Medicine Examination.

The Board is also seeking to adopt rules related to labeling, recordkeeping, storage, and packaging of natural substances, pursuant to A.R.S. § 32-2581(E). Specifically, Article 10 would clarify when a certificate to dispense is required, the packaging and inventory requirements of

the dispensing physician, the recordkeeping requirements, and when a physician is required to cooperate with inspections of dispensing practices.

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 establish a new fee or contain a fee increase.

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

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

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

Currently, the Board regulates approximately 1,200 licensed Naturopathic Physicians. Statute requires those physicians to obtain a certificate to dispense under certain conditions. According to the Board, there should be little to no economic, small business, and consumer impact with the implementation of the proposed rules.

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 does not identify any less intrusive or less costly alternative method of achieving the proposed rulemaking.

6. What are the economic impacts on stakeholders?

Stakeholders include the Board, Naturopathic Medical Doctors licensed by the Board, and Naturopathic Medical Doctors seeking to obtain a certificate to dispense.

According to the Board, the rulemaking has no economic impact on any stakeholders. The Board already issues certificates to dispense to qualified physicians. There should be no additional costs associated with compliance of the rule.

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 only change between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking was the number of licensed Naturopathic Physicians listed.

The Notice of Proposed Rulemaking indicated the Board regulated approximately 1165 licensed Naturopathic Physicians at that time, and the Notice of Final Rulemaking indicates that the Board currently regulates approximately 1200.

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

The Board indicates that it did not receive any comments.

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 it issues certificates to dispense to qualified naturopathic physicians and that use of a general permit allowing for specific activities is not applicable.

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 the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Naturopathic Physicians Medical Board seeks to amend two (2) rules in Title 4, Chapter 18, Article 9 and establish a new article with five (5) rules at Title 4, Chapter 18, Article 10. The amendment to Article 9 would add a new avenue to qualify for a certificate to dispense. The new Article 10 would adopt rules related to labeling, recordkeeping, storage, and packaging of natural substances pursuant to A.R.S. § 32-2581(E).

The Board 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
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1740 W. Adams, Ste. 3002 Phoenix, AZ 85007
Phone: 602-542-8242, Email: info@nd.az.gov Website nd.az.gov
Katie Hobbs - Governor

September 14, 2023

Governors Regulatory Review Counsel
100 N. 15th Avenue, Ste. 302
Phoenix, AZ 85007

Re: Notice of Final Rulemaking

Chairperson Sornsin and Members of the Council,

The State of Arizona Naturopathic Physicians Medical Board is requesting approval of the attached Notice of Final Rulemaking.

Pursuant to R1-6-201(A.)(1.), the following information is provided.
a. The close of the record relating to the rule was July 26, 2023.
b. The rule does not relate to a 5-year review report.
c. The rule does not establish a new fee.
d. The rule does not contain a fee increase.
e. The rule does not request an immediate effective date.
f. The preamble reflects the Board did not rely on a study to justify the rule.
g. Implementation of the rule does not require an increase in Board staff.
h. Documents enclosed.
Notice of Final Rulemaking
Emails granting Board authority to proceed with the rulemaking submission
EIS

Regards,

Gail Anthony

Gail Anthony, Executive Director
State of Arizona Naturopathic Physician Medical Board
Gail.anthony@nd.az.gov
602 542-8242

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

PREAMBLE

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

R4-18-902	Amend
R4-18-903	Amend
Article 10	New Section
R4-18-1001	New Section
R4-18-1002	New Section
R4-18-1003	New Section
R4-18-1004	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. § 32-1504(A)

Implementing statute: A.R.S. § 32-1581(E)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Agency requests a general effective date.

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):

The Agency requests a general effective date.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 810, March 31, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1391, June 23, 2023

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

Name: Gail Anthony, Executive Director

Address: State of Arizona Naturopathic Physicians Medical Board
1740 W. Adams, Ste. 3002
Phoenix, AZ 85007

Telephone: (602) 542-8242

E-mail: Gail.anthony@nd.az.gov

Web site: https://nd.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A recent Auditor General report recommended the Board adopt rules relating to the labeling, recordkeeping, storage, and packaging of natural substances, pursuant to A.R.S. § 32-2581(E). The Board found that R4-18-901 defines "dispense" by reference to AR.S. § 32-1581(H)(2), with the statute requiring the labeling, recordkeeping, storage and packaging of natural substances be consistent with the requirements of chapter 18. However, the Auditor General report did make the recommendation to adopt more specific rules regarding this topic, and the Board agreed to the recommendation. The Board chose to create a new Article (Article10), to address the specifics required by A.R.S. § 32-2581(E). A.R.S. § 32-1581(A)(1) allows a naturopathic physician to dispense a natural substance, a drug with the exception of a schedule II controlled substance that is an opioid, or a device, to a patient for a condition that is being diagnosed or treated by the physician if the physician is certified by the board to dispense. These new rules seek to clarify when a certificate to dispense is required, the packaging and inventory requirements of the dispensing physician, the recordkeeping requirements of the dispensing physician, and when a physician is required to cooperate with inspections of dispensing practices. Current statute, A.R.S. §32-1581(E) allows for inspections.

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 for this rulemaking

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

Not applicable.

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

Currently the Board regulates approximately 1200 licensed Naturopathic Physicians. Statute requires those physicians to obtain a certificate to dispense under certain conditions. There should be little to no economic, small business, and consumer impact with implementation of the proposed rules.

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

None

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

No comments were received.

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

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Board issues certificates to dispense to qualified applicants to conduct identified activities as a naturopathic physician. Use of a general permit allowing for specific activities is not applicable.

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

Not applicable.

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

The Board did not receive such an analysis from any person.

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:

The rules was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 9. CERTIFICATE TO DISPENSE

R4-18-902. Qualifications for a Certificate to Dispense

R4-18-903. Application for a Certificate to Dispense; Renewal

ARTICLE 10. DISPENSING OF A NATURAL SUBSTANCE, DRUG OR DEVICE.

R4-18-1001. Certificate to Dispense Required

R4-18-1002. Packaging and Inventory

R4-18-1003. Recordkeeping and Reporting Shortages

R4-18-1004. Inspections

R4-18-902. Qualifications for a Certificate to Dispense

A. To qualify for a certificate to dispense, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of natural substances, drugs, or devices.

B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of natural substances, drugs, or devices:

1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. § 32-1525(B)(4); or
2. Completion of a 60 hour or more pharmacological course on natural substances, drugs, or devices that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or R4-18-205(B)(2), or by passing of The North American Board of Naturopathic Examiners (NABNE) add on Parenteral Medicine Examination.

C. If an applicant intends to administer a natural substance or drug intravenously, the Board approved training completed by the applicant shall include administration of a natural substance or drug by intravenous means.

R4-18-903. Application for a Certificate to Dispense; Renewal

A. An applicant for a certificate to dispense shall submit:

1. An application to the Board that contains:
   a. The applicant's:
      i. Full legal name;
      ii. Naturopathic license number, if known; and

iii. Social Security number;

b. If a corporation, a statement of whether the corporation holds tax exempt status;

c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;

d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:

i. The name and address of the federal or state agency or court having jurisdiction over the matter, and

ii. The disposition of the matter;

e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and state statutes, regulations, and rules; and

f. The date the application is submitted; and

2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.

~~**B.** An applicant for a naturopathic license may request a certificate to dispense as part of a naturopathic license application. When this request is made, approval of the naturopathic license by the Board includes approval of the certificate to dispense.~~

~~**C.**~~ **B.** A certificate holder shall renew a certificate to dispense on or before July 1 of each year by submitting:

1. An application to the Board that contains:

a. The applicant's full legal name;

b. If a corporation, a statement of whether the corporation holds tax exempt status;

c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a natural substance, drug, device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:

i. The name and address of the federal or state agency or court having jurisdiction over the matter; and

ii. The disposition of the matter; and

d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and

2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.

~~D.~~ **C.** The Board shall grant or deny the certificate to dispense or renewal of certificate to dispense according to the time-frames in 4 A.A.C. 18, Article 7, Table 1.

ARTICLE 10. DISPENSING OF A NATURAL SUBSTANCE, DRUG OR DEVICE

R4-18-1001. Certificate to Dispense Required

A. A doctor of naturopathic medicine may dispense a natural substance, a drug,

except a schedule II controlled substance that is an opioid, or a device to a patient for a condition that is being diagnosed or treated by the doctor. A doctor who holds a current medical license with the board shall obtain a certificate to dispense annually if the doctor:

1. Maintains a supply of Natural Substances as defined in A.R.S. 32-1501(23), controlled substances as defined in A.R.S. 32-1501(12), prescription-only drugs as defined in A.R.S. 321501(17), or prescription-only devises as defined in A.R.S. 32-1581(H)(i), excluding manufacturer's samples;
2. Prescribes the items listed in subsection (A)(1) to a patient of the doctor for use outside the office;
3. Obtains payment for the items listed in subsection (A)(1),including payment from a fulfillment center; or
4. Administers substances approved for intravenous administration pursuant to A.R.S. 32-1501(15)(a)(i)(ii)(iii).

B. To obtain a certificate to dispense, a doctor shall:

1. Submit the application form referenced in R4-18-903;
2. Submit a copy of the doctor's current Drug Enforcement Administration certificate of registration, for each location from which the doctor will dispense a controlled substance; and
3. Submit the fee required under R4-18-107, unless the doctor is exempt from paying the fee pursuant to A.R.S. 32-1530. A doctor applying for exemption is required to submit proof of exempt status with the application.

C. A doctor shall renew the certificate to dispense by July I of each year. If a doctor

makes a timely and complete application to renew the certificate, the doctor may continue to dispense until the Board approves or denies the renewal application.

D. If a doctor fails to submit a timely and complete application to renew the certificate to dispense, the doctor shall immediately cease dispensing.

E. If a doctor fails to comply with subsection (C), the doctor shall not dispense any natural substance, controlled substance, prescription-only drug, or prescription-only device, including substances approved for intravenous administration, until the doctor complies fully with subsection (B) and receives notice the Board approves the application.

R4-18-1002. Packaging and Inventory

A. A doctor shall dispense all controlled substances and prescription-only drugs in appropriate containers that are in compliance with state and federal laws.

B. A doctor shall ensure the natural substance, drug or device dispensed is in compliance with labeling requirements outlined in A.R.S. 32-1581(2). For the purpose of compliance with A.R.S. 32-1581(2), if the natural substance or device dispensed does not require a prescription, the information required may be incorporated into an accompanying instruction sheet. For a natural substance that contain multiple ingredients, the strength of each ingredient is not required to be documented, only the brand name of the supplement is required for documentation. All ingredients and amounts administered by intravenous or intramuscular administration are required to be fully documented in the patient chart.

C. A doctor shall:

1. Secure all controlled substances in a locked cabinet or room;

2. Control access to the locked cabinet or room by a written procedure that include, at a minimum:

a. Designation of the persons who have access to the locked room, and

b. Procedures for recording requests for access to the locked cabinet or room;

3. Make a written procedure required under subsection (C)(2) available on demand by the Board or its authorized represented for inspection and copying;

4. Store prescription-only drugs so they are not accessible to patients; and

5. Store controlled substances and prescription-only drugs not requiring refrigeration in an area where the temperature does not exceed 85 degrees Fahrenheit.

D. A doctor shall maintain an ongoing dispensing log for all controlled substances and prescription-only drugs dispensed by the physician. The dispensing log shall Include the following:

1. A separate inventory sheet for each controlled substance and prescription-only drug;

2. The date the drug is dispensed;

3. The patient's name;

4. The name of the controlled substance or prescription-only drug, strength, dosage, form, and name of manufacturer;

5. The number of dosage units dispensed;

6. A running total of each controlled substance or prescription-only drug

dispensed; and

7. The written signature of the doctor next to each entry.

E. A doctor may use a computer to maintain the dispensing log required under subsection (D) if the dispensing log is password protected and quickly accessible through either on-screen viewing or printing a copy.

F. This Section does not apply to a prepackaged manufacturer sample of a controlled substance or prescription-only drug unless otherwise provided by federal law.

G. The doctor must report the dispensing of controlled substances in compliance with the Arizona Controlled Substance Prescription Monitoring Program.

R4-18-1003. Recordkeeping and Reporting Shortages

A. A doctor who dispenses a controlled substance or prescription-only drug shall ensure an original prescription order for the controlled substance or prescription-only device is dated, consecutively number in the order in which it is originally dispensed, and filed separately from patient medical records. The doctor shall ensure original prescription orders are maintained in three separate files, as follows:

1. Schedule II controlled substances;

2. Schedule III, IV and V controlled substances; and

3. Prescription-only drugs.

B. A doctor shall ensure purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed, whether for profit or not for profit, for three years from the date of the purchase order or invoice. Purchase

orders and invoices shall be maintained in three separate files as follows:

l . Schedule II controlled substances only;

2. Schedule III, IV and V controlled substances; and

3. All other prescription-only drugs.

C. A doctor who discovers a theft or loss of a prescription only drug from the doctors office shall:

1. Immediately notify the local law enforcement agency,

2. Provide the local law enforcement agency with a written report, and

3. Send a copy of the report provided under subsection (C)(2) to the Drug Enforcement Administration and Board within seven days of the discovery.

R4-18-1004. Inspections

A. A doctor shall cooperate with and allow access to the doctor's office and records for inspection of dispensing practices by the Board or its authorized representative.

B. The Board shall revoke a doctor's certificate to dispense if the doctor's license is suspended, revoked or surrendered.

C. The certificate automatically expires if;

l . The doctor fails to renew the medical license in a timely manner; or

2. The doctor fails to renew the certificate in a timely manner.

D. A doctor who holds a certificate and is not currently under investigation, may request the certificate be cancelled.

STATE OF ARIZONA
NATUROAPTHIC PHYSICIANS MEDICAL BOARD
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 4., PROFESSIONS AND OCCUPUCANTION
CHAPTER 18, ARTICLE 9. AND NEW ARTICLE 10.

1. **An identification of the proposed rulemaking**.

A recent Auditor General report recommended the Board adopt rules relating to the labeling, recordkeeping, storage, and packaging of natural substances, pursuant to A.R.S. § 32-2581(E). The Board found that R4-18-901 defines "dispense" by reference to AR.S. § 32-1581(H)(2), with the statute requiring the labeling, recordkeeping, storage and packaging of natural substances be consistent with the requirements of chapter 18. However, the Auditor General report did make the recommendation to adopt more specific rules regarding this topic, and the Board agreed to the recommendation. The Board chose to create a new Article (Article10), to address the specifics required by A.R.S. § 32-2581(E). A.R.S. § 32-1581(A)(1) allows a naturopathic physician to dispense a natural substance, a drug with the exception of a schedule II controlled substance that is an opioid, or a device, to a patient for a condition that is being diagnosed or treated by the physician if the physician is certified by the board to dispense. These new rules seek to clarify when a certificate to dispense is required, the packaging and inventory requirements of the dispensing physician, the recordkeeping requirements of the dispensing physician, and when a physician is required to cooperate with inspections of dispensing practices. Current statute, A.R.S. §32-1581(E) allows for inspections.

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

Persons affected:
The rulemaking affects Naturopathic Medical Doctors licensed by this Board.

Cost Bearer:
Naturopathic Medical Doctors seeking to obtain a certificate to dispense.

Beneficiaries:
Naturopathic Medical Doctors licensed by this Board.

3. **A cost benefit analysis of the following:**

(a.) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. 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 EIS shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the Council.

There should be no economic impact to the agency. No new FTE's are required to implement the proposed rule changes.

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

None apparent.

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

None apparent.

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

None apparent.

5. **A statement of the probable impact of the rulemaking on small business.**

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

None apparent.

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

The Board already issues certificates to dispense to qualified physicians. There should be no additional costs associated with compliance of the rule.

(c.) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses with reasons for the agency's decision to use or not to use each method.

None identified.

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

None identified.

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

There should be no significant change to revenue.

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

   None identified.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable ata 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.

   The rule is being updated based upon a recommendation reflected in the recent Auditor General's

   Report.

ARTICLE 8. EXPERIMENTAL MEDICINE

R4-18-801. Experimental Medicine

A procedure, medication, or device is experimental if:

1. An Institutional review board exists for a particular procedure, medication, or device;
2. The procedure, medication, or device is not generally considered to be within the accepted practice standards for the naturopathic profession; and
3. The procedure, medication, or device is not part of the curriculum at an approved school of naturopathic medicine or approved postdoctoral training.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-802. Informed Consent and Duty to Follow Protocols

A. A physician, medical student engaged in an approved clinical training program, preceptee, or intern who conducts research involving an experimental procedure, medication, or device, shall ensure that all research subjects give informed consent to participate, which states:

1. Whether a physician, preceptee, or an intern is treating the patient;
2. That the patient or legal guardian of the patient understands:
   a. The type of treatment the patient is to receive;
   b. Each procedure that will be provided to the patient;
   c. The risks and benefits of each procedure, medication, or device to be provided;
   d. That the patient can withdraw at any time; and
   e. That the patient is voluntarily participating; and
3. The physician, medical student engaged in the approved clinical training program, preceptee, or intern has established a protocol as required by subsection (B) that meets the requirements of the institutional review board that approved the protocol.

B. A physician, medical student engaged in an approved clinical training program, preceptee, or intern, who conducts research on humans involving an experimental procedure, medication, or device shall have a protocol for that research approved by an institutional review board.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

ARTICLE 9. CERTIFICATE TO DISPENSE

R4-18-901. Definitions

The following definitions apply in this Article:

1. "Applicant" means:
   a. An individual applying for a license and a certificate to dispense; or
   b. A licensee requesting a certificate to dispense only.
2. "Ausculation" means the act of listening to sounds within the human body either directly or through the use of a stethoscope or other means.
3. "Certificate to dispense" means an approval granted by the Board to dispense a natural substance, drug, or device.
4. "Dispense" means the same as in A.R.S. § 32-1581(H).
5. "Drug" means the same as in A.R.S. § 32-1501(15).
6. "Hour" means 50 to 60 minutes of participation.
7. "Medical record" means the same as in A.R.S. § 12-2291.
8. "Nutrient" means the same as in A.R.S. § 32-1501(15)(a)(iii).
9. "Physical examination" means an evaluation of the health of an individual's body using inspection, palpation, percussion, and auscultation to determine cause of illness or disease.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-902. Qualifications for a Certificate to Dispense

A. To qualify for a certificate to dispense, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of natural substances, drugs, or devices.

B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of natural substances, drugs, or devices:

1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. § 32-1525(B)(4); or
2. Completion of a 60 hour or more pharmacological course on natural substances, drugs, or devices that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or R4-18-205(B)(2).

C. If an applicant intends to administer a natural substance or drug intravenously, the Board approved training completed by the applicant shall include administration of a natural substance or drug by intravenous means.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-903. Application for a Certificate to Dispense; Renewal

A. An applicant for a certificate to dispense shall submit:

1. An application to the Board that contains:
   a. The applicant's:
      i. Full name;
      ii. Naturopathic license number, if known; and
      iii. Social Security number;
   b. If a corporation, a statement of whether the corporation holds tax exempt status;
   c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;
   d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:
      i. The name and address of the federal or state agency or court having jurisdiction over the matter, and
      ii. The disposition of the matter;
   e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and state statutes, regulations, and rules; and
   f. The date the application is submitted; and

2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.

B. An applicant for a naturopathic license may request a certificate to dispense as part of a naturopathic license application. When this request is made, approval of the naturopathic license by the Board includes approval of the certificate to dispense.

C. A certificate holder shall renew a certificate to dispense on or before July 1 of each year by submitting:

1. An application to the Board that contains:
   a. The applicant's full name;
   b. If a corporation, a statement of whether the corporation holds tax exempt status;
   c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a natural substance, drug, device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:
      i. The name and address of the federal or state agency or court having jurisdiction over the matter; and
      ii. The disposition of the matter; and
   d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and
2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.

D. The Board shall grant or deny the certificate to dispense or renewal of certificate to dispense according to the time-frames in 4 A.A.C. 18, Article 7, Table 1.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-904. Dispensing; Intravenous Nutrients

A. To prevent toxicity due to the excessive intake of a natural substance, drug, or device, before dispensing the natural substance, drug, or device to an individual, a certified physician shall:

1. Conduct a physical examination of the individual,
2. Conduct laboratory tests as necessary that determine the potential for toxicity of the individual, and
3. Document the results of the physical examination and laboratory tests in the individual's medical record.

B. For the purposes of A.R.S. § 32-1504(A)(8), a substance is considered a nutrient suitable for intravenous administration if it complies with A.R.S. § 32-1501(15)(iii).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by emergency rulemaking at 21 A.A.R. 51, effective December 18, 2014, for 180 days (Supp. 14-4). Emergency renewed at 21 A.A.R. 928, effective June 5, 2015, for 180 days (Supp. 15-2). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.

2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.

3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.

4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.

5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.

6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.

7. Adopt rules relating to the dispensing of natural substances, drugs and devices.

8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.

9. Adopt and use a seal.

10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.

2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.

3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.

4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.

5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director to represent the board at the annual meeting of these organizations.

6. Adopt rules for conducting licensing examinations required by this chapter.

7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

32-1581. Dispensing of natural substances, drugs and devices; conditions; civil penalty; dispensing minerals; rules; definitions

A. A doctor of naturopathic medicine may dispense a natural substance, a drug, except a schedule II controlled substance that is an opioid, or a device to a patient for a condition that is being diagnosed or treated by the doctor if:

1. The doctor is certified to dispense by the board and the certificate has not been suspended or revoked by the board.

2. The natural substance, drug or device is dispensed and properly labeled with the following dispenser information:

(a) The dispensing doctor's name, address and telephone number and a prescription number or other method of identifying the prescription.

(b) The date the natural substance, drug or device is dispensed.

(c) The patient's name.

(d) The name and strength of the natural substance, drug or device, directions for proper and appropriate use and any cautionary statements for the natural substance, drug or device. If a generic drug is dispensed, the manufacturer's name must be included.

3. The dispensing doctor enters into the patient's medical record the name and strength of the natural substance, drug or device dispensed, the date the natural substance, drug or device is dispensed and the therapeutic reason.

4. The dispensing doctor keeps all prescription-only drugs, controlled substances and prescription-only devices in a secured cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency, a doctor of naturopathic medicine who dispenses a natural substance, drug or device without being certified to dispense by the board is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and may be prohibited from further dispensing for a period of time as determined by the board.

C. Before dispensing a natural substance, drug or device pursuant to this section, the treating doctor shall give the patient or the patient's legal guardian a written prescription and must inform the patient or the patient's legal guardian that the prescription may be filled by the prescribing doctor or the pharmacy of the patient's choice. If the patient chooses to have the medication dispensed by the doctor, the doctor must retrieve the written prescription and place it in a prescription file kept by the doctor.

D. A doctor of naturopathic medicine shall provide direct supervision of a nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor of naturopathic medicine is present and makes the determination as to the necessary use or the advisability of the natural substance, drug or device to be dispensed.

E. The board shall enforce this section. The board shall adopt rules regarding the dispensing of a natural substance, drug or device, including the labeling, recordkeeping, storage and packaging of natural substances, that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. This section does not prevent a licensed practical or professional nurse employed by a doctor of naturopathic medicine from assisting in the delivery of natural substances, drugs and devices in accordance with this chapter.

G. Before prescribing or dispensing a mineral to a patient, the treating physician shall perform necessary clinical examinations and laboratory tests to prevent toxicity due to the excessive intake of magnesium, calcium and other minerals. The board shall adopt rules necessary for the safe administration of minerals. These rules shall require prior certification of a physician who prescribes or dispenses minerals to a patient.

H. For the purposes of this section:

1. "Device" means an appliance, apparatus or instrument that is administered or dispensed to a patient by a doctor of naturopathic medicine.

2. "Dispense" means the delivery by a doctor of naturopathic medicine of a natural substance, drug or device to a patient and only for a condition being diagnosed or treated by that doctor, except for free samples packaged for individual use by licensed manufacturers or repackagers, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the natural substance, drug or device for delivery to the treating doctor's own patient.

WATER INFRASTRUCTURE FINANCE AUTHORITY
Title 18, Chapter 15, Articles 1-7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 18, 2023

SUBJECT: **WATER INFRASTRUCTURE FINANCE AUTHORITY**
Title 18, Chapter 15, Articles 1-7

Summary

This Five-Year Review Report (5YRR) from the Water Infrastructure Finance Authority (Authority) relates to thirty-eight (38) rules in Title 18, Chapter 15, Articles 1-7. Specifically, the report covers rules in the following Articles:

- Article 1 - General Provisions
- Article 2 - Clean Water Revolving Fund
- Article 3 - Drinking Water Revolving Fund
- Article 4 - Water Supply Development Revolving Fund
- Article 5 - Technical Assistance
- Article 6 - Hardship Grant Fund Program
- Article 7 - Interest Rate Setting and Forgivable Principal

The Authority provides financing for the construction, rehabilitation, and improvement of water facilities, including potable water, wastewater, and wastewater reclamation. The Authority primarily assists clients through low interest financial assistance such as the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

In the prior 5YRR for these rules, which was approved by the Council in January 2018, the Authority intended to update many of its rules in a rulemaking to be considered by the Council in the same month. The Authority's rulemaking addressing issues identified in the prior report became effective on March 11, 2018.

Proposed Action

In the current report, the Authority has identified rules that are not clear, concise, understandable, consistent, effective, or enforced as written which it intends to amend. The Authority states it has contacted the Governor's Office to request approval pursuant to A.R.S. § 49-1039(A) to conduct rulemaking consistent with this report. The Authority states, if granted approval, it anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by July 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

The Authority cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Authority states that the economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2017 rulemaking.

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 Authority indicates that WIFA is a public financing authority; it does not regulate any consumer or business. WIFA has determined the probable benefits of the rules outweigh the probable costs of the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Authority 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 Authority indicates the following rules are not clear, concise, and understandable:

- **R18-15-101 (Definitions):**
    - The term "Advisory Board" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Advisory Board."

- The term "Clean Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Clean Water State Revolving Fund".
- The term "Dedicated revenue source for repayment" does not provide value and does not need to be defined. WIFA proposes deleting this definition.
- The term "Department" is used in Title 18, Chapter 15 of the Arizona Administrative Code, to refer to the "Arizona Department of Environmental Quality." WIFA proposes replacing the term "Department" with "ADEQ".
- The term "Drinking Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Drinking Water State Revolving Fund".
- The term "Executive Director" refers to a position which no longer exists. WIFA proposes striking the definition of "Executive Director" and replacing with the defined term "Director."
- The term "FONSI" as defined does not provide value. WIFA proposes amending this definition to increase its clarity and public understanding of the term.
- The term "Governmental unit" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Governmental unit."
- The term "Planning and design technical assistance applicant" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance applicant."
- The term "Planning and design technical assistance application" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance application."
- The term "Recipient" does not provide value and does not need to be defined. WIFA proposes deleting this definition.
- The term "Staff assistance" contains a limitation that restricted assistance to water providers to the planning and design of water supply development projects in accordance with A.R.S. § 49-1203(B)(17). SB1704 removed this restriction and expanded eligibility to "eligible entities" as defined by statute. WIFA proposes removing the now superseded language restricting staff assistance for water providers.

- **R18-15-107 (Disputes):**
  - The "Executive Director" position no longer exists. WIFA proposes striking references to "Executive Director" and replacing with "Director."

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Authority indicates the following rules are inconsistent with other rules and statutes:

- **R18-15-101 (Definitions):**

    - SB1740 enacted significant changes to WIFA's governing statutes and renumbered the definitions in A.R.S. § 49-1201. This renumbering created inconsistencies between the statutes and rule. WIFA proposes to amend the rule to accurately reference the current citations.
    - SB1740 modified WIFA's governing structure. The definition of "Board" therefore inaccurately references the Arizona Finance Authority. WIFA proposes rewriting the definition to correctly reflect the change in WIFA's governing structure.
    - SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the definition of "Applicant" to account for these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.
- **R18-15-102 (Types of Assistance):**
    - SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.
    - SB1740 granted WIFA the ability to participate in public-private partnerships. WIFA proposes amending the rule to reference this new type of assistance. WIFA anticipates pursuing rulemaking to adopt rules for the new type of assistance during FY2024.
- **R18-15-103 (Application Process):**
    - SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.
- **R18-15-304 (Drinking Water Revolving Fund Project Priority List Ranking):**
    - Subsection B of this rule incorrectly refers to "clean water revolving loan funds." WIFA proposes correcting this error and replacing with "drinking water revolving loan funds."
- **Article 4 - Water Supply Development Revolving Fund**
    - SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.
- **Article 5 - Technical Assistance**
    - SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Authority indicates the following rules are not effective in achieving their objectives:

- **Article 4 - Water Supply Development Revolving Fund**
    - SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.
- **Article 5 - Technical Assistance**
    - SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Authority indicates the following rules are not enforced as written:

- **Article 4 - Water Supply Development Revolving Fund**
    - Currently, there is no financial assistance available under the Water Supply Development Fund, and therefore, there are no applications for assistance for WIFA to review under these rules. Moreover, SB1740 significantly changed the statutes governing the Water Supply Development Fund. To the extent the current rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740 with the expectation that financial assistance will be available under the Water Supply Development Revolving Fund in the future.
- **Article 5 - Technical Assistance**
    - SB1740 significantly changed the statutes governing technical assistance. To the extent the current rules governing Technical Assistance are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

9. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Authority indicates Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f *et seq*.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. The Authority has determined the following rules are not more stringent than their corresponding federal law(s):

- R18-15-106. Environmental Review

The Authority indicates Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 *et seq.*), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1292 and 33 U.S.C. §§ 1381-1387; *see also* 40 CFR Part 35 Subpart K. The Authority has determined the following rules are not more stringent than their corresponding federal law(s):

- R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.
- R18-15-202. Clean Water Revolving Fund Intended Use Plan.
- R18-15-203. Clean Water Revolving Fund Project Priority List.
- R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.
- R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.
- R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.
- R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.
- R18-15-208. Clean Water Revolving Fund Requirements.

The Authority indicates Section 1452 of the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 42 U.S.C. 300j-12; *see also* 40 CFR Part 35, Subpart L. The Authority has determined the following rules are not more stringent than their corresponding federal law(s):

- R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.
- R18-15-302. Drinking Water Revolving Fund Intended Use Plan.
- R18-15-303. Drinking Water Revolving Fund Project Priority List.
- R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.
- R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.
- R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.
- R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.
- R18-15-308. Drinking Water Revolving Fund Requirements.

The Authority indicates Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 *et seq.*), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. The Authority has determined the following rules are not more stringent than their corresponding federal law(s):

- R18-15-501. Technical Assistance
- R18-15-502. Technical Assistance Intended Use Plan
- R18-15-503. Clean Water Planning and Design Assistance
- R18-15-504. Drinking Water Planning and Design Assistance

The Authority indicates Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f *et seq*.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. The Authority has determined the following rules are not more stringent than their corresponding federal law(s):

- R18-15-701. Interest Rate Setting and Forgivable Principal

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 Authority states the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Authority relates to thirty-eight (38) rules in Title 18, Chapter 15, Articles 1-7. The Authority provides financing for the construction, rehabilitation, and improvement of water facilities, including potable water, wastewater, and wastewater reclamation. The Authority primarily assists clients through low interest financial assistance such as the Clean Water Revolving Fund and the Drinking Water Revolving Fund. the Authority has identified rules that are not clear, concise, understandable, consistent, effective, or enforced as written which it intends to amend. The Authority states it has contacted the Governor's Office to request approval pursuant to A.R.S. § 49-1039(A) to conduct rulemaking consistent with this report. The Authority states, if granted approval, it anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by July 2024.

Council staff recommends approval of this report.

Katie Hobbs, Governor
Chuck Podolak, Director

July 18, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Subject: Water Infrastructure Finance Authority of Arizona, Title 18, Chapter 15, Articles 1 through 7, Five Year Rule Report

Dear Chairwoman Sornsin:

Please find enclosed the Five Year Review Report of the Water Infrastructure Finance Authority of Arizona (WIFA) for Title 18, Chapter 15, Articles 1 through 7 of the Arizona Administrative Code, which is due on August 31, 2023.

WIFA hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact WIFA's General Counsel, Joe Citelli, at JCitelli@azwifa.gov or 602-647-4403.

Sincerely,

Chuck Podolak
Director
Water Infrastructure Finance Authority of Arizona

enclosures (1)

WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

Five-Year Review Report

A.A.C. Title 18, Chapter 15

Submitted to the

Governor's Regulatory Review Council

July 2023

Introduction

The Water Infrastructure Finance Authority of Arizona's (WIFA) Five-Year Review Report for A.A.C. Title 18, Chapter 15 was originally due to be submitted to the Governor's Regulatory Review Council (GRRC) by August 31, 2022. On July 20, 2022, WIFA requested a one-year extension due to pending legislation which would substantially impact WIFA's governing statutes. On August 2, 2022, GRRC granted WIFA's request and set a new deadline of August 31, 2023. WIFA now submits this Five-Year Review Report for GRRC's review and approval. A copy of the rules being reviewed in this report is included in Attachment A.

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors (WIFA Board). A copy of SB1740 is included as Attachment B. The newly constructed WIFA Board consists of eighteen members: eight members from counties with specified population sizes, one person who specializes in finance or statewide water needs, and nine specified public officers, including the Director of the Arizona Department of Environmental Quality (ADEQ) or a designee. The WIFA Board succeeds the authority, powers, duties and responsibilities of the AFA Board with respect to the Clean Water Revolving Fund Program, Drinking Water Revolving Fund Program, Hardship Grant Fund financial provisions, and Water Supply Development Revolving Fund financial provisions. In addition, SB1740 significantly modified the existing Water Supply Development Revolving Fund and established two new financial assistance programs: the Long-Term Water Augmentation Fund, and the Water Conservation Grant Fund. As indicated in this report, WIFA anticipates initiating rulemaking proceedings related to the changes enacted by SB1740.

Title 18. Environmental Quality

Chapter 15. Water Infrastructure Finance Authority of Arizona

Five-Year Review Report

1. Authorization of the rule by existing statutes.

Article 1. General Provisions

The rules within Title 18, Chapter 15, Article 1 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); and A.R.S. § 49-1203(C).

Article 2. Clean Water Revolving Fund

The rules within Title 18, Chapter 15, Article 2 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1222(A); A.R.S. § 49-1224(B)(2); A.R.S. § 49-1225(C).

Article 3. Drinking Water Revolving Fund

The rules within Title 18, Chapter 15, Article 3 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1242(A); A.R.S. § 49-1244(B)(2); A.R.S. § 49-1245(C).

Article 4. Water Supply Development Revolving Fund

The rules within Title 18, Chapter 15, Article 4 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1274(B)(2); and A.R.S. § 49-1275(C).

Article 5. Technical Assistance

The rules within Title 18, Chapter 15, Article 5 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C).

Article 6. Hardship Grant Fund Program

The rules within Title 18, Chapter 15, Article 6 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C).

Article 7. Interest Rate Setting and Forgivable Principal

The rules within Title 18, Chapter 15, Article 7 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C); A.R.S. § 49-1225(C); A.R.S. § 49-1245(C); A.R.S. § 49-1275(C).

2. Objective of the rule, including the purpose for the existence of the rule.

Rule	Objective
Article 1. General Provisions	
R18-15-501. Definitions	The rule establishes definitions used in the rules in a manner that is not explained adequately by a dictionary definition. The rule's objective is to facilitate understanding by those who use the rules.
R18-15-502. Types of Assistance.	The rule describes the types of financial and technical assistance available from WIFA.
R18-15-103. Application Process.	The rule specifies how to apply for financial and technical assistance. The rule's objective is to guide applicants to the appropriate article for each type of assistance.
R18-15-104. General Financial Assistance Application Requirements.	The rule establishes the common application requirements for the Clean Water State Revolving Fund, Drinking Water State Revolving Fund, Water Supply Development Revolving Fund, and technical assistance programs. The objective of the rule is to inform applicant of the materials required to be submitted with financial assistance applications.
R18-15-105. General Financial Assistance Conditions.	The rule informs applicants of general conditions associated with receiving financial assistance from WIFA.
R18-15-106. Environmental Review.	The rule describes the environmental review process for projects funded through the Clean Water and Drinking Water State Revolving Funds. This review is a condition of the federal capitalization grants. The rule enables an applicant to anticipate steps in the evaluation process.
R18-15-107. Disputes.	The rule describes the process to file a letter of dispute and the actions taken thereafter.
Article 2. Clean Water Revolving Fund	
R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.	The rule specifies who may apply for funding from the Clean Water Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-202. Clean Water Revolving Fund Intended Use Plan.	The rule describes the process used to prepare the Intended Use Plan for the Clean Water Revolving Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-203. Clean Water Revolving Fund Project Priority List.	The rule describes the process to prepare and update the Project Priority List, as required by federal regulations. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an

	application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.	The rule describes how the Authority determines a project is ready to proceed for placement on the Fundable Range . The rule's objective is to enable an applicant to anticipate steps in the evaluation process.
R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.	The rule establishes requirements for presentation of a project to the Board of Directors for consideration. The rule's objective is to standardize the treatment of applications under the Clean Water Revolving Fund.
R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-208. Clean Water Revolving Fund Requirements.	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws. The rule's objective is to enforce compliance with federal laws.
Article 3. Drinking Water Revolving Fund	
R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria	The rule specifies who may apply for funding from the Drinking Water Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-302. Drinking Water Revolving Fund Intended Use Plan	The rule describes the process to prepare the Intended Use Plan for the Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-303. Drinking Water Revolving Fund Project Priority List	The rule describes the process to prepare and update the Project Priority List, as required by federal regulations. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance	The rule describes how the Authority determines a project is ready to proceed for placement on the Fundable Range (a list of projects that are ready to proceed). The rule's objective is to enable an applicant to anticipate steps in the evaluation process.
R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance	The rule establishes requirements for presentation of a project to the Board of Directors for consideration. The rule's objective

	is to standardize the treatment of applications under the Drinking Water Revolving Fund.
R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-308. Drinking Water Revolving Fund Requirements	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws.
Article 4. Water Supply Development Revolving Fund	
R18-15-502. Types of Assistance	The rule specifies who may apply for funding from the Water Supply Development Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria	The rule describes the process used to prepare the Intended Use Plan for the Fund. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-402. Water Supply Development Revolving Fund Project List	The rule describes the process used to prepare the Project Priority List, as well as the process to update the Project Priority List. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-403. Water Supply Development Revolving Fund Project List Ranking	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance	The rule establishes requirements for presentation of a project to the Board of Directors for consideration.
R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-406. Water Supply Development Revolving Fund Requirements	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws.
Article 5. Technical Assistance	
R18-15-501. Technical Assistance.	The rule describes the types of technical assistance available from the Authority.
R18-15-502. Technical Assistance Intended Use Plan.	The rule describes the process used to prepare the Intended Use Plan(s) for technical assistance. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-503. Clean Water Planning and Design Assistance.	The rule describes the technical assistance available for the Clean Water Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Clean Water Revolving Fund.
R18-15-504. Drinking Water Planning and Design Assistance.	The rule describes the technical assistance available for the Drinking Water Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Drinking Water Revolving Fund.
R18-15-505. Water Supply Development Planning and Design Assistance Grants.	The rule describes the technical assistance available for the Water Supply Development Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Water Supply Development Revolving Fund.
Article 6. Hardship Grant Fund	
R18-15-601. Hardship Grant Fund Administration	The rule describes how the Authority administers the Hardship Grant Fund. The rule's objective is to inform the public about the types of funding available under the Hardship Grant Fund.
R18-15-602. Hardship Grant Fund Financial Assistance	The rule specifies who may apply for financial assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. The rule's objective is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-603. Hardship Grant Fund Technical Assistance	The rule specifies who may apply for technical assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. The rule's objective is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
Article 7. Interest Rate Setting and Forgivable Principal	
R18-15-701. Interest Rate Setting and Forgivable Principal	The rule describes the process by which the Authority sets interest rates for the various funds. The rule also specifies which applicants and projects may be eligible for forgivable principal.

3. Are the rules effective in achieving their objectives? Yes ____ No X

Article 1. General Provisions

The rules are effective in achieving the objectives stated above.

Article 2. Clean Water Revolving Fund

The rules are effective in achieving the objectives stated above.

Article 3. Drinking Water Revolving Fund

The rules are effective in achieving the objectives stated above.

Article 4. Water Supply Development Revolving Fund

SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The rules are effective in achieving the objectives stated above.

Article 7. Interest Rate Setting and Forgivable Principal

The rules are effective in achieving the objectives stated above.

4. Are the rules consistent with other rules and statutes? Yes ____ No __X__

Article 1. General Provisions

The following rules are consistent with, and are not in conflict, with statutes and rules:

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-106. Environmental Review

R18-15-107. Disputes

The following rules are not consistent with, or conflict with, statutes and rules; WIFA proposes to increase their consistency with statutes and rules as indicated:

R18-15-101. Definitions.

SB1740 enacted significant changes to WIFA's governing statutes and renumbered the definitions in A.R.S. § 49-1201. This renumbering created inconsistencies between the statutes and rule. WIFA proposes to amend the rule to accurately reference the current citations.

SB1740 modified WIFA's governing structure. The definition of "Board" therefore inaccurately references the Arizona Finance Authority. WIFA proposes rewriting the definition to correctly reflect the change in WIFA's governing structure.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the definition of "Applicant" to account for these new programs. WIFA

anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

R18-15-102. Types of Assistance.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

SB1740 granted WIFA the ability to participate in public-private partnerships. WIFA proposes amending the rule to reference this new type of assistance. WIFA anticipates pursuing rulemaking to adopt rules for the new type of assistance during FY2024.

R18-15-103. Application Process.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

Article 2. Clean Water Revolving Fund

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

The following rules are consistent with and are not in conflict with statutes and rules:

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

The following rules are not consistent with, or conflict with, statutes and rules; WIFA proposes to increase their consistency with statutes and rules as indicated:

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

Subsection B of this rule incorrectly refers to "clean water revolving loan funds." WIFA proposes correcting this error and replacing with "drinking water revolving loan funds."

Article 4. Water Supply Development Revolving Fund

SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-701. Interest Rate Setting and Forgivable Principal

5. Are the rules enforced as written? **Yes ____** **No __X__**

Article 1. General Provisions

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 2. Clean Water Revolving Fund

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 3. Drinking Water Revolving Fund

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 4. Water Supply Development Revolving Fund

Currently, there is no financial assistance available under the Water Supply Development Fund, and therefore, there are no applications for assistance for WIFA to review under these rules. Moreover, SB1740 significantly changed the statutes governing the Water Supply Development Fund. To the extent the current rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740 with the expectation that financial assistance will be available under the Water Supply Development Revolving Fund in the future.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. To the extent the current rules governing Technical Assistance are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 7. Interest Rate Setting and Forgivable Principal

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

6. Are the rules clear, concise, and understandable? Yes ____ No __X__

Article 1. General Provisions

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-102. Types of Assistance

R18-15-103. Application Process

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-106. Environmental Review

The following rules are not clear, concise, or easily understood; WIFA proposes to increase clarity, conciseness, and understandability as indicated:

R18-15-101. Definitions.

The term "Advisory Board" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Advisory Board."

The term "Clean Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Clean Water State Revolving Fund".

The term "Dedicated revenue source for repayment" does not provide value and does not need to be defined. WIFA proposes deleting this definition.

The term "Department" is used in Title 18, Chapter 15 of the Arizona Administrative Code, to refer to the "Arizona Department of Environmental Quality." WIFA proposes replacing the term "Department" with "ADEQ".

The term "Drinking Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Drinking Water State Revolving Fund".

The term "Executive Director" refers to a position which no longer exists. WIFA proposes striking the definition of "Executive Director" and replacing with the defined term "Director."

The term "FONSI" as defined does not provide value. WIFA proposes amending this definition to increase its clarity and public understanding of the term.

The term "Governmental unit" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Governmental unit."

The term "Planning and design technical assistance applicant" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance applicant."

The term "Planning and design technical assistance application" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance application."

The term "Recipient" does not provide value and does not need to be defined. WIFA proposes deleting this definition.

The term "Staff assistance" contains a limitation that restricted assistance to water providers to the planning and design of water supply development projects in accordance with A.R.S. § 49-1203(B)(17). SB1704 removed this restriction and expanded eligibility to "eligible entities" as defined by statute. WIFA

proposes removing the now superseded language restricting staff assistance for water providers.

R18-15-107. Disputes.

The "Executive Director" position no longer exists. WIFA proposes striking references to "Executive Director" and replacing with "Director."

Article 2. Clean Water Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

Article 4. Water Supply Development Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

R18-15-402. Water Supply Development Revolving Fund Project List

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

R18-15-406. Water Supply Development Revolving Fund Requirements

Article 5. Technical Assistance

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-501. Technical Assistance

R18-15-502. Technical Assistance Intended Use Plan

R18-15-503. Clean Water Planning and Design Assistance

R18-15-504. Drinking Water Planning and Design Assistance

R18-15-505. Water Supply Development Planning and Design Assistance Grants

Article 6. Hardship Grant Fund Program

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-701. Interest Rate Setting and Forgivable Principal

7. Has the agency received written criticisms of the rules within the last five years?

Yes ____ No __X__

Article 1. General Provisions

WIFA did not receive any written comments of the rules in Article 1.

Article 2. Clean Water Revolving Fund

WIFA did not receive any written comments of the rules in Article 2.

Article 3. Drinking Water Revolving Fund

WIFA did not receive any written comments of the rules in Article 3.

Article 4. Water Supply Development Revolving Fund

WIFA did not receive any written comments of the rules in Article 4.

Article 5. Technical Assistance

WIFA did not receive any written comments of the rules in Article 5.

Article 6. Hardship Grant Fund Program

WIFA did not receive any written comments of the rules in Article 6.

Article 7. Interest Rate Setting and Forgivable Principal

WIFA did not receive any written comments of the rules in Article 7.

8. Economic, small business, and consumer impact comparison.

The economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2017 rulemaking. A copy of the 2017 Economic, Small Business and Consumer Impact Statement is included in Attachment C.

9. Has the agency received any business competitiveness analyses of the rules?

Yes ____ No __X__

Article 1. General Provisions

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 2. Clean Water Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 3. Drinking Water Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 4. Water Supply Development Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 5. Technical Assistance

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 6. Hardship Grant Fund Program

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 7. Interest Rate Setting and Forgivable Principal

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In WIFA's 2017 Five-Year Review Report, WIFA reported it had initiated a rulemaking, expected to be completed in early 2018, to address the issues identified in the 2017 Report. That rulemaking was completed on March 11, 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.

WIFA reports that the following information is identical for all WIFA rules:

WIFA is a public financing authority; it does not regulate any consumer or business. WIFA determined the probable benefits of the rules outweigh the probable costs of the rules.

12. Are the rules more stringent than corresponding federal laws?

Yes ____ No __X__

Article 1. General Provisions

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-101. Definitions

R18-15-102. Types of Assistance

R18-15-103. Application Process

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-107. Disputes

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-106. Environmental Review

Article 2. Clean Water Revolving Fund

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1292 and 33 U.S.C. §§ 1381-1387; *see also* 40 CFR Part 35 Subpart K. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

Section 1452 of the Safe Drinking Water Act, as amended (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 42 U.S.C. 300j-12; *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

Article 4. Water Supply Development Revolving Fund

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

R18-15-402. Water Supply Development Revolving Fund Project List

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

R18-15-406. Water Supply Development Revolving Fund Requirements

Article 5. Technical Assistance

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-505. Water Supply Development Planning and Design Assistance Grants

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-501. Technical Assistance

R18-15-502. Technical Assistance Intended Use Plan

R18-15-503. Clean Water Planning and Design Assistance

R18-15-504. Drinking Water Planning and Design Assistance

Article 6. Hardship Grant Fund Program

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-701. Interest Rate Setting and Forgivable Principal

13. For a rule adopted after July 29, 2020, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

WIFA reports that the following information is identical for all WIFA rules:

WIFA's rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action.

WIFA has contacted the Governor's Office to request approval pursuant to A.R.S. § 49-1039(A) to conduct rulemaking consistent with this report. If granted approval, WIFA anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by July 2024.

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 366

SENATE BILL 1740

AN ACT

AMENDING SECTION 41-192, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3002.09, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3027.05; REPEALING SECTION 41-3031.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-5355, 41-5356, 45-105, 45-111 AND 48-6415, ARIZONA REVISED STATUTES; REPEALING SECTIONS 49-193, 49-193.02, 49-193.03, 49-193.04 AND 49-193.05, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-1201 AND 49-1202, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, ARTICLE 1; AMENDING TITLE 49, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1203.01; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTION 49-1205, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 49, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-1206, 49-1207, 49-1208, 49-1209, 49-1210, 49-1211, 49-1212, 49-1213, 49-1214 AND 49-1215; AMENDING TITLE 49, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1270; AMENDING SECTION 49-1271, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1273, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 2; AMENDING SECTION 49-1274, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 3; AMENDING SECTION 49-1275, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 4; AMENDING TITLE 49, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 4 AND 5; AMENDING LAWS 2021, CHAPTER 408, SECTION 115; APPROPRIATING MONIES; RELATING TO THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-192, Arizona Revised Statutes, is amended to read:

41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions; compromise and settlement monies

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.

2. Establish administrative and operational policies and procedures within his department.

3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.

4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.

5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on ~~its~~ THEIR behalf. At any time within thirty days after the notification, ~~the political subdivisions, school districts and municipalities~~ A POLITICAL SUBDIVISION, SCHOOL DISTRICT OR MUNICIPALITY, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district

in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or ~~their~~ ITS duly authorized legal representatives in such action.

7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Subject to chapter 4, article 4 of this title, employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in subsections E and F of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.
7. The office of the governor.
8. The constitutional defense council.
9. The office of the state treasurer.
10. The Arizona commerce authority.
11. THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA.

E. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

F. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

G. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and ~~upon~~ ON a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

H. Appropriations made pursuant to subsection G of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F of this section are applicable shall be performed by special or regular assistants to the attorney general.

I. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

J. Unless otherwise provided by law, monies received for and belonging to the state and resulting from compromises and settlements entered into pursuant to subsection B of this section, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be deposited into the state treasury and credited to the state general fund pursuant to section 35-142. Monies received for and belonging to the state and resulting from a compromise or settlement are not considered custodial, private or quasi-private monies unless specifically provided by law. On or before January 15, April 15, July 15 and October 15, the attorney general shall file with the governor, with copies to the director of the department of administration, the president of the senate, the speaker of the house of representatives, the secretary of state and the staff director of the joint legislative budget committee, a full and complete account of the deposits into the state treasury made pursuant to this subsection in the previous calendar quarter. For the purposes of this subsection, "restitution" means monies intended to compensate a specific, identifiable person, including this state, for economic loss.

Sec. 2. Repeal

Section 41-3002.09, Arizona Revised Statutes, is repealed.

Sec. 3. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3027.05, to read:

41-3027.05. Water infrastructure finance authority of Arizona; termination July 1, 2027

A. THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA TERMINATES ON JULY 1, 2027.

B. TITLE 49, CHAPTER 8, ARTICLES 1 AND 3 AND SECTIONS 49-1224, 49-1225, 49-1226, 49-1244, 49-1245, 49-1246, 49-1261, 49-1262, 49-1263, 49-1264, 49-1265, 49-1266, 49-1267, 49-1268, 49-1269, 49-1301, 49-1303, 49-1304, 49-1305, 49-1306, 49-1307, 49-1308, 49-1309, 49-1310, 49-1311, 49-1312 AND 49-1313 ARE REPEALED ON JANUARY 1, 2028, IF THE AUTHORITY EITHER:

1. HAS NO OUTSTANDING CONTRACTUAL OBLIGATIONS WITH THE UNITED STATES OR ANY UNITED STATES AGENCY AND HAS NO DEBTS, OBLIGATIONS OR GUARANTEES THAT WERE ISSUED FOR THE PURPOSES OF TITLE 49, CHAPTER 8.

2. HAS OTHERWISE PROVIDED FOR PAYING OR RETIRING SUCH DEBTS OR OBLIGATIONS.

C. IF ANY DEBT OR OBLIGATION LISTED IN SUBSECTION B OF THIS SECTION EXISTS AND NO SATISFACTORY PROVISION HAS BEEN MADE TO PAY OR RETIRE THE DEBT OR OBLIGATION, THE AUTHORITY AND STATUTES CONTINUE IN EXISTENCE UNTIL THE DEBT OR OBLIGATION IS FULLY SATISFIED.

Sec. 4. Repeal

Section 41-3031.01, Arizona Revised Statutes, is repealed.

Sec. 5. Section 41-5355, Arizona Revised Statutes, is amended to read:

41-5355. Assets; cost of operation and administration; taxation

A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.

B. This state is not responsible for any obligation incurred by the authority.

C. All costs and expenses of the ARIZONA FINANCE authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the ARIZONA FINANCE authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority ~~and the water infrastructure finance authority of Arizona~~ that are available to pay the Arizona finance authority's costs and expenses.

D. The authority and its income are exempt from taxation in this state.

Sec. 6. Section 41-5356, Arizona Revised Statutes, is amended to read:

41-5356. Duties of board; annual report

A. The board shall:

1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.

2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.

~~3. Serve as the board of the water infrastructure finance authority of Arizona and have all powers and authority to take action pursuant to title 49, chapter 8 regarding water infrastructure financing.~~

~~4.~~ 3. Approve the authority's budget.

~~5. Establish a water and infrastructure finance authority advisory board to advise the board of directors of the authority consisting of relevant state agency representatives and the following additional members:~~

~~(a) One member who represents a public water system that serves five hundred or more connections.~~

~~(b) One member who represents a public water system that serves less than five hundred connections.~~

~~(c) One member who represents a sanitary district in a county with a population of less than five hundred thousand persons.~~

~~(d) One member who represents a sanitary district in a county with a population of five hundred thousand or more persons.~~

~~(e) One member who represents a city or town with a population of less than fifty thousand persons.~~

~~(f) One member who represents a city or town with a population of fifty thousand or more persons.~~

~~(g) One member who represents a county with a population of five hundred thousand or more persons.~~

B. On or before October 1 of each year, the industrial development authority shall submit a report to the president of the senate, the speaker of the house of representatives and the directors of the joint legislative budget committee and the governor's office of strategic planning and budgeting regarding the authority's revenues, expenditures and program activity for the previous fiscal year.

Sec. 7. Section 45-105, Arizona Revised Statutes, is amended to read:

45-105. Powers and duties of director

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.

3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and ~~utilization~~ USE of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, ~~utilization~~ USE of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the

performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3 and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including ~~meetings of the Arizona water resources advisory board,~~ congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; 33 United States Code section 701-1).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title. If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.

2. Administer all laws relating to groundwater, as provided in this title.

3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.

4. Coordinate and confer with and may contract with:

(a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.

(b) The department of environmental quality with respect to title 49, chapter 2 for its assistance in the development of state water plans.

(c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.

(d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.

5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.

6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.

7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.

8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.

~~9. Report to and consult with the Arizona water resources advisory board at regular intervals.~~

~~10.~~ 9. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

~~11.~~ 10. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.

~~12.~~ 11. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.

~~13.~~ 12. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.

~~14.~~ 13. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:

(a) The current status of the water supply in this state and any likely changes in that status.

(b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.

(c) The status of current water conservation programs in this state.

(d) The current state of each active management area and the level of progress toward management goals in each active management area.

(e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.

(f) The status of any pending or likely litigation regarding surface water adjudications or other ~~water related~~ WATER-RELATED litigation and the potential impacts on this state's water supplies.

(g) The status of Indian water rights settlements and related negotiations that affect this state.

(h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

14. NOT LATER THAN DECEMBER 1, 2023 AND ON OR BEFORE DECEMBER 1 OF EACH YEAR THEREAFTER, PREPARE AND ISSUE A WATER SUPPLY AND DEMAND ASSESSMENT FOR AT LEAST SIX OF THE FORTY-SIX GROUNDWATER BASINS ESTABLISHED PURSUANT TO SECTION 45-403. THE DIRECTOR SHALL ENSURE THAT A WATER SUPPLY AND DEMAND ASSESSMENT IS COMPLETED FOR ALL GROUNDWATER BASINS AT LEAST ONCE EVERY FIVE YEARS. THE DIRECTOR MAY CONTRACT WITH OUTSIDE ENTITIES TO PERFORM SOME OR ALL OF THE ASSESSMENTS AND THOSE OUTSIDE ENTITIES SHALL BE IDENTIFIED IN THE ASSESSMENT.

Sec. 8. Section 45-111, Arizona Revised Statutes, is amended to read:

45-111. Annual report by director

On or before July 1 each year the director shall render to the governor and the legislature a full and true report of the department's operations under this title. The report shall include suggestions as to amending existing laws or enacting new legislation as the director ~~and the Arizona water resources advisory board deem~~ DEEMS necessary and such other information, suggestions and recommendations as the director considers of value to the public. The report shall be published and made available to the public.

Sec. 9. Section 48-6415, Arizona Revised Statutes, is amended to read:

48-6415. District and municipal water delivery systems in the district eligible to receive financial assistance from water supply development revolving fund

The district is deemed to be a water provider for the purposes of title 49, chapter 8. The district and municipal water delivery systems serving water in the district are eligible to apply for and receive financial assistance from monies in the water supply development revolving fund established under section 49-1271 ~~notwithstanding section 49-1273, subsection C~~.

Sec. 10. Heading repeal

The article heading of title 49, chapter 1, article 8, Arizona Revised Statutes, is repealed.

Sec. 11. Repeal

Sections 49-193, 49-193.02, 49-193.03, 49-193.04 and 49-193.05, Arizona Revised Statutes, are repealed.

Sec. 12. Section 49-1201, Arizona Revised Statutes, is amended to read:

49-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means the water infrastructure finance authority of Arizona.

2. "Board" means the WATER INFRASTRUCTURE FINANCE AUTHORITY board ~~of directors of the Arizona finance authority~~ established by ~~title 41, chapter 53, article 2~~ SECTION 49-1206.

3. "Bonds of a political subdivision" means bonds issued by a political subdivision as authorized by law.

4. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water quality act of 1987 (P.L. 100-4; 101 Stat. 7).

5. "CONCESSION AGREEMENT" MEANS ANY LEASE, GROUND LEASE, FRANCHISE, EASEMENT, PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF WATER-RELATED FACILITIES BY THE AUTHORITY TO A PRIVATE PARTNER IN ACCORDANCE WITH THIS CHAPTER.

~~5.~~ 6. "Drinking water facility":

(a) Means a community water system or a nonprofit noncommunity water system as defined in the safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in this state. ~~For purposes of this chapter, drinking water facility~~

(b) Does not include water systems owned by federal agencies.

~~6.~~ 7. "Financial assistance loan repayment agreement" means an agreement to repay a loan provided to design, construct, acquire, rehabilitate or improve water or wastewater infrastructure, related property and appurtenances or a loan provided to finance a water supply development project.

8. "IMPORTED WATER" MEANS ANY WATER THAT ORIGINATES OUTSIDE OF THIS STATE AND THAT IS MADE AVAILABLE TO WATER USERS WITHIN THIS STATE BY CONVEYANCE, EXCHANGE OR OTHERWISE THROUGH PROJECTS THAT ARE FUNDED OR FINANCED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND.

9. "IMPORT WATER" MEANS TO MAKE WATER ORIGINATING OUTSIDE OF THIS STATE AVAILABLE TO WATER USERS WITHIN THIS STATE BY CONVEYANCE, EXCHANGE OR OTHERWISE THROUGH PROJECTS THAT ARE FUNDED OR FINANCED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND.

~~7.~~ 10. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority 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.

11. "LONG-TERM WATER AUGMENTATION BONDS" MEANS BONDS THAT ARE ISSUED BY THE AUTHORITY IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

12. "LONG-TERM WATER AUGMENTATION FUND" MEANS THE FUND ESTABLISHED BY SECTION 49-1302.

~~8.~~ 13. "Nonpoint source project" means a project designed to implement a certified water quality management plan.

~~9.~~ 14. "Political subdivision" means a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects.

15. "PRIVATE PARTNER" MEANS A PERSON, ENTITY OR ORGANIZATION THAT IS NOT THE FEDERAL GOVERNMENT, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

16. "PUBLIC-PRIVATE PARTNERSHIP PROJECT" MEANS ANY WATER SUPPLY DEVELOPMENT PROJECT THAT IS THE SUBJECT OF A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IN ACCORDANCE WITH THIS CHAPTER.

~~10.~~ 17. "Safe drinking water act" means the federal safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

~~11.~~ 18. "Technical assistance loan repayment agreement" means either of the following:

(a) An agreement to repay a loan provided to develop, plan and design water or wastewater infrastructure, related property and appurtenances. The agreement shall be for a term of not more than three years and the maximum amount that may be borrowed is limited to not more than $500,000.

(b) An agreement to repay a loan provided to develop, plan or design a water supply development project.

~~12.~~ 19. "Wastewater treatment facility" means a treatment works, as defined in section 212 of the clean water act, that is located in this state and that is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

~~13.~~ 20. "Water provider" means any of the following:

(a) A municipal water delivery system as defined in section 42-5301.

(b) A county water augmentation authority established under title 45, chapter 11.

(c) A county water authority established under title 45, chapter 13.

(d) An Indian tribe.

(e) A community facilities district as established by title 48, chapter 4.

(f) A public water system as prescribed in section 49-352.

(g) A county with a population of less than three hundred thousand persons.

(h) A natural resource conservation district.

(i) For purposes of funding from the water supply development revolving fund pursuant to article 3 of this chapter only, a county that enters into an intergovernmental agreement or other formal written agreement with a city, town or other water provider regarding a water supply development project.

21. "WATER-RELATED FACILITIES" MEANS ANY FACILITY RELATED TO THE PRODUCTION, DELIVERY, CONSERVATION OR STORAGE OF WATER, INCLUDING ANY CANALS, PIPELINES, DESALINATION PLANTS, PUMPING STATIONS, STORAGE PROJECTS, RECOVERY WELLS, DELIVERY AND RETENTION PROJECTS, WATER AND WASTEWATER TREATMENT PLANTS, AND OTHER EQUIPMENT AND FACILITIES INSTALLED FOR WATER CONSERVATION PURPOSES, TOGETHER WITH ANY LAND, BUILDINGS OR OTHER IMPROVEMENTS AND EQUIPMENT OR PERSONAL PROPERTY RELATED THERETO.

~~14.~~ 22. "Water supply development" means ~~either~~ ANY of the following:

(a) Acquiring water or rights to or contracts for water to augment the water supply of a water provider, including any environmental or other reviews, permits or plans reasonably necessary for that acquisition.

(b) Planning, designing, building or developing WATER-RELATED facilities, including any environmental or other reviews, permits or plans reasonably necessary for those facilities, for ~~any~~ EITHER of the following purposes:

(i) Conveyance~~,~~ OR DELIVERY OF WATER.

(ii) Storage or recovery of water UNDER TITLE 45, CHAPTER 3.1.

~~(iii)~~ (iii) Reclamation and reuse of water.

~~(iiii)~~ (iv) Replenishment of groundwater.

~~(iv)~~ (v) Active or passive stormwater recharge structures that increase water supplies.

(c) CONSERVATION THROUGH REDUCING EXISTING WATER USE OR MORE EFFICIENT USES OF EXISTING WATER SUPPLIES.

Sec. 13. Section 49-1202, Arizona Revised Statutes, is amended to read:

49-1202. Water infrastructure finance authority of Arizona

The water infrastructure finance authority of Arizona is established ~~in the Arizona finance authority~~. The ~~Arizona finance authority~~ board ~~of directors~~ shall govern the ~~water infrastructure finance~~ authority ~~of Arizona~~.

Sec. 14. Section 49-1203, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, article 1, is amended to read:

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

NOTWITHSTANDING ANY OTHER LAW AND UNLESS EXPRESSLY WAIVED BY THE AUTHORITY, THE AUTHORITY IS NOT SUBJECT TO ANY STATUTORY REQUIREMENT TO PAY ANOTHER PARTY'S ATTORNEY FEES OR COSTS IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to ~~water providers~~ ELIGIBLE ENTITIES for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance ~~to water providers~~ from monies in the water supply development revolving fund to finance water supply development AS PRESCRIBED BY THIS ARTICLE.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third-party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

~~(c) Water providers that are issued to finance water supply development projects.~~

7. Provide linked deposit guarantees through third-party lenders to political subdivisions~~,~~ AND drinking water facilities ~~and water providers~~.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding OF wastewater treatment facility, drinking

water facility and nonpoint source project financial assistance under this chapter, administering the clean water revolving fund and the drinking water revolving fund and issuing water quality bonds.

11. ~~Subject to title 41, chapter 4, article 4,~~ Hire a director WHO SERVES AT THE PLEASURE OF THE BOARD and WHO SHALL HIRE staff for the authority.

12. Contract for OR EMPLOY the services of outside advisors, attorneys, ENGINEERS, FINANCIAL AND OTHER consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with developing or financing wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance ~~to water providers in connection with the planning or design of water supply development projects~~ IN ACCORDANCE WITH SECTION 49-1273. ~~A single grant shall not exceed $250,000.~~ Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any

liability for the authority or this state regarding designing, constructing or operating any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding ~~water supply development fund project financial assistance under this chapter and administering the water supply development revolving fund~~ OF ASSISTANCE UNDER THIS CHAPTER AND THE ADMINISTRATION OF THE FUNDS ESTABLISHED BY THIS CHAPTER.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. ~~Disbursements of monies by~~ The water infrastructure finance authority ~~pursuant to a financial assistance agreement are~~ OF ARIZONA IS not subject to title 41, chapter 23. IN COORDINATION WITH THE DEPARTMENT OF ADMINISTRATION, THE AUTHORITY SHALL ESTABLISH PROCUREMENT PROCEDURES BY RULE TO ADMINISTER THE LONG-TERM WATER AUGMENTATION FUND.

F. For the purposes of the safe drinking water act and the clean water act, the department is the state agency with primary responsibility for administering this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

Sec. 15. Title 49, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 49-1203.01, to read:

49-1203.01. Water infrastructure finance authority of Arizona; additional powers and duties

A. THE AUTHORITY, ACTING THROUGH ITS BOARD, SHALL:

1. ADMINISTER THE LONG-TERM WATER AUGMENTATION FUND IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

2. USE MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 TO INVESTIGATE THE FEASIBILITY OF ENTERING INTO AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES FOR PROJECTS TO IMPORT WATER INTO THIS STATE. THE AUTHORITY MAY CONSIDER ANY EXISTING STUDIES OR PLANS IT DEEMS RELEVANT FOR THIS PURPOSE.

B. EXCEPT AS LIMITED IN THIS CHAPTER OR BY OTHER LAWS AND AS REASONABLE OR NECESSARY TO ADMINISTER OR CARRY OUT THE PURPOSES OF THE LONG-TERM WATER AUGMENTATION FUND AND WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271, THE AUTHORITY MAY:

1. ACQUIRE, SELL, LEASE, EXCHANGE OR OTHERWISE DISPOSE OF REAL AND PERSONAL PROPERTY OF EVERY KIND WITHIN THIS STATE.

2. APPLY FOR AND HOLD PERMITS THAT ARE REQUIRED BY LAW TO ENGAGE IN ANY OF THE ACTIVITIES DESCRIBED IN THIS CHAPTER.

3. NEGOTIATE AND ENTER INTO INTERGOVERNMENTAL AGREEMENTS AND AGREEMENTS WITH PRIVATE AND PUBLIC ENTITIES WITHIN AND OUTSIDE OF THIS STATE.

4. CONTRACT FOR OR PERFORM FEASIBILITY STUDIES OF WATER STORAGE, STORAGE FACILITIES AND RECOVERY WELLS.

5. APPLY FOR AND ACCEPT GRANTS, GIFTS OR DONATIONS OF MONIES OR OTHER PROPERTY FROM ANY SOURCE THAT MAY BE SPENT FOR ANY PURPOSE CONSISTENT WITH THIS CHAPTER.

6. CONDUCT ANY OTHER ACTIVITIES THAT ARE REASONABLY NECESSARY AND RELATED TO THE POWERS AND DUTIES DESCRIBED IN THIS CHAPTER.

C. EXCEPT AS LIMITED IN THIS CHAPTER OR BY OTHER LAWS AND AS REASONABLE OR NECESSARY TO ADMINISTER OR CARRY OUT THE PURPOSES OF THE LONG-TERM WATER AUGMENTATION FUND, THE AUTHORITY MAY:

1. ISSUE LONG-TERM WATER AUGMENTATION BONDS IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER. THE LONG-TERM WATER AUGMENTATION BONDS SHALL BE IN THE NAME OF THE AUTHORITY, AND THE AUTHORITY MAY PLEDGE SOURCES FOR SECURITY AND PAYMENT OF SUCH BONDS IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

2. ISSUE REFUNDING BONDS IF THE AUTHORITY DEEMS REFUNDING EXPEDIENT.

3. REFUND BY ISSUING NEW BONDS FOR ANY BONDS ISSUED BY THE AUTHORITY IF THESE BONDS ARE SECURED FROM THE SAME SOURCE OF REVENUES AS THE BONDS AUTHORIZED BY THIS CHAPTER WITHOUT REGARD TO WHETHER THE BONDS TO BE REFUNDED HAVE MATURED.

4. TAKE, HOLD AND ENFORCE A SECURITY INTEREST IN WATER-RELATED FACILITIES INSIDE AND OUTSIDE OF THIS STATE IN CONNECTION WITH THE TERMS OF ANY AGREEMENT ENTERED INTO BY THE AUTHORITY IF THE AUTHORITY DETERMINES THAT SUCH A SECURITY INTEREST IS NECESSARY TO ADEQUATELY PROTECT THIS STATE'S INTERESTS.

5. TO THE EXTENT NECESSARY TO FACILITATE AN APPROVED WATER SUPPLY DEVELOPMENT PROJECT:

(a) PLAN, CONSTRUCT, ACQUIRE, OWN, IMPROVE AND EQUIP WATER-RELATED FACILITIES WITHIN THIS STATE TO TRANSPORT OR DELIVER IMPORTED WATER WITHIN THIS STATE.

(b) NEGOTIATE AND EXECUTE AGREEMENTS TO ACQUIRE, SELL, LEASE, EXCHANGE, HOLD, SEVER OR TRANSFER IMPORTED WATER AND RIGHTS TO IMPORTED WATER. THE AUTHORITY MAY ACQUIRE IMPORTED WATER AND RIGHTS TO IMPORTED WATER IN ITS OWN NAME.

(c) ENTER INTO AND CARRY OUT CONTRACTS OR SUBCONTRACTS FOR THE TRANSPORT, TREATMENT AND DELIVERY OF IMPORTED WATER ACQUIRED BY THE AUTHORITY.

(d) STORE IMPORTED WATER AND ACQUIRE, HOLD, ASSIGN OR OTHERWISE DISPOSE OF CREDITS FOR IMPORTED WATER REGISTERED TO STORAGE ACCOUNTS UNDER TITLE 45, CHAPTER 3.1.

(e) NEGOTIATE AND ENTER INTO AGREEMENTS TO USE EXISTING WATER-RELATED FACILITIES.

6. CONDUCT INVESTIGATIONS, INCLUDING PERFORMING ENVIRONMENTAL OR OTHER REVIEWS, IN ASSOCIATION WITH ANY OF THE ACTIVITIES PRESCRIBED BY PARAGRAPHS 4 AND 5 OF THIS SUBSECTION.

7. ASSESS FEES AND CHARGES IN CONNECTION WITH THE AUTHORITY'S DESIGN, CONSTRUCTION, ACQUISITION, IMPROVEMENT, EQUIPPING AND OWNERSHIP OF WATER-RELATED FACILITIES, INCLUDING FOR THE CONVEYANCE OR DELIVERY OF WATER AND IN CONNECTION WITH OPERATION AND MAINTENANCE AGREEMENTS ENTERED INTO BY THE AUTHORITY IN CONNECTION WITH WATER-RELATED FACILITIES. ANY FEES COLLECTED PURSUANT TO THIS PARAGRAPH CONSTITUTE GOVERNMENTAL REVENUE, MAY BE USED FOR ANY PURPOSE CONSISTENT WITH THE PURPOSES OF THE AUTHORITY AND MUST BE DEPOSITED IN THE LONG-TERM WATER AUGMENTATION FUND.

D. THIS CHAPTER DOES NOT REPLACE, SUPPLANT OR DIMINISH THE POWERS AND DUTIES OF THE DIRECTOR OF WATER RESOURCES SET FORTH IN TITLE 45, INCLUDING SECTIONS 45-105 AND 45-107.

Sec. 16. Section 49-193.01, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, chapter 8, article 1, Arizona Revised Statutes, as section 49-1205 and as so renumbered, is amended to read:

49-1205. Water infrastructure finance authority board; legislative intent

~~A. The drought mitigation revolving fund is established to be maintained in perpetuity consisting of:~~

~~1. Monies appropriated by the legislature to the fund.~~

~~2. Monies received for drought mitigation purposes from the United States government.~~

~~3. Monies received as loan repayments, interest and penalties.~~

~~4. Interest and other income received from investing monies in the fund.~~

~~5. Gifts, grants and donations received for drought mitigation purposes from any public or private source.~~

~~B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.~~

~~C.~~ A. The legislature finds THAT:

1. NOW AND INTO THE FORESEEABLE FUTURE that ~~many~~ regions in this state lack access to ~~sustainable~~ THE NECESSARY water supplies to meet their CURRENT AND long-term water ~~demands and need financial assistance to develop water supply and conservation projects. The legislature intends that the fund established by this section be used to provide financial~~

~~assistance for these projects under the terms set forth in this article~~ NEEDS.

2. PROTECTING CURRENT AND FUTURE RESIDENTS, THE ECONOMY AND THE ENVIRONMENT OF THIS STATE IS BEST ACHIEVED THROUGH A COMPREHENSIVE WATER STRATEGY THAT CONSERVES WATER, IMPROVES THE EFFICIENCY AND REUSE OF EXISTING WATER RESOURCES AND AUGMENTS EXISTING WATER RESOURCES WITH NEW RENEWABLE SUPPLIES OF WATER.

B. THE AUTHORITY IS ESTABLISHED FOR THE BENEFIT OF CURRENT AND FUTURE RESIDENTS, THE ECONOMY AND THE ENVIRONMENT OF THIS STATE.

C. THE AUTHORITY SHALL ACCOMPLISH ITS PURPOSES OF HELPING TO MEET EXISTING AND FUTURE WATER NEEDS OF THIS STATE BY DEVELOPING OR FACILITATING WATER CONSERVATION, REUSE AND AUGMENTATION PROJECTS.

D. THE AUTHORITY MAY ACCOMPLISH ITS PURPOSE INDIVIDUALLY, THROUGH COLLABORATION OR BY PARTNERING WITH PUBLIC OR PRIVATE ENTITIES. IF POSSIBLE, THE AUTHORITY MAY LEVERAGE EXISTING RESOURCES AND INFRASTRUCTURE WHILE NOT INTERFERING WITH ALREADY AVAILABLE USABLE WATER RESOURCES.

Sec. 17. Title 49, chapter 8, article 1, Arizona Revised Statutes, is amended by adding sections 49-1206, 49-1207, 49-1208, 49-1209, 49-1210, 49-1211, 49-1212, 49-1213, 49-1214 and 49-1215, to read:

49-1206. Water infrastructure finance authority board; membership; fingerprinting; conduct of office; definition

A. THE WATER INFRASTRUCTURE FINANCE AUTHORITY BOARD IS ESTABLISHED TO EVALUATE AND APPROVE FUNDING REQUESTS FOR MONIES FROM THE CLEAN WATER REVOLVING FUND, THE SAFE DRINKING WATER REVOLVING FUND, THE WATER SUPPLY DEVELOPMENT REVOLVING FUND, THE LONG-TERM WATER AUGMENTATION FUND AND THE WATER CONSERVATION GRANT FUND AND TO PERFORM OTHER DUTIES AS PRESCRIBED IN THIS CHAPTER.

B. THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

1. FOUR PERSONS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE.

2. FOUR PERSONS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS.

3. ONE PERSON WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS.

4. THE FOLLOWING AS ADVISORY MEMBERS WITHOUT THE POWER TO VOTE BUT WHO MAY ATTEND EXECUTIVE SESSIONS OF THE BOARD:

(a) THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE.

(b) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SPEAKER'S DESIGNEE.

(c) THE MINORITY LEADER OF THE SENATE OR THE MINORITY LEADER'S DESIGNEE.

(d) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR THE MINORITY LEADER'S DESIGNEE.

(e) THE DIRECTOR OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

(f) THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE DIRECTOR'S DESIGNEE.

(g) THE STATE LAND COMMISSIONER OR THE COMMISSIONER'S DESIGNEE.

(h) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION OR THE DIRECTOR'S DESIGNEE.

(i) THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE.

C. THE FOLLOWING APPLY TO THE EIGHT MEMBERS APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION:

1. NO THREE APPOINTED MEMBERS OF THE BOARD MAY BE RESIDENTS OF THE SAME COUNTY, AND AT LEAST ONE APPOINTED MEMBER OF THE BOARD SHALL BE A RESIDENT OF EACH COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE.

2. MEMBERS MUST HAVE A SUBSTANTIAL KNOWLEDGE OF AND EXPERIENCE WITH WATER OR FINANCE, INCLUDING PUBLIC FINANCE.

D. THE FOLLOWING APPLY TO ALL MEMBERS APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 THROUGH 3 OF THIS SECTION:

1. THE GOVERNOR SHALL APPOINT TWO OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE, TWO OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS AND SHALL APPOINT THE MEMBER WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS FROM THE JOINT LIST OF AT LEAST FIVE QUALIFIED APPLICANTS SUBMITTED BY THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

2. THE PRESIDENT OF THE SENATE AND MINORITY LEADER OF THE SENATE SHALL APPOINT ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS. THE PRESIDENT OF THE SENATE AND MINORITY LEADER OF THE SENATE SHALL ALTERNATE THE TERMS IN WHICH THESE MEMBERS ARE APPOINTED.

3. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL ALTERNATE THE TERMS IN WHICH THESE MEMBERS ARE APPOINTED.

4. APPOINTED MEMBERS SERVE FIVE-YEAR TERMS OF OFFICE BEGINNING AND ENDING ON THE THIRD MONDAY IN JANUARY AND ARE ELIGIBLE FOR REAPPOINTMENT. A MEMBER MAY BE REMOVED ONLY FOR CAUSE BY THE PERSON WHO THEN HOLDS THE SAME OFFICE AS THE PERSON WHO APPOINTED THAT MEMBER.

5. MEMBERS SHALL BE RESIDENTS OF THIS STATE FOR AT LEAST TWO YEARS.

6. THE ORDER IN WHICH THE MEMBERS ARE APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 AND 2 IS:

(a) FOR THE INITIAL TERM AND EVERY THIRD TERM THEREAFTER, THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT FIRST, THE GOVERNOR SHALL APPOINT SECOND AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT THIRD.

(b) FOR THE SECOND TERM AND EVERY THIRD TERM THEREAFTER, THE GOVERNOR SHALL APPOINT FIRST, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT SECOND AND THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT THIRD.

(c) FOR THE THIRD TERM AND EVERY THIRD TERM THEREAFTER, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT FIRST, THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT SECOND AND THE GOVERNOR SHALL APPOINT THIRD.

E. BEFORE A MEMBER IS APPOINTED TO THE BOARD PURSUANT TO SUBSECTION C OR D OF THIS SECTION, THE PROSPECTIVE MEMBER 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 GOVERNOR SHALL SUBMIT THE FINGERPRINTS TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION.

F. THE BOARD SHALL ELECT A CHAIRPERSON OF THE BOARD FROM AMONG THE VOTING MEMBERS. THE CHAIRPERSON MAY APPOINT SUBCOMMITTEES AS NECESSARY.

G. THE BOARD MAY REQUEST ASSISTANCE FROM REPRESENTATIVES OF OTHER STATE AGENCIES. THE DEPARTMENT OF WATER RESOURCES SHALL PROVIDE TECHNICAL ASSISTANCE TO THE BOARD.

H. BOARD MEMBERS SERVE WITHOUT COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2. A BOARD MEMBER WHO IS OTHERWISE EMPLOYED AS A PUBLIC OFFICER MAY NOT RECEIVE REIMBURSEMENT PURSUANT TO THIS SUBSECTION IF IT IS OTHERWISE PROHIBITED BY LAW.

I. A MAJORITY OF THE VOTING MEMBERS CONSTITUTES A QUORUM FOR THE PURPOSE OF AN OFFICIAL MEETING FOR CONDUCTING BUSINESS. AN AFFIRMATIVE VOTE OF A MAJORITY OF THE VOTING MEMBERS PRESENT AT AN OFFICIAL MEETING IS SUFFICIENT FOR THE BOARD TO TAKE ANY ACTION, EXCEPT THAT APPROVAL OF FUNDING OR OTHER FINANCIAL ASSISTANCE FROM THE WATER CONSERVATION GRANT FUND, THE CLEAN WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1221, THE DRINKING WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1241, THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271 OR THE LONG-TERM WATER AUGMENTATION FUND REQUIRES THE AFFIRMATIVE VOTE OF AT LEAST SIX OF THE VOTING MEMBERS PRESENT AT AN OFFICIAL MEETING OF THE BOARD.

J. THE BOARD SHALL KEEP AND MAINTAIN A COMPLETE AND ACCURATE RECORD OF ALL BOARD PROCEEDINGS.

K. THE BOARD, COMMITTEES AND ANY SUBCOMMITTEES ARE SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 3.1, RELATING TO PUBLIC MEETINGS, EXCEPT ADVISORY NONVOTING MEMBERS OF THE BOARD MAY ATTEND EXECUTIVE SESSIONS OF THE BOARD.

L. THE BOARD, ITS SUBCOMMITTEES AND THE OFFICERS AND ANY EMPLOYEES OF THE BOARD ARE SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 8, RELATING TO CONFLICTS OF INTEREST. IN ADDITION TO THE CONFLICT OF INTEREST PROVISIONS IN TITLE 38, CHAPTER 3, ARTICLE 8, AND EXCEPT FOR EMPLOYEES OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE, THE FOLLOWING APPLY:

1. A PERSON IS NOT ELIGIBLE FOR APPOINTMENT TO THE BOARD IF THE PERSON OR THE PERSON'S SPOUSE MEETS ANY OF THE FOLLOWING CRITERIA:

(a) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS ENTITY OR OTHER ORGANIZATION THAT RECEIVES MONIES FROM THE AUTHORITY.

(b) OWNS, CONTROLS OR HAS, DIRECTLY OR INDIRECTLY, MORE THAN A TEN PERCENT INTEREST IN A BUSINESS ENTITY OR OTHER ORGANIZATION THAT RECEIVES MONIES FROM THE AUTHORITY.

(c) USES OR RECEIVES A SUBSTANTIAL AMOUNT OF TANGIBLE GOODS, SERVICES OR MONIES FROM THE AUTHORITY.

(d) HAS A PERSONAL FINANCIAL INTEREST IN THE AWARD OR EXPENDITURE. THE PERSON OR THE PERSON'S SPOUSE DOES NOT HAVE A PERSONAL FINANCIAL INTEREST IF THE PERSON OR THE PERSON'S SPOUSE IS A MEMBER OF A CLASS OF PERSONS AND IT REASONABLY APPEARS THAT A MAJORITY OF THE TOTAL MEMBERSHIP OF THAT CLASS IS TO BE AFFECTED BY THE ACTION.

2. A PERSON MAY NOT BE A VOTING MEMBER OF THE BOARD OR ACT AS THE GENERAL COUNSEL TO THE BOARD OR AUTHORITY IF THE PERSON IS REQUIRED TO REGISTER AS A LOBBYIST.

3. A PERSON MAY NOT BE A MEMBER OF THE BOARD OR AN EMPLOYEE OF THE AUTHORITY IF THE PERSON OR THE PERSON'S RELATIVE IS AN OFFICER, EMPLOYEE OR PAID CONSULTANT FOR A WATER USERS' ASSOCIATION OR TRADE ASSOCIATION.

M. AN EMPLOYEE OF A POLITICAL SUBDIVISION OF THIS STATE WHO SERVES ON THE BOARD MAY NOT PARTICIPATE IN THE CONSIDERATION OF OR A VOTE CONCERNING ANY AWARD OR EXPENDITURE BY THE AUTHORITY FOR PROJECTS THAT WILL DIRECTLY BENEFIT THE POLITICAL SUBDIVISION.

N. THE BOARD SHALL ADOPT WRITTEN POLICIES, PROCEDURES AND GUIDELINES FOR STANDARDS OF CONDUCT, INCLUDING A GIFT POLICY, FOR MEMBERS OF THE BOARD AND FOR OFFICERS AND EMPLOYEES OF THE BOARD.

O. THE BOARD IS A PUBLIC BODY THAT IS SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 3. THE BOARD SHALL OPERATE ON THE STATE FISCAL YEAR.

P. ALL STATE AGENCIES SHALL COOPERATE WITH THE BOARD AND MAKE AVAILABLE DATA PERTAINING TO THE FUNCTIONS OF THE BOARD AS REQUESTED BY THE BOARD.

Q. FOR THE PURPOSES OF THIS SECTION, "TRADE ASSOCIATION" MEANS ANY COOPERATIVE, ASSOCIATION OR BUSINESS ORGANIZATION, WHETHER OR NOT INCORPORATED UNDER FEDERAL OR STATE LAW, THAT IS DESIGNED TO ASSIST ITS MEMBERS, INDUSTRY OR PROFESSION IN ADVOCATING FOR OR PROMOTING THEIR COMMON INTEREST.

49-1207. Federal water programs committee; membership; recommendations

A. THE FEDERAL WATER PROGRAMS COMMITTEE IS ESTABLISHED TO ADVISE THE BOARD AND CONSISTS OF THE FOLLOWING VOTING MEMBERS WHO ARE APPOINTED BY THE BOARD:

1. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES FIVE HUNDRED OR MORE CONNECTIONS.

2. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES LESS THAN FIVE HUNDRED CONNECTIONS.

3. ONE MEMBER WHO REPRESENTS A DOMESTIC WATER IMPROVEMENT DISTRICT OR SANITARY DISTRICT IN A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND PERSONS.

4. ONE MEMBER WHO REPRESENTS A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT OR SANITARY DISTRICT IN A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

5. ONE MEMBER WHO REPRESENTS A CITY OR TOWN WITH A POPULATION OF LESS THAN FIFTY THOUSAND PERSONS.

6. ONE MEMBER WHO REPRESENTS A CITY OR TOWN WITH A POPULATION OF FIFTY THOUSAND OR MORE PERSONS.

7. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

8. THE DIRECTOR OF ENVIRONMENTAL QUALITY OR THE DIRECTOR'S DESIGNEE.

9. THE DIRECTOR OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

10. THE EXECUTIVE DIRECTOR OF THE CORPORATION COMMISSION OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

11. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE.

B. THE FEDERAL WATER PROGRAMS COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL OR OTHER ASSISTANCE FROM THE CLEAN WATER REVOLVING FUND PROGRAM, THE SAFE DRINKING WATER REVOLVING FUND PROGRAM AND THE HARDSHIP GRANT FUND PROGRAM AND SHALL MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

49-1208. Water supply development committee; long-term water augmentation committee; membership; recommendations

A. THE WATER SUPPLY DEVELOPMENT COMMITTEE IS ESTABLISHED CONSISTING OF SEVEN MEMBERS OF THE BOARD, INCLUDING THE FOUR MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF LESS THAN FOUR HUNDRED THOUSAND PERSONS, TWO MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND WHO ARE SELECTED BY A VOTE OF THE BOARD AND THE MEMBER OF THE BOARD WHO IS APPOINTED BY THE GOVERNOR AND WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS. THE WATER SUPPLY DEVELOPMENT COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE WATER SUPPLY

DEVELOPMENT REVOLVING FUND AND MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

B. THE LONG-TERM WATER AUGMENTATION COMMITTEE IS ESTABLISHED CONSISTING OF SEVEN MEMBERS OF THE BOARD, INCLUDING THE FOUR MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF FOUR HUNDRED THOUSAND PERSONS OR MORE, TWO MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF LESS THAN FOUR HUNDRED THOUSAND PERSONS AND WHO ARE SELECTED BY A VOTE OF THE BOARD AND THE MEMBER OF THE BOARD WHO IS APPOINTED BY THE GOVERNOR AND WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS. THE LONG-TERM WATER AUGMENTATION COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND AND MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

49-1209. Cooperation with governmental entities

A. THE AUTHORITY MAY REQUEST ASSISTANCE FROM REPRESENTATIVES OF OTHER STATE AGENCIES, AND ALL STATE AGENCIES SHALL COOPERATE WITH THE AUTHORITY AND MAKE AVAILABLE DATA PERTAINING TO THE FUNCTIONS OF THE BOARD AS REQUESTED BY THE AUTHORITY.

B. IN THE ACQUISITION, CONSTRUCTION OR DEVELOPMENT OF WATER-RELATED FACILITIES, THE AUTHORITY SHALL COOPERATE WITH ESTABLISHED AND EXISTING STATE AGENCIES AND POLITICAL SUBDIVISIONS OF THIS STATE AND WITH THE UNITED STATES AND OTHER STATES.

C. THE AUTHORITY MAY NOT BEGIN NEGOTIATIONS REGARDING ANY AGREEMENT INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THIS STATE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE DIRECTOR OF WATER RESOURCES AND MAY NOT ENTER INTO ANY AGREEMENT INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THIS STATE WITHOUT THE DIRECTOR OF WATER RESOURCES' EXPRESS WRITTEN APPROVAL.

49-1210. Limitations on water activities

A. THE AUTHORITY MAY NOT PURCHASE ANY MAINSTREAM COLORADO RIVER WATER OR RIGHTS TO MAINSTREAM COLORADO RIVER WATER AND MAY NOT PROVIDE FUNDING OR FINANCIAL ASSISTANCE TO TRANSFER, PURCHASE OR LEASE ANY SUCH WATER OR RIGHTS TO SUCH WATER, EXCEPT THAT THIS PROHIBITION DOES NOT APPLY TO ANY WATER OR RIGHTS TO WATER HELD BY A FEDERALLY RECOGNIZED INDIAN TRIBE OR TO PURCHASES MADE WITH MONIES FROM THE CLEAN WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1221 OR THE DRINKING WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1241. FOR PURPOSES OF THIS SUBSECTION, "MAINSTREAM COLORADO RIVER WATER" MEANS COLORADO RIVER WATER THAT IS AVAILABLE TO SATISFY ENTITLEMENTS IN THIS STATE BUT THAT IS NOT DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT.

B. THE AUTHORITY MAY NOT ENTER INTO ANY AGREEMENTS TO CONVEY OR DELIVER WATER TO A WATER USER WITHIN THE INCORPORATED BOUNDARIES OF A CITY OR TOWN, A CITY OR TOWN WATER SERVICE AREA OR WITHIN THE BOUNDARIES OF A CERTIFICATE OF CONVENIENCE AND NECESSITY OF A PRIVATE WATER COMPANY WITHOUT THE WRITTEN CONSENT OF THE CITY, TOWN OR PRIVATE WATER COMPANY.

C. THE AUTHORITY MAY NOT OPERATE OR MAINTAIN ANY WATER-RELATED FACILITIES BUT MAY ENTER INTO AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO OPERATE OR MAINTAIN WATER-RELATED FACILITIES OWNED OR CONSTRUCTED BY THE AUTHORITY.

D. EXCEPT AS PROVIDED IN SECTION 49-1203.01, SUBSECTION C, PARAGRAPH 4, THE AUTHORITY MAY NOT ACQUIRE OR OWN WATER-RELATED FACILITIES THAT ARE EITHER:

1. LOCATED WITHIN THIS STATE AND USED TO CONVEY OR DELIVER WATER THAT IS NOT IMPORTED WATER.

2. LOCATED OUTSIDE THIS STATE.

E. IF THE AUTHORITY ACQUIRES IMPORTED WATER OR LONG-TERM STORAGE CREDITS CREATED FROM IMPORTED WATER IN ITS OWN NAME, THE AUTHORITY MAY NOT SELL OR LEASE THAT WATER OR THOSE LONG-TERM STORAGE CREDITS FOR AMOUNTS GREATER THAN NECESSARY TO COMPLY WITH SECTION 49-1303, SUBSECTION E OR TO REPAY LONG-TERM WATER AUGMENTATION BONDS ISSUED TO FUND ANY PROJECT TO ACQUIRE THE IMPORTED WATER OR LONG-TERM STORAGE CREDITS.

49-1211. Project delivery methods

THE AUTHORITY MAY PROVIDE FOR THE DEVELOPMENT OR OPERATION OF WATER-RELATED FACILITIES USING A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF AGREEMENT. THE METHODS MAY INCLUDE:

1. PREDEVELOPMENT AGREEMENTS LEADING TO OTHER IMPLEMENTING AGREEMENTS.

2. A DESIGN-BUILD AGREEMENT.

3. A DESIGN-BUILD-MAINTAIN AGREEMENT.

4. A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.

5. A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.

6. A DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT.

7. A CONCESSION AGREEMENT PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD, OPERATE, MAINTAIN, MANAGE OR LEASE A WATER-RELATED FACILITY.

8. ANY OTHER PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF METHODS OR AGREEMENTS THAT THE AUTHORITY DETERMINES ARE REASONABLE OR NECESSARY TO CARRY OUT THE AUTHORITY'S PURPOSES.

49-1212. Procurement for water-related facilities; insurance; evaluations; deviations

A. THE AUTHORITY MAY PROCURE SERVICES FOR THE DEVELOPMENT, DESIGN, ACQUISITION, CONSTRUCTION, IMPROVEMENT OR EQUIPPING OF WATER-RELATED FACILITIES USING ANY OF THE FOLLOWING:

1. REQUESTS FOR PROJECT PROPOSALS IN WHICH THE AUTHORITY DESCRIBES A CLASS OF WATER-RELATED FACILITIES OR A GEOGRAPHIC AREA IN WHICH ENTITIES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP WATER-RELATED FACILITIES.

2. SOLICITATIONS USING REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL OFFERS OR OTHER PROCUREMENT PROCEDURES.

3. PROCUREMENTS SEEKING DEVELOPMENT AND FINANCE PLANS THAT ARE MOST SUITABLE FOR THE PROJECT.

4. BEST VALUE SELECTION PROCUREMENTS BASED ON PRICE OR FINANCIAL PROPOSALS, OR BOTH, AND ANY OTHER RELEVANT FACTORS.

5. OTHER PROCEDURES THAT THE AUTHORITY DETERMINES MAY FURTHER THE IMPLEMENTATION OF THIS CHAPTER.

B. FOR ANY PROCUREMENT IN WHICH THE AUTHORITY ISSUES A REQUEST FOR QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT, THE REQUEST SHALL SET FORTH GENERALLY THE FACTORS THAT WILL BE EVALUATED AND THE MANNER IN WHICH RESPONSES WILL BE EVALUATED. IF CONTRACTOR INSURANCE IS REQUIRED FOR SERVICES PROCURED PURSUANT TO THIS SECTION, THE INSURANCE SHALL BE PLACED WITH AN INSURER AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1 OR A SURPLUS LINES INSURER APPROVED AND IDENTIFIED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 5.

C. IN EVALUATING PROPOSALS UNDER THIS SECTION, THE AUTHORITY SHALL CONSIDER THE CRITERIA PRESCRIBED PURSUANT TO SECTION 49-1304.

D. THE AUTHORITY MAY DEVIATE FROM ANY REQUIREMENTS IN THIS SECTION TO THE EXTENT NECESSARY TO MAKE USE OF ANY AVAILABLE FEDERAL FUNDING FOR THE DESIGN, DEVELOPMENT, ACQUISITION, CONSTRUCTION, IMPROVEMENT OR EQUIPPING OF WATER-RELATED FACILITIES.

49-1213. Public-private partnership agreements; private partners; political subdivisions; tax exemptions; prohibition

A. IN ANY PUBLIC-PRIVATE PARTNERSHIP UNDER THIS CHAPTER, THE AUTHORITY MAY INCLUDE PROVISIONS THAT:

1. ALLOW THE AUTHORITY OR THE PRIVATE PARTNER TO ESTABLISH AND COLLECT DELIVERY CHARGES, SERVICE CHARGES, OPERATION AND MAINTENANCE CHARGES OR SIMILAR CHARGES, INCLUDING PROVISIONS THAT:

(a) ESTABLISH CIRCUMSTANCES UNDER WHICH THE AUTHORITY MAY RECEIVE ALL OR A SHARE OF REVENUES FROM SUCH CHARGES.

(b) GOVERN ENFORCEMENT OF COLLECTION OF SUCH CHARGES.

(c) ALLOW THE AUTHORITY TO CONTINUE OR CEASE COLLECTION OF CHARGES AFTER THE END OF THE TERM OF THE AGREEMENT.

2. ALLOW FOR PAYMENTS TO BE MADE BY THIS STATE TO THE PRIVATE PARTNER.

3. ALLOW THE AUTHORITY TO ACCEPT PAYMENTS OF MONIES AND SHARE REVENUES WITH THE PRIVATE PARTNER.

4. ADDRESS HOW THE PARTNERS WILL SHARE MANAGEMENT OF THE RISKS OF THE PUBLIC-PRIVATE PARTNERSHIP PROJECT, INCLUDING ANY RISKS ASSOCIATED WITH PUBLIC-PRIVATE PARTNERSHIP PROJECTS THAT WILL ORIGINATE OUTSIDE OF THIS STATE.

5. SPECIFY HOW THE PARTNERS WILL SHARE THE COSTS OF THE DESIGN, DEVELOPMENT, ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THE PUBLIC-PRIVATE PARTNERSHIP PROJECT.

6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

7. ESTABLISH THE DAMAGES TO BE ASSESSED FOR NONPERFORMANCE.

8. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

9. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY INTERESTS THAT MAY BE REQUIRED.

10. ESTABLISH RECORDKEEPING, ACCOUNTING AND AUDITING STANDARDS TO BE USED FOR THE PUBLIC-PRIVATE PARTNERSHIP PROJECT.

11. FOR A PUBLIC-PRIVATE PARTNERSHIP PROJECT THAT REVERTS TO PUBLIC OWNERSHIP, ADDRESS RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER FOR WATER-RELATED FACILITIES TO MEET ALL APPLICABLE GOVERNMENT STANDARDS ON REVERSION OF THE WATER-RELATED FACILITIES TO THIS STATE.

12. IDENTIFY ANY AUTHORITY SPECIFICATIONS THAT MUST BE SATISFIED, INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING SATISFACTORY TO THE AUTHORITY.

13. REQUIRE A PRIVATE PARTNER TO PROVIDE PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORMS OF SECURITY OR A COMBINATION OF ANY OF THESE, THE PENAL SUM OR AMOUNT OF WHICH MAY BE LESS THAN ONE HUNDRED PERCENT OF THE VALUE OF THE CONTRACT INVOLVED BASED ON THE AUTHORITY'S DETERMINATION, MADE ON A PROJECT-BY-PROJECT BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THIS STATE.

14. ALLOW THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO ESTABLISH AND COLLECT DELIVERY CHARGES, OPERATION AND MAINTENANCE CHARGES OR SIMILAR CHARGES TO COVER ITS COSTS AND PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT, INCLUDING ANY OF THE FOLLOWING PROVISIONS:

(a) THE CHARGES MAY BE COLLECTED DIRECTLY BY THE PRIVATE PARTNER OR BY A THIRD PARTY ENGAGED FOR THAT PURPOSE.

(b) A FORMULA FOR THE ADJUSTMENT OF CHARGES DURING THE TERM OF THE AGREEMENT.

(c) FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA DESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH, PROVISIONS REGULATING THE PRIVATE PARTNER'S RETURN ON INVESTMENT.

15. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES, INCLUDING FORUM SELECTION AND CHOICE OF LAW PROVISIONS AND THE RIGHT OF THE PARTIES TO INSTITUTE LEGAL PROCEEDINGS TO OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AND PROCEDURES FOR USE OF DISPUTE REVIEW BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

16. ALLOW THE AUTHORITY TO ACQUIRE REAL PROPERTY THAT IS NEEDED FOR WATER-RELATED FACILITIES, INCLUDING ACQUISITION BY EXCHANGE FOR OTHER REAL PROPERTY THAT IS OWNED BY THE AUTHORITY.

B. THE AUTHORITY MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF GOVERNMENT TO DEVELOP WATER-RELATED FACILITIES IN A MANNER SIMILAR TO THAT USED BY THE AUTHORITY FOR PUBLIC-PRIVATE PARTNERSHIPS.

C. NOTWITHSTANDING ANY OTHER LAW, AGREEMENTS UNDER THIS CHAPTER THAT ARE PROPERLY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A CONCESSION AGREEMENT PURSUANT TO THIS CHAPTER ARE EXEMPT FROM ALL STATE AND LOCAL AD VALOREM AND PROPERTY TAXES THAT OTHERWISE MIGHT BE APPLICABLE.

D. A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER THIS CHAPTER SHALL CONTAIN A PROVISION BY WHICH THE PRIVATE PARTNER EXPRESSLY AGREES THAT IT IS PROHIBITED FROM SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR OTHERWISE HINDER THE AUTHORITY OR ANY JURISDICTION FROM DEVELOPING, CONSTRUCTING OR MAINTAINING ANY WATER-RELATED FACILITIES THAT WERE PLANNED AND THAT WOULD OR MIGHT IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM THE WATER-RELATED FACILITIES DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE AGREEMENT MAY PROVIDE FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR THE ADVERSE EFFECT ON REVENUES RESULTING FROM DEVELOPMENT, CONSTRUCTION AND MAINTENANCE OF AN UNPLANNED REVENUE IMPACTING WATER-RELATED FACILITIES.

E. A FOREIGN PRIVATE CORPORATION THAT ENTERS INTO AN AGREEMENT WITH THE AUTHORITY PURSUANT TO THIS SECTION MUST PROVIDE SATISFACTORY EVIDENCE TO THE BOARD THAT THE FOREIGN ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 10, CHAPTER 38.

49-1214. Attorney general public-private partnership agreement certification

A. THE AUTHORITY SHALL SUBMIT TO THE ATTORNEY GENERAL ANY PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ENTERED INTO BY THE AUTHORITY. ON THE SUBMISSION OF THE AGREEMENT TO THE ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL INVESTIGATE AND DETERMINE THE VALIDITY OF THE AGREEMENT.

B. IF THE AGREEMENT COMPLIES WITH THIS CHAPTER AND THE ATTORNEY GENERAL DETERMINES THAT THE AGREEMENT WILL CONSTITUTE A BINDING AND LEGAL OBLIGATION OF THE AUTHORITY THAT IS ENFORCEABLE ACCORDING TO THE TERMS OF THE AGREEMENT, THE ATTORNEY GENERAL SHALL CERTIFY, IN SUBSTANCE, THAT THE AGREEMENT HAS BEEN ENTERED INTO IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THIS STATE.

49-1215. Joint legislative water committee; membership; duties

A. THE JOINT LEGISLATIVE WATER COMMITTEE IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE.

2. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SPEAKER'S DESIGNEE.

3. THE MINORITY LEADER OF THE SENATE OR THE MINORITY LEADER'S DESIGNEE.

4. THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR THE MINORITY LEADER'S DESIGNEE.

5. THE CHAIRPERSON OF THE SENATE COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

6. THE CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

7. THE RANKING MINORITY PARTY MEMBER OF THE SENATE COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

8. THE RANKING MINORITY PARTY MEMBER OF THE HOUSE OF REPRESENTATIVES COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

9. THE CHAIRPERSON OF THE JOINT LEGISLATIVE BUDGET COMMITTEE.

B. THE JOINT LEGISLATIVE WATER COMMITTEE SHALL REVIEW AWARDS OF $50,000,000 OR MORE FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 AND THE BOARD SHALL PROVIDE THE JOINT LEGISLATIVE WATER COMMITTEE WITH THE RELEVANT INFORMATION.

Sec. 18. Title 49, chapter 8, article 3, Arizona Revised Statutes, is amended by adding section 49-1270, to read:

49-1270. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ELIGIBLE ENTITY" MEANS ANY OF THE FOLLOWING:

(a) A WATER PROVIDER THAT DISTRIBUTES OR SELLS WATER OUTSIDE OF THE BOUNDARIES OF AN ACTIVE MANAGEMENT AREA LOCATED IN MARICOPA, PIMA OR PINAL COUNTY.

(b) ANY CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE THAT IS LOCATED OUTSIDE OF THE BOUNDARIES OF AN ACTIVE MANAGEMENT AREA LOCATED IN MARICOPA, PIMA OR PINAL COUNTY.

2. "LOAN" MEANS LEASES, LOANS OR OTHER EVIDENCE OF INDEBTEDNESS FOR WATER SUPPLY DEVELOPMENT PURPOSES ISSUED FROM THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

3. "LOAN REPAYMENT AGREEMENT" MEANS AN AGREEMENT TO REPAY A LOAN ISSUED FROM THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ENTERED INTO BY AN ELIGIBLE ENTITY.

4. "WATER SUPPLY DEVELOPMENT REVOLVING FUND" OR "FUND" MEANS THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271.

Sec. 19. Section 49-1271, Arizona Revised Statutes, is amended to read:

49-1271. Water supply development revolving fund

A. The water supply development revolving fund is established ~~to be maintained in perpetuity~~ consisting of ALL OF THE FOLLOWING:

1. Monies received from the issuance and sale of water supply development bonds under section 49-1278.

2. Monies appropriated by the legislature to the water supply development revolving fund.

3. Monies received for water supply development purposes from the United States government.

4. Monies received ~~from water providers~~ as loan repayments, interest and penalties.

5. Interest and other income received from investing monies in the fund.

6. Gifts, grants and donations received for water supply development purposes from any public or private source.

7. ANY OTHER MONIES RECEIVED BY THE AUTHORITY IN CONNECTION WITH THE PURPOSE OF THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

~~C. The legislature finds that many water providers in this state, particularly in rural areas, lack access to sufficient water supplies to meet their long-term water demands and need financial assistance to construct water supply projects and obtain additional water supplies. It is the intent of the legislature that the water supply development revolving fund established by this section be used to provide financial assistance to these water providers under the terms set forth in this article.~~

C. ALL MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE FUND AND SHALL BE HELD IN TRUST. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

D. THE AUTHORITY SHALL ADMINISTER THE FUND. THE AUTHORITY SHALL ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND. IF ANY BONDS ARE ISSUED UNDER SECTION 49-1278, THE AUTHORITY SHALL ESTABLISH ONE OR MORE BOND PROCEEDS ACCOUNTS AND ONE OR MORE BOND DEBT SERVICE ACCOUNTS AS NECESSARY TO ACCURATELY RECORD AND TRACK BOND PROCEEDS AND DEBT SERVICE REVENUES.

E. MONIES AND OTHER ASSETS IN THE FUND SHALL BE USED SOLELY FOR THE PURPOSES AUTHORIZED BY THIS CHAPTER.

F. MONIES IN THE FUND MAY BE USED TO SECURE WATER SUPPLY DEVELOPMENT BONDS OF THE AUTHORITY.

Sec. 20. Section 49-1273, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 2, is amended to read:

49-1273. Water supply development revolving fund; purposes

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making ~~water supply development~~ loans to ~~water providers~~ ELIGIBLE ENTITLES in this state under section 49-1274 for water supply development ~~purposes~~ PROJECTS WITHIN THIS STATE. A SINGLE LOAN SHALL NOT EXCEED $3,000,000.

2. Making ~~loans or~~ grants or providing technical assistance to ~~water providers for planning or designing~~ ELIGIBLE ENTITIES FOR water supply development projects IN THIS STATE. A single grant shall not exceed ~~$250,000~~ $2,000,000.

3. Purchasing or refinancing debt obligations of water providers at or below market rate if the debt obligation was issued for a water supply development purpose.

4. Providing financial assistance to water providers with bonding authority to purchase insurance for local bond obligations incurred by them for water supply development purposes.

5. Paying the costs to administer the fund.

~~6. Providing linked deposit guarantees through third-party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.~~

7. Conducting water supply studies.

B. If the monies pledged to secure water supply development bonds issued pursuant to section 49-1278 become insufficient to pay the principal and interest on the water supply development bonds guaranteed by the water supply development revolving fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

~~C. Monies in the water supply development revolving fund shall not be used to provide financial assistance to a water provider, other than an Indian tribe, unless one of the following applies:~~

~~1. The board of supervisors of the county in which the water provider is located has adopted the provision authorized by section 11-823, subsection A.~~

~~2. The water provider is located in a city or town and the legislative body of the city or town has enacted the ordinance authorized by section 9-463.01, subsection O.~~

~~3. The water provider is located in an active management area established pursuant to title 45, chapter 2, article 2.~~

~~4. The water provider is located outside of an active management area and either of the following applies:~~

~~(a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.~~

~~(b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after July 24, 2014.~~

~~5. The water provider is located in a county with a population of less than one million five hundred thousand persons.~~

Sec. 21. Section 49-1274, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 3, is amended to read:

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, ~~a water provider~~ AN ELIGIBLE ENTITY may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance ~~pursuant to section 49-1273~~ from the water supply development revolving fund for water supply development ~~purposes~~ PROJECTS IN THIS STATE. In compliance with any applicable requirements, ~~a water provider~~ AN ELIGIBLE ENTITY may also apply to the authority for and accept grants, staff assistance or technical assistance for ~~the planning or design of~~ a water supply development project IN THIS STATE. ~~A water provider that applies for and accepts a loan or other financial assistance under this article is not precluded from applying for and accepting a loan or other financial assistance under article 2 of this chapter or under any other law.~~

B. The authority~~, in consultation with the board,~~ shall DO ALL OF THE FOLLOWING:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including: ~~requirements for local participation in project costs, if deemed advisable. The criteria shall include determining the following:~~

~~(a) The ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.~~

~~(b) The applicant's legal capability to enter into a loan repayment agreement.~~

~~(c) The applicant's financial ability to construct, operate and maintain the project if it receives the financial assistance.~~

~~(d) The applicant's ability to manage the project.~~

~~(e) The applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.~~

~~(f) The applicant's ability to acquire any necessary regulatory permits.~~

(a) FOR ANY ASSISTANCE:

(i) A DETERMINATION OF THE APPLICANT'S FINANCIAL ABILITY TO CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT IF THE APPLICANT RECEIVES THE ASSISTANCE.

(ii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MANAGE THE PROJECT.

(iii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY FEDERAL OR STATE AGENCIES.

(iv) A DETERMINATION OF THE APPLICANT'S ABILITY TO ACQUIRE ANY NECESSARY REGULATORY PERMITS.

(b) IF THE APPLICANT IS APPLYING FOR A LOAN:

(i) A DETERMINATION OF THE ABILITY OF THE APPLICANT TO REPAY A LOAN ACCORDING TO THE TERMS AND CONDITIONS ESTABLISHED BY THIS SECTION. AT THE OPTION OF THE AUTHORITY, THE EXISTENCE OF A CURRENT INVESTMENT GRADE RATING ON EXISTING DEBT OF THE APPLICANT THAT IS SECURED BY THE SAME REVENUES TO BE PLEDGED TO SECURE REPAYMENT UNDER THE LOAN REPAYMENT AGREEMENT CONSTITUTES EVIDENCE REGARDING ABILITY TO REPAY A LOAN.

(ii) A DETERMINATION OF THE APPLICANT'S LEGAL CAPABILITY TO ENTER INTO A LOAN REPAYMENT AGREEMENT.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

~~(a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.~~

~~(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.~~

~~(c) Benefits of the project.~~

~~(d) The sustainability of the water supply to be developed through the project.~~

~~(e) The water provider's need for financial assistance.~~

~~(f) The cost-effectiveness of the project.~~

(a) THE ABILITY OF THE PROJECT TO PROVIDE MULTIPLE WATER SUPPLY DEVELOPMENT BENEFITS.

(b) THE COST-EFFECTIVENESS OF THE PROJECT.

(c) THE RELIABILITY AND LONG-TERM SECURITY OF THE WATER SUPPLY TO BE DEVELOPED THROUGH THE PROJECT.

(d) THE DEGREE TO WHICH THE PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

(e) THE FEASIBILITY OF THE PROJECT, INCLUDING THE FEASIBILITY OF THE PROPOSED DESIGN AND OPERATION OF ANY PROJECT.

(f) COMMENTS FROM WATER USERS, LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

(g) EXISTING, NEAR-TERM AND LONG-TERM WATER DEMANDS COMPARED TO THE VOLUME AND RELIABILITY OF EXISTING WATER SUPPLIES OF THE PROPOSED RECIPIENTS OF THE WATER SUPPLY.

(h) EXISTING AND PLANNED CONSERVATION, BEST MANAGEMENT PRACTICES AND WATER MANAGEMENT PROGRAMS OF THE APPLICANT OR THE PROPOSED RECIPIENTS OF THE WATER SUPPLY.

(i) THE ABILITY OF THE PROJECT TO PROVIDE WATER SUPPLY DEVELOPMENT BENEFITS TO MULTIPLE JURISDICTIONS WITHIN THE STATE.

(j) OTHER CRITERIA THAT THE AUTHORITY DEEMS APPROPRIATE.

C. THE AUTHORITY SHALL CONDUCT BACKGROUND CHECKS, FINANCIAL CHECKS AND OTHER REVIEWS DEEMED APPROPRIATE FOR INDIVIDUAL APPLICANTS, APPLICANTS' BOARDS OF DIRECTORS AND OTHER PARTNERS OF THE APPLICANTS.

~~C.~~ D. The ~~board~~ AUTHORITY shall review on its merits each application received and shall inform the applicant of the ~~board's~~ AUTHORITY'S determination ~~within ninety days after receipt of a complete and correct application~~. If the application is not approved, the ~~board~~ AUTHORITY shall notify the applicant, stating the reasons. If the application is approved, the ~~board~~ AUTHORITY may condition the approval on assurances the ~~board~~ AUTHORITY deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

~~D. On approval of an application under this section by the board, the authority shall use monies in the water supply development revolving fund to finance the project.~~

Sec. 22. Section 49-1275, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 4, is amended to read:

49-1275. Water supply development revolving fund financial assistance; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the ~~water provider~~ ELIGIBLE ENTITY has bonding authority, or by a ~~financial assistance~~ LOAN REPAYMENT agreement, delivered to and held by the authority.

B. A loan under this section shall:

~~1. Be repaid not more than forty years after the date incurred.~~

~~2. Require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the~~

~~loan. If the loan is for constructing water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completing the construction be capitalized in the loan.~~

~~3.~~ 1. Be conditioned on establishing a dedicated revenue source for repaying the loan.

2. BE REPAID IN A PERIOD AND ON TERMS DETERMINED BY THE AUTHORITY.

C. The authority~~, in consultation with the board,~~ shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority~~, on recommendations from the board,~~ may adopt rules that provide for flexible interest rates and interest-free loans. All ~~financial assistance~~ LOAN agreements or bonds of ~~a water provider~~ AN ELIGIBLE ENTITY shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. THE AUTHORITY MAY NOT UNILATERALLY AMEND A LOAN REPAYMENT AGREEMENT, LOAN OR BOND AFTER ITS EXECUTION OR IMPLEMENT ANY POLICY THAT MODIFIES TERMS AND CONDITIONS OR AFFECTS A PREVIOUSLY EXECUTED LOAN REPAYMENT AGREEMENT, LOAN OR BOND. THE AUTHORITY MAY NOT IMPOSE A REDEMPTION PREMIUM OR AN INTEREST PAYMENT BEYOND THE DATE THE PRINCIPAL IS PAID AS A CONDITION OF REFINANCING OR RECEIVING PREPAYMENT ON A LOAN REPAYMENT AGREEMENT, LOAN OR BOND IF THE LOAN REPAYMENT AGREEMENT, LOAN OR BOND DID NOT ORIGINALLY CONTAIN A REDEMPTION PREMIUM OR INTEREST PAYMENT BEYOND THE DATE THE PRINCIPAL IS PAID.

D. The approval of a loan is conditioned on a written commitment by the ~~water provider~~ ELIGIBLE ENTITY to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to ~~a water provider under this section~~ AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE may be secured additionally by an irrevocable pledge of any shared state revenues due to the ~~water provider~~ ELIGIBLE ENTITY for the duration of the loan as prescribed by ~~a resolution of the board. If the board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements, the authority shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers~~ THE AUTHORITY. AS APPLICABLE TO LOANS ADDITIONALLY SECURED WITH SHARED STATE REVENUES, THE AUTHORITY MAY ENTER INTO AGREEMENTS TO SPECIFY THE ALLOCATION OF SHARED STATE REVENUES IN RELATION TO INDIVIDUAL BORROWERS FROM SUCH AUTHORITIES. If a pledge OF SHARED STATE REVENUES AS ADDITIONAL SECURITY FOR A LOAN is required and ~~a water provider~~ THE ELIGIBLE ENTITY fails to make any payment due to the authority under its loan repayment agreement or THE ELIGIBLE ENTITY'S bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting ~~water provider~~ ELIGIBLE ENTITY that the ~~water provider~~ ELIGIBLE ENTITY has failed to make the required payment and shall direct a withholding of

~~state~~ shared STATE revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the ~~water provider~~ ELIGIBLE ENTITY.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting ~~water provider~~ ELIGIBLE ENTITY from the next succeeding distribution of monies pursuant to section 42-5029. In the case of AN ELIGIBLE ENTITY THAT IS a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds OR INDEBTEDNESS of the ~~water provider~~ ELIGIBLE ENTITY if so certified by the defaulting ~~water provider~~ ELIGIBLE ENTITY to the state treasurer and the authority. The ~~water provider~~ DEFAULTING ELIGIBLE ENTITY shall not certify deposits as necessary for payment for bonds OR INDEBTEDNESS unless the bonds were issued OR THE INDEBTEDNESS INCURRED before the date of the loan repayment agreement and the bonds ~~were~~ OR INDEBTEDNESS WAS secured by a pledge of ~~distribution~~ DISTRIBUTIONS made pursuant to sections 42-5029 and 43-206.

G. BY RESOLUTION OF THE BOARD, THE AUTHORITY MAY IMPOSE ANY ADDITIONAL REQUIREMENTS IT CONSIDERS NECESSARY TO ENSURE THAT THE LOAN PRINCIPAL AND INTEREST ARE TIMELY PAID.

H. ALL MONIES RECEIVED FROM ELIGIBLE ENTITIES AS LOAN REPAYMENTS, INTEREST AND PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

I. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, THE REVENUES OF THE ELIGIBLE ENTITY'S UTILITY SYSTEM OR SYSTEMS MAY BE PLEDGED TO THE PAYMENT OF A LOAN WITHOUT AN ELECTION, IF THE PLEDGE OF REVENUES DOES NOT VIOLATE ANY COVENANT PERTAINING TO THE UTILITY SYSTEM OR SYSTEMS OR THE REVENUES PLEDGED TO SECURE OUTSTANDING BONDS OR OTHER OBLIGATIONS OR INDEBTEDNESS OF THE ELIGIBLE ENTITY.

J. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, IF THE REVENUES FROM A SECONDARY PROPERTY TAX LEVY CONSTITUTE REVENUES PLEDGED BY THE ELIGIBLE ENTITY TO REPAY A LOAN, THE ELIGIBLE ENTITY SHALL SUBMIT THE QUESTION OF ENTERING AND PERFORMING A LOAN REPAYMENT AGREEMENT TO THE QUALIFIED ELECTORS OF THE ELIGIBLE ENTITY AT AN ELECTION HELD ON THE FIRST TUESDAY FOLLOWING THE FIRST MONDAY IN NOVEMBER.

K. AN ELECTION IS NOT REQUIRED IF VOTER APPROVAL HAS PREVIOUSLY BEEN OBTAINED FOR SUBSTANTIALLY THE SAME PROJECT WITH ANOTHER FUNDING SOURCE.

L. PAYMENTS MADE PURSUANT TO A LOAN REPAYMENT AGREEMENT ARE NOT SUBJECT TO SECTION 42-17106.

M. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, A LOAN REPAYMENT AGREEMENT UNDER THIS SECTION DOES NOT CREATE A DEBT OF THE ELIGIBLE ENTITY, AND THE AUTHORITY MAY NOT REQUIRE THAT PAYMENT OF A LOAN REPAYMENT AGREEMENT BE MADE FROM OTHER THAN THE REVENUES PLEDGED BY THE ELIGIBLE ENTITY.

N. AN ELIGIBLE ENTITY MAY EMPLOY ATTORNEYS, ACCOUNTANTS, FINANCIAL CONSULTANTS AND OTHER EXPERTS IN THEIR FIELDS AS DEEMED NECESSARY TO PERFORM SERVICES WITH RESPECT TO A LOAN REPAYMENT AGREEMENT.

O. AT THE DIRECTION OF THE AUTHORITY, AN ELIGIBLE ENTITY SHALL PAY, AND IS AUTHORIZED TO PAY, THE AUTHORITY'S COSTS IN ISSUING WATER SUPPLY DEVELOPMENT BONDS OR OTHERWISE BORROWING TO FUND A LOAN.

Sec. 23. Title 49, chapter 8, Arizona Revised Statutes, is amended by adding articles 4 and 5, to read:

ARTICLE 4. LONG-TERM WATER AUGMENTATION FUND

49-1301. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ELIGIBLE ENTITY" MEANS ANY OF THE FOLLOWING:

(a) A WATER PROVIDER.

(b) ANY CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE.

2. "FINANCIAL ASSISTANCE" MEANS LOANS PROVIDED BY THE AUTHORITY TO ELIGIBLE ENTITIES AND CREDIT ENHANCEMENTS PURCHASED FOR AN ELIGIBLE ENTITY'S BONDS OR OTHER FORMS OF INDEBTEDNESS PURSUANT TO SECTION 49-1307.

3. "LOAN" MEANS A BOND, LEASE, LOAN OR OTHER EVIDENCE OF INDEBTEDNESS PERTAINING TO FINANCIAL ASSISTANCE FOR WATER SUPPLY DEVELOPMENT PROJECTS ISSUED FROM THE LONG-TERM WATER AUGMENTATION FUND.

4. "LOAN REPAYMENT AGREEMENT" MEANS AN AGREEMENT TO REPAY A LOAN THAT IS ISSUED FROM THE LONG-TERM WATER AUGMENTATION FUND AND THAT IS ENTERED INTO BY AN ELIGIBLE ENTITY.

5. "PLEDGED REVENUES" MEANS ANY MONIES TO BE RECEIVED BY AN ELIGIBLE ENTITY, INCLUDING PROPERTY TAXES, OTHER LOCAL TAXES, FEES, ASSESSMENTS, RATES OR CHARGES THAT ARE PLEDGED BY THE ELIGIBLE ENTITY AS A SOURCE OF REPAYMENT FOR A LOAN REPAYMENT AGREEMENT.

49-1302. Long-term water augmentation fund

A. THE LONG-TERM WATER AUGMENTATION FUND IS ESTABLISHED TO BE MAINTAINED IN PERPETUITY CONSISTING OF ALL OF THE FOLLOWING:

1. MONIES RECEIVED FROM THE ISSUANCE AND SALE OF LONG-TERM WATER AUGMENTATION BONDS UNDER SECTION 49-1309.

2. MONIES APPROPRIATED BY THE LEGISLATURE TO THE FUND.

3. MONIES RECEIVED FOR ANY ALLOWABLE PURPOSE OF THE FUND FROM THE UNITED STATES GOVERNMENT.

4. MONIES RECEIVED AS LOAN REPAYMENTS, INTEREST, ADMINISTRATIVE FEES AND PENALTIES.

5. MONIES FROM ANY LAWFUL ACTIVITIES OF THE AUTHORITY, INCLUDING PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS RELATING TO WATER SUPPLY DEVELOPMENT PROJECTS.

6. INTEREST AND OTHER INCOME RECEIVED FROM INVESTING MONIES IN THE FUND.

7. GIFTS, GRANTS AND DONATIONS RECEIVED FOR PURPOSES OF THE FUND FROM ANY PUBLIC OR PRIVATE SOURCE.

B. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTIONS 35-313 AND 35-314.03, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

C. ALL MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE FUND AND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE.

D. THE AUTHORITY SHALL ADMINISTER THE FUND. THE AUTHORITY SHALL ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND. IF ANY LONG-TERM WATER AUGMENTATION BONDS ARE ISSUED UNDER SECTION 49-1309, THE AUTHORITY SHALL ESTABLISH ONE OR MORE BOND PROCEEDS ACCOUNTS AND ONE OR MORE BOND DEBT SERVICE ACCOUNTS AS NECESSARY TO ACCURATELY RECORD AND TRACK BOND PROCEEDS AND DEBT SERVICE REVENUES.

E. THE AUTHORITY SHALL USE THE MONIES AND OTHER ASSETS IN THE FUND SOLELY FOR THE PURPOSES AUTHORIZED BY THIS CHAPTER.

F. MONIES IN THE FUND MAY BE USED FOR SECURING LONG-TERM WATER AUGMENTATION BONDS OF THE AUTHORITY.

49-1303. Long-term water augmentation fund; purposes; limitation

A. MONIES AND OTHER ASSETS IN THE LONG-TERM WATER AUGMENTATION FUND MAY BE USED FOR THE FOLLOWING PURPOSES:

1. FUNDING WATER SUPPLY DEVELOPMENT PROJECTS THAT IMPORT WATER FROM OUTSIDE THE BOUNDARIES OF THIS STATE. AT LEAST SEVENTY-FIVE PERCENT OF THE MONIES IN THE FISCAL YEARS 2022-2023, 2023-2024 AND 2024-2025 APPROPRIATIONS TO THE FUND SHALL BE RESERVED FOR ONE OR MORE PROJECTS WITH THIS PURPOSE, AND THOSE MONIES SHALL BE ACCOUNTED FOR SEPARATELY.

2. PURCHASING IMPORTED WATER OR RIGHTS TO IMPORTED WATER.

3. ACQUIRING OR CONSTRUCTING WATER-RELATED FACILITIES IN THIS STATE TO CONVEY OR DELIVER IMPORTED WATER WITHIN THE STATE.

4. CONDUCTING INVESTIGATIONS, INCLUDING PERFORMING ENVIRONMENTAL OR OTHER REVIEWS.

5. CONTRACTING FOR WATER NEEDS ASSESSMENTS.

6. PROVIDING FINANCIAL ASSISTANCE TO ELIGIBLE ENTITIES FOR THE PURPOSES OF FINANCING OR REFINANCING WATER SUPPLY DEVELOPMENT PROJECTS WITHIN THIS STATE, INCLUDING PROJECTS FOR CONSERVATION THROUGH REDUCING EXISTING WATER USE OR MORE EFFICIENT USES OF EXISTING WATER SUPPLIES.

7. GUARANTEEING DEBT OBLIGATIONS OF ELIGIBLE ENTITIES THAT ARE ISSUED OR INCURRED TO FINANCE OR REFINANCE WATER SUPPLY DEVELOPMENT PROJECTS WITHIN THIS STATE OR PROVIDING CREDIT ENHANCEMENTS IN CONNECTION WITH THESE DEBT OBLIGATIONS.

8. PAYING THE COSTS TO ADMINISTER THE FUND.

9. FUNDING NOT MORE THAN TEN FULL-TIME EQUIVALENT POSITIONS OF THE AUTHORITY.

B. IN PROVIDING FINANCIAL ASSISTANCE FROM THE FUND, THE AUTHORITY SHALL COMPLY WITH SECTION 49-1304.

C. MONIES IN THE FUND MAY NOT BE USED TO PURCHASE CONSERVATION OR OTHER SIMILAR EASEMENTS ON REAL PROPERTY.

D. IF THE MONIES PLEDGED TO SECURE LONG-TERM WATER AUGMENTATION BONDS ISSUED PURSUANT TO SECTION 49-1309 BECOME INSUFFICIENT TO PAY THE PRINCIPAL AND INTEREST ON THE LONG-TERM WATER AUGMENTATION BONDS GUARANTEED BY THE FUND, THE AUTHORITY SHALL DIRECT THE STATE TREASURER TO LIQUIDATE SECURITIES IN THE FUND AS MAY BE NECESSARY AND SHALL APPLY THOSE PROCEEDS TO MAKE CURRENT ALL PAYMENTS THEN DUE ON THE LONG-TERM WATER AUGMENTATION BONDS. THE STATE TREASURER SHALL IMMEDIATELY NOTIFY THE ATTORNEY GENERAL AND AUDITOR GENERAL OF THE INSUFFICIENCY. THE AUDITOR GENERAL SHALL AUDIT THE CIRCUMSTANCES SURROUNDING THE DEPLETION OF THE FUND AND REPORT THE FINDINGS TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL CONDUCT AN INVESTIGATION AND REPORT THOSE FINDINGS TO THE GOVERNOR AND THE LEGISLATURE.

E. THE AUTHORITY SHALL TAKE NECESSARY ACTIONS TO OBTAIN FULL REPAYMENT FOR MONIES OR FINANCIAL ASSISTANCE PROVIDED FROM THE FUND BY THE RECIPIENTS OF THE FUNDING OR FINANCIAL ASSISTANCE OR THE RECIPIENTS OF ANY WATER SUPPLY DEVELOPMENT PROJECT MADE AVAILABLE FROM MONIES FROM THE FUND THROUGH WATER SUBCONTRACTS, LOAN REPAYMENTS, RATES, FEES, CHARGES OR OTHERWISE, AS APPROPRIATE. THIS SUBSECTION DOES NOT APPLY TO MONIES SPENT BY THE AUTHORITY FOR INVESTIGATIONS AND STUDIES OR MONIES SPENT IN CONNECTION WITH LOAN GUARANTEES OR CREDIT ENHANCEMENT.

49-1304. Evaluation criteria for projects from the long-term water augmentation fund

A. THE AUTHORITY SHALL DETERMINE THE ORDER AND PRIORITY OF WATER SUPPLY DEVELOPMENT PROJECTS PROPOSED TO BE FUNDED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND, PARTICIPATION IN

PROJECTS TO IMPORT WATER OR ALLOCATION OF IMPORTED WATER BASED ON THE FOLLOWING, AS APPLICABLE:

1. THE BENEFITS OF THE PROJECT TO CURRENT AND FUTURE RESIDENTS OF THIS STATE, INCLUDING THE ABILITY OF THE PROJECT TO IMPROVE ACCESS TO WATER SUPPLIES FOR USE WITHIN THIS STATE AND PROMOTE ECONOMIC GROWTH, IN RELATION TO THE PROJECTED COST OF THE PROJECT.

2. THE ABILITY OF THE PROJECT TO PROVIDE MULTIPLE WATER SUPPLY DEVELOPMENT BENEFITS.

3. THE PROJECTED COSTS OF THE PROJECT.

4. THE ABILITY OF THE PROJECT TO ADDRESS OR MITIGATE WATER SUPPLY REDUCTIONS TO EXISTING WATER USERS, CONSIDERING THE EXISTENCE, FEASIBILITY AND LONG-TERM RELIABILITY OF MITIGATION MEASURES AVAILABLE TO THE APPLICANT OR PROPOSED BENEFICIARIES, INCLUDING THE AVAILABILITY OF WATER SUPPLIES FROM THE ARIZONA WATER BANKING AUTHORITY.

5. THE COST-EFFECTIVENESS OF THE PROJECT.

6. THE RELIABILITY AND LONG-TERM SECURITY OF THE WATER SUPPLY TO BE DEVELOPED THROUGH THE PROJECT.

7. EXISTING AND PLANNED CONSERVATION, BEST MANAGEMENT PRACTICES AND WATER MANAGEMENT PROGRAMS OF THE APPLICANT OR POTENTIAL APPLICANT.

8. THE DEGREE TO WHICH THE PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

9. THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY ANY FEDERAL OR STATE AGENCY.

10. THE QUALIFICATIONS, INDUSTRY EXPERIENCE, INCLUDING EXPERIENCE WITH SIMILAR PROJECTS, GENERAL REPUTATION AND FINANCIAL CAPACITY OF THE APPLICANT OR ANY PRIVATE PARTNER, BASED ON APPROPRIATE DUE DILIGENCE.

11. THE FEASIBILITY OF THE PROJECT, INCLUDING THE FEASIBILITY OF THE PROPOSED DESIGN AND OPERATION OF THE PROJECT.

12. COMMENTS FROM WATER USERS, LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

13. FOR PROJECTS INVOLVING THE CONSTRUCTION OR OPERATION OF WATER-RELATED FACILITIES, THE SAFETY RECORD OF ANY PRIVATE PARTNER.

14. EXISTING, NEAR-TERM AND LONG-TERM WATER DEMANDS COMPARED TO THE VOLUME AND RELIABILITY OF EXISTING WATER SUPPLIES OF THE BENEFICIARIES OF THE FUNDING OR PROJECT. IN EVALUATING THIS CRITERION, THE AUTHORITY SHALL CONSIDER INFORMATION CONTAINED IN ANY APPLICABLE WATER SUPPLY AND DEMAND ASSESSMENT THAT HAS BEEN ISSUED BY THE DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-105, SUBSECTION B, PARAGRAPH 14, IN ADDITION TO ANY OTHER INFORMATION SUBMITTED TO EVALUATE THIS CRITERION.

15. POTENTIAL IMPACTS TO RATEPAYERS.

16. THE ABILITY OF THE APPLICANT AND ANY PUBLIC OR PRIVATE PARTNER TO FULLY REPAY ALL FINANCIAL OBLIGATIONS TO THE AUTHORITY.

17. FOR AGREEMENTS ENTERED INTO PURSUANT TO SECTION 49-1203.01, SUBSECTION C, PARAGRAPH 5, THE IMPACT OF ANY SUCH AGREEMENT ON THE ABILITY OF THE AUTHORITY TO COMPLY WITH THE REQUIREMENTS OF SECTION 49-1303, SUBSECTION E.

18. OTHER CRITERIA THAT THE AUTHORITY DEEMS APPROPRIATE.

B. THE BOARD SHALL CONDUCT BACKGROUND CHECKS, FINANCIAL CHECKS AND OTHER REVIEWS DEEMED APPROPRIATE FOR INDIVIDUAL APPLICANTS, APPLICANTS' BOARDS OF DIRECTORS AND OTHER PARTNERS OF THE APPLICANTS.

49-1305. Opportunity for participation by Colorado River water users

FOR ANY WATER SUPPLY DEVELOPMENT PROJECT TO IMPORT WATER THAT IS PROPOSED TO BE FUNDED BY THE AUTHORITY, THE AUTHORITY SHALL PROVIDE WRITTEN NOTICE OF THE PROPOSED PROJECT TO ALL ENTITIES IN THIS STATE WITH AN ENTITLEMENT TO WATER FROM THE COLORADO RIVER, INCLUDING WATER DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT. AN ENTITY THAT RECEIVES A NOTICE PRESCRIBED BY THIS SECTION SHALL SUBMIT TO THE AUTHORITY WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE A STATEMENT OF THE ENTITY'S INTEREST IN PARTICIPATING IN THE PROJECT.

49-1306. Taxation exemption

A. THE AUTHORITY IS REGARDED AS PERFORMING A GOVERNMENTAL FUNCTION IN CARRYING OUT THE PURPOSES OF THIS ARTICLE AND IS NOT REQUIRED TO PAY TAXES OR ASSESSMENTS ON ANY OF THE PROPERTY ACQUIRED OR CONSTRUCTED FOR THESE PURPOSES OR ON THE AGREEMENTS OF THE AUTHORITY PERTAINING TO MAINTAINING AND OPERATING WATER-RELATED FACILITIES OR IN THE REVENUES DERIVED FROM THE WATER-RELATED FACILITIES.

B. THE LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS CHAPTER, THEIR TRANSFER AND THE INCOME THE BONDS PRODUCE ARE AT ALL TIMES EXEMPT FROM TAXATION BY THIS STATE OR BY ANY POLITICAL SUBDIVISION OF THIS STATE.

C. THE AUTHORITY IS AUTHORIZED UNDER THIS CHAPTER AND UNDER TITLE 35, CHAPTER 3, ARTICLE 7 TO TAKE ALL ACTIONS DETERMINED NECESSARY BY THE BOARD TO COMPLY WITH FEDERAL INCOME TAX LAWS, INCLUDING THE PAYMENT OF REBATES TO THE UNITED STATES TREASURY.

49-1307. Financial assistance from the long-term water augmentation fund; terms

A. THE AUTHORITY SHALL CONSIDER APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND IN ACCORDANCE WITH SECTION 49-1304 AND SHALL CONSIDER THE RECOMMENDATIONS OF THE LONG-TERM WATER AUGMENTATION COMMITTEE ESTABLISHED BY SECTION 49-1208.

B. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND FOR WATER SUPPLY DEVELOPMENT PROJECTS INSIDE OR OUTSIDE THIS STATE. THE FINANCIAL ASSISTANCE MAY INCLUDE:

1. LOANS AS PROVIDED IN THIS SECTION.

2. CREDIT ENHANCEMENTS PURCHASED FOR AN ELIGIBLE ENTITY'S BONDS OR OTHER FORMS OF INDEBTEDNESS.

C. A LOAN SHALL BE EVIDENCED BY A LOAN REPAYMENT AGREEMENT OR LEASE PURCHASE AGREEMENT, OR TO THE EXTENT AN ELIGIBLE ENTITY IS A POLITICAL SUBDIVISION OF THIS STATE AND HAS BONDING AUTHORITY, BONDS OF THE ELIGIBLE ENTITY THAT ARE DELIVERED TO AND HELD BY THE AUTHORITY.

D. A LOAN UNDER THIS SECTION:

1. SHALL BE REPAID DURING A PERIOD APPROVED BY THE AUTHORITY.

2. SHALL REQUIRE THAT INTEREST PAYMENTS BEGIN NOT LATER THAN THE NEXT DATE THAT EITHER PRINCIPAL OR INTEREST MUST BE PAID BY THE AUTHORITY TO HOLDERS OF ANY OF THE AUTHORITY'S LONG-TERM WATER AUGMENTATION BONDS THAT PROVIDED FUNDING FOR THE LOAN. THE AUTHORITY MAY PROVIDE THAT LOAN INTEREST ACCRUING DURING CONSTRUCTION OF THE ELIGIBLE ENTITY'S WATER SUPPLY DEVELOPMENT PROJECT AND UP TO ONE YEAR AFTER COMPLETION OF THE CONSTRUCTION OF THE WATER SUPPLY DEVELOPMENT PROJECT BE CAPITALIZED IN THE LOAN.

3. SHALL CLEARLY SPECIFY THE AMOUNT OF PRINCIPAL, INTEREST AND REDEMPTION PREMIUM, IF ANY, THAT IS DUE ON ANY PAYMENT DATE.

4. SHALL BE CONDITIONED ON THE IDENTIFICATION OF PLEDGED REVENUES FOR REPAYING THE LOAN. IF THE WATER SUPPLY DEVELOPMENT PROJECT FINANCED OR REFINANCED BY THE LOAN IS PART OF A MUNICIPAL UTILITY AND THE CITY OR TOWN PLEDGES REVENUES OF THE UTILITY TO REPAY THE LOAN, THE LOAN MAY BE TREATED UNDER SECTION 9-530, SUBSECTION B AS A LAWFUL LONG-TERM OBLIGATION INCURRED FOR A SPECIFIC PURPOSE.

5. TO THE EXTENT ALLOWED BY LAW, SHALL BE SECURED BY A DEBT SERVICE RESERVE ACCOUNT THAT IS HELD IN TRUST AND THAT IS IN AN AMOUNT, IF ANY, AS DETERMINED BY THE AUTHORITY.

6. SHALL CONTAIN THE COVENANTS AND CONDITIONS PERTAINING TO CONSTRUCTING, ACQUIRING, IMPROVING OR EQUIPPING WATER SUPPLY DEVELOPMENT PROJECTS AND REPAYING THE LOAN AS THE AUTHORITY DEEMS PROPER.

7. MAY PROVIDE FOR PAYING INTEREST ON THE UNPAID PRINCIPAL BALANCE OF THE LOAN AT THE RATES ESTABLISHED IN THE LOAN REPAYMENT AGREEMENT.

8. MAY PROVIDE FOR PAYING THE ELIGIBLE ENTITY'S PROPORTIONATE SHARE OF THE EXPENSES OF ADMINISTERING THE LONG-TERM WATER AUGMENTATION FUND AND MAY PROVIDE THAT THE ELIGIBLE ENTITY PAY FINANCING AND LOAN ADMINISTRATION FEES APPROVED BY THE AUTHORITY. THE COSTS MAY BE INCLUDED IN THE LEVY, ASSESSMENT, RATES OR CHARGES OF THE PLEDGED REVENUES PLEDGED BY THE ELIGIBLE ENTITY TO REPAY THE LOAN.

E. THE AUTHORITY SHALL PRESCRIBE THE RATE OR RATES OF INTEREST ON LOANS MADE UNDER THIS SECTION, BUT THE RATE OR RATES MAY NOT EXCEED THE PREVAILING MARKET RATE FOR SIMILAR TYPES OF LOANS. AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE MAY NEGOTIATE THE SALE OF ITS BONDS TO, OR A LOAN REPAYMENT AGREEMENT WITH, THE AUTHORITY WITHOUT COMPLYING WITH ANY PUBLIC OR ACCELERATED BIDDING REQUIREMENTS IMPOSED BY ANY OTHER LAW FOR THE SALE OF ITS BONDS.

F. THE APPROVAL OF A LOAN SHALL BE CONDITIONED ON A WRITTEN COMMITMENT BY THE ELIGIBLE ENTITY TO COMPLETE ALL APPLICABLE REVIEWS AND APPROVALS AND TO SECURE ALL REQUIRED PERMITS IN A TIMELY MANNER.

G. BY RESOLUTION OF THE BOARD, THE AUTHORITY MAY IMPOSE ANY ADDITIONAL REQUIREMENTS IT CONSIDERS NECESSARY TO ENSURE THAT THE LOAN PRINCIPAL AND INTEREST ARE TIMELY PAID.

H. ALL MONIES RECEIVED FROM ELIGIBLE ENTITIES AS LOAN REPAYMENTS, INTEREST AND PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE LONG-TERM WATER AUGMENTATION FUND.

I. IF REQUESTED BY THE AUTHORITY, THE ATTORNEY GENERAL SHALL TAKE WHATEVER ACTIONS ARE NECESSARY TO ENFORCE THE LOAN REPAYMENT AGREEMENT AND ACHIEVE REPAYMENT OF LOANS PROVIDED BY THE AUTHORITY PURSUANT TO THIS ARTICLE.

J. FOR ELIGIBLE ENTITIES THAT ARE POLITICAL SUBDIVISIONS OF THIS STATE, THE REVENUES OF THE ELIGIBLE ENTITIES' UTILITY SYSTEM OR SYSTEMS MAY BE PLEDGED TO THE PAYMENT OF A LOAN REPAYMENT AGREEMENT WITHOUT AN ELECTION, IF THE PLEDGE OF REVENUES DOES NOT VIOLATE ANY COVENANT PERTAINING TO THE UTILITY SYSTEM OR SYSTEMS OR THE REVENUES PLEDGED TO SECURE OUTSTANDING BONDS OR OTHER OBLIGATIONS OR INDEBTEDNESS OF THE ELIGIBLE ENTITIES.

K. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, AND NOTWITHSTANDING SECTIONS 9-571 AND 11-671, IF THE REVENUES FROM A SECONDARY PROPERTY TAX LEVY CONSTITUTE PLEDGED REVENUES, THE ELIGIBLE ENTITY IS NOT REQUIRED TO SUBMIT TO A VOTE THE QUESTION OF ENTERING AND PERFORMING A LOAN REPAYMENT AGREEMENT.

L. PAYMENTS MADE PURSUANT TO A LOAN REPAYMENT AGREEMENT ARE NOT SUBJECT TO SECTION 42-17106.

M. FOR ELIGIBLE ENTITIES THAT ARE POLITICAL SUBDIVISIONS OF THIS STATE, A LOAN REPAYMENT AGREEMENT UNDER THIS SECTION DOES NOT CREATE A DEBT OF THE ELIGIBLE ENTITIES, AND THE AUTHORITY MAY NOT REQUIRE THAT PAYMENT OF A LOAN REPAYMENT AGREEMENT BE MADE FROM OTHER THAN THE PLEDGED REVENUES PLEDGED BY THE ELIGIBLE ENTITIES.

N. AN ELIGIBLE ENTITY MAY EMPLOY ATTORNEYS, ACCOUNTANTS, FINANCIAL CONSULTANTS AND OTHER EXPERTS IN THEIR FIELDS AS DEEMED NECESSARY TO PERFORM SERVICES WITH RESPECT TO A LOAN REPAYMENT AGREEMENT.

O. AT THE DIRECTION OF THE AUTHORITY, THE ELIGIBLE ENTITY SHALL PAY, AND IS HEREBY AUTHORIZED TO PAY, THE AUTHORITY'S COSTS IN ISSUING LONG-TERM WATER AUGMENTATION BONDS OR OTHERWISE BORROWING TO FUND A LOAN.

P. A LOAN MADE TO AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE MAY BE SECURED ADDITIONALLY BY AN IRREVOCABLE PLEDGE OF ANY SHARED STATE REVENUES DUE TO THE ELIGIBLE ENTITY FOR THE DURATION OF THE LOAN AS PRESCRIBED BY THE AUTHORITY. AS APPLICABLE TO LOANS ADDITIONALLY SECURED WITH SHARED STATE REVENUES, THE AUTHORITY MAY ENTER INTO AGREEMENTS TO SPECIFY THE ALLOCATION OF SHARED STATE REVENUES IN RELATION TO INDIVIDUAL BORROWERS FROM SUCH AUTHORITIES. IF A PLEDGE OF

SHARED STATE REVENUES AS ADDITIONAL SECURITY FOR A LOAN IS REQUIRED AND THE ELIGIBLE ENTITY FAILS TO MAKE ANY PAYMENT DUE TO THE AUTHORITY UNDER ITS LOAN REPAYMENT AGREEMENT OR THE ELIGIBLE ENTITY'S BONDS, THE AUTHORITY SHALL CERTIFY TO THE STATE TREASURER AND NOTIFY THE GOVERNING BODY OF THE DEFAULTING ELIGIBLE ENTITY THAT THE ELIGIBLE ENTITY HAS FAILED TO MAKE THE REQUIRED PAYMENT AND SHALL DIRECT A WITHHOLDING OF SHARED STATE REVENUES AS PRESCRIBED IN SUBSECTION Q OF THIS SECTION. THE CERTIFICATE OF DEFAULT SHALL BE IN THE FORM DETERMINED BY THE AUTHORITY, EXCEPT THAT THE CERTIFICATE SHALL SPECIFY THE AMOUNT REQUIRED TO SATISFY THE UNPAID PAYMENT OBLIGATION OF THE ELIGIBLE ENTITY.

Q. ON RECEIPT OF A CERTIFICATE OF DEFAULT FROM THE AUTHORITY, THE STATE TREASURER, TO THE EXTENT NOT EXPRESSLY PROHIBITED BY LAW, SHALL WITHHOLD ANY MONIES DUE TO THE DEFAULTING ELIGIBLE ENTITY FROM THE NEXT SUCCEEDING DISTRIBUTION OF MONIES PURSUANT TO SECTION 42-5029. IN THE CASE OF AN ELIGIBLE ENTITY THAT IS A CITY OR TOWN, THE STATE TREASURER SHALL ALSO WITHHOLD FROM THE MONIES DUE TO THE DEFAULTING CITY OR TOWN FROM THE NEXT SUCCEEDING DISTRIBUTION OF MONIES PURSUANT TO SECTION 43-206 THE AMOUNT SPECIFIED IN THE CERTIFICATE OF DEFAULT AND SHALL IMMEDIATELY DEPOSIT THE MONIES IN THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271. THE STATE TREASURER SHALL CONTINUE TO WITHHOLD AND DEPOSIT MONIES UNTIL THE AUTHORITY CERTIFIES TO THE STATE TREASURER THAT THE DEFAULT HAS BEEN CURED. THE STATE TREASURER MAY NOT WITHHOLD ANY AMOUNT THAT IS NECESSARY TO MAKE ANY REQUIRED DEPOSITS THEN DUE FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS OR INDEBTEDNESS OF THE ELIGIBLE ENTITY IF SO CERTIFIED BY THE DEFAULTING ELIGIBLE ENTITY TO THE STATE TREASURER AND THE AUTHORITY. THE DEFAULTING ELIGIBLE ENTITY MAY NOT CERTIFY DEPOSITS AS NECESSARY FOR PAYMENT FOR BONDS OR INDEBTEDNESS UNLESS THE BONDS WERE ISSUED OR THE INDEBTEDNESS INCURRED BEFORE THE DATE OF THE LOAN REPAYMENT AGREEMENT AND THE BONDS OR INDEBTEDNESS WAS SECURED BY A PLEDGE OF DISTRIBUTION MADE PURSUANT TO SECTIONS 42-5029 AND 43-206.

49-1308. Long-term water augmentation financial assistance: procedures

A. IN COMPLIANCE WITH ANY APPLICABLE REQUIREMENTS, AN ELIGIBLE ENTITY MAY APPLY TO THE AUTHORITY FOR AND ACCEPT AND INCUR INDEBTEDNESS AS A RESULT OF FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND FOR WATER SUPPLY DEVELOPMENT PROJECTS.

B. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE FINANCIAL ASSISTANCE.

2. ESTABLISH BY RULE CRITERIA BY WHICH FINANCIAL ASSISTANCE WILL BE AWARDED, INCLUDING:

(a) FOR ANY FINANCIAL ASSISTANCE:

(i) A DETERMINATION OF THE APPLICANT'S FINANCIAL ABILITY TO CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT IF IT RECEIVES THE ASSISTANCE.

(ii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MANAGE THE PROJECT.

(iii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY FEDERAL OR STATE AGENCIES.

(iv) A DETERMINATION OF THE APPLICANT'S ABILITY TO ACQUIRE ANY NECESSARY REGULATORY PERMITS.

(v) REQUIREMENTS FOR LOCAL PARTICIPATION IN PROJECT COSTS, IF DEEMED ADVISABLE BY THE AUTHORITY.

(b) IF THE APPLICANT IS APPLYING FOR A LOAN:

(i) A DETERMINATION OF THE ABILITY OF THE APPLICANT TO REPAY A LOAN ACCORDING TO THE TERMS AND CONDITIONS ESTABLISHED BY THIS CHAPTER. AT THE OPTION OF THE AUTHORITY, THE EXISTENCE OF A CURRENT INVESTMENT GRADE RATING ON EXISTING DEBT OF THE APPLICANT THAT IS SECURED BY THE SAME REVENUES TO BE PLEDGED TO SECURE REPAYMENT UNDER THE LOAN REPAYMENT AGREEMENT CONSTITUTES EVIDENCE REGARDING ABILITY TO REPAY A LOAN.

(ii) A DETERMINATION OF THE APPLICANT'S LEGAL CAPABILITY TO ENTER INTO A LOAN REPAYMENT AGREEMENT.

3. DETERMINE THE ORDER AND PRIORITY OF PROJECTS ASSISTED UNDER THIS ARTICLE BASED ON THE MERITS OF THE APPLICATION WITH RESPECT TO WATER SUPPLY DEVELOPMENT CRITERIA SET FORTH IN SECTION 49-1304.

C. THE AUTHORITY SHALL REVIEW ON ITS MERITS EACH APPLICATION RECEIVED AND SHALL INFORM THE APPLICANT OF THE AUTHORITY'S DETERMINATION. IF THE APPLICATION IS NOT APPROVED, THE AUTHORITY SHALL NOTIFY THE APPLICANT, STATING THE REASONS. IF THE APPLICATION IS APPROVED, THE AUTHORITY MAY CONDITION THE APPROVAL ON ASSURANCES THE AUTHORITY DEEMS NECESSARY TO ENSURE THAT THE FINANCIAL ASSISTANCE WILL BE USED ACCORDING TO LAW AND THE TERMS OF THE APPLICATION.

49-1309. Long-term water augmentation bonds; requirements; authority; exemption from liability

A. THE AUTHORITY, THROUGH THE BOARD, MAY ISSUE NEGOTIABLE LONG-TERM WATER AUGMENTATION BONDS IN A PRINCIPAL AMOUNT THAT, IN ITS OPINION, IS NECESSARY TO DO ALL OF THE FOLLOWING:

1. PROVIDE SUFFICIENT MONIES FOR WATER SUPPLY DEVELOPMENT PROJECTS AND FINANCIAL ASSISTANCE FOR WATER SUPPLY DEVELOPMENT PROJECTS APPROVED UNDER THIS CHAPTER.

2. REFUND LONG-TERM WATER AUGMENTATION BONDS, WHEN THE AUTHORITY DEEMS IT EXPEDIENT TO DO SO.

3. INCREASE THE CAPITALIZATION OF THE LONG-TERM WATER AUGMENTATION FUND.

4. MAINTAIN SUFFICIENT RESERVES IN THE LONG-TERM WATER AUGMENTATION FUND TO SECURE THE LONG-TERM WATER AUGMENTATION BONDS.

5. PAY THE NECESSARY COSTS OF ISSUING, SELLING AND REDEEMING THE LONG-TERM WATER AUGMENTATION BONDS.

6. PAY OTHER EXPENDITURES OF THE AUTHORITY INCIDENTAL TO AND NECESSARY AND CONVENIENT TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

B. THE BOARD SHALL AUTHORIZE LONG-TERM WATER AUGMENTATION BONDS BY RESOLUTION. THE RESOLUTION SHALL PRESCRIBE ALL OF THE FOLLOWING:

1. THE RATE OR RATES OF INTEREST AND THE DENOMINATIONS OF THE LONG-TERM WATER AUGMENTATION BONDS.

2. THE DATE OR DATES AND MATURITY OF THE LONG-TERM WATER AUGMENTATION BONDS.

3. THE COUPON OR REGISTERED FORM OF THE LONG-TERM WATER AUGMENTATION BONDS.

4. THE MANNER OF EXECUTING THE LONG-TERM WATER AUGMENTATION BONDS.

5. THE MEDIUM AND PLACE OF PAYMENT.

6. THE TERMS OF REDEMPTION.

C. THE LONG-TERM WATER AUGMENTATION BONDS SHALL BE SOLD AT PUBLIC OR PRIVATE SALE AT THE PRICE AND ON THE TERMS DETERMINED BY THE BOARD. ALL PROCEEDS FROM THE ISSUANCE OF LONG-TERM WATER AUGMENTATION BONDS, EXCEPT ANY AMOUNTS USED TO PAY COSTS ASSOCIATED WITH THE ISSUANCE AND SALE OF THE LONG-TERM WATER AUGMENTATION BONDS, SHALL BE DEPOSITED IN THE LONG-TERM WATER AUGMENTATION FUND OR A SEPARATELY HELD ACCOUNT AS SPECIFIED IN THE RESOLUTION.

D. TO SECURE ANY LONG-TERM WATER AUGMENTATION BONDS AUTHORIZED BY THIS SECTION, THE BOARD BY RESOLUTION MAY:

1. REQUIRE THAT LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS SECTION BE SECURED BY A LIEN ON ALL OR A PART OF THE MONIES PAID IN TO THE APPROPRIATE ACCOUNT OR SUBACCOUNT OF THE LONG-TERM WATER AUGMENTATION FUND AND PROVIDE THE PRIORITY OF THE LIEN.

2. PLEDGE OR ASSIGN TO OR IN TRUST TO BE HELD BY THE STATE TREASURER FOR THE BENEFIT OF THE HOLDER OR HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS ANY PART OF THE APPROPRIATE ACCOUNT OR SUBACCOUNT OF THE LONG-TERM WATER AUGMENTATION FUND MONIES AS IS NECESSARY TO PAY THE PRINCIPAL AND INTEREST OF THE LONG-TERM WATER AUGMENTATION BONDS AS THE BONDS COME DUE.

3. SET ASIDE, REGULATE AND DISPOSE OF RESERVES AND SINKING FUNDS.

4. REQUIRE THAT SUFFICIENT AMOUNTS OF THE PROCEEDS FROM THE SALE OF THE LONG-TERM WATER AUGMENTATION BONDS BE USED TO FULLY OR PARTLY FUND ANY RESERVES OR SINKING FUNDS ESTABLISHED BY THE BOARD RESOLUTION AUTHORIZING THE LONG-TERM WATER AUGMENTATION BONDS.

5. PRESCRIBE THE PROCEDURE, IF ANY, BY WHICH THE TERMS OF ANY CONTRACT WITH BONDHOLDERS MAY BE AMENDED OR ABROGATED, THE AMOUNT OF LONG-TERM WATER AUGMENTATION BONDS THE HOLDERS OF WHICH MUST CONSENT TO AND THE MANNER IN WHICH CONSENT MAY BE GIVEN.

6. PROVIDE FOR PAYMENT FROM THE PROCEEDS OF THE SALE OF THE LONG-TERM WATER AUGMENTATION BONDS OF ALL LEGAL, FINANCIAL AND OTHER EXPENSES INCURRED BY THE AUTHORITY IN ISSUING, SELLING, DELIVERING AND PAYING THE LONG-TERM WATER AUGMENTATION BONDS.

7. PROVIDE TERMS NECESSARY TO SECURE CREDIT ENHANCEMENT OR OTHER SOURCES OF PAYMENT OR SECURITY.

8. PROVIDE ANY OTHER TERMS AND CONDITIONS THAT IN ANY WAY MAY AFFECT THE SECURITY AND PROTECTION OF THE LONG-TERM WATER AUGMENTATION BONDS.

E. THE PLEDGE OF PLEDGED REVENUES BY AN ELIGIBLE ENTITY, OR THE PLEDGE OF ANY OTHER REVENUES BY THE AUTHORITY, UNDER THIS ARTICLE IS VALID AND BINDING FROM THE TIME THE PLEDGE IS MADE. THE MONIES PLEDGED AND RECEIVED BY THE STATE TREASURER TO BE PLACED IN THE LONG-TERM WATER AUGMENTATION FUND OR IN ANY ACCOUNT OR SUBACCOUNT IN THE LONG-TERM WATER AUGMENTATION FUND ARE IMMEDIATELY SUBJECT TO THE LIEN OF THE PLEDGE WITHOUT ANY FUTURE PHYSICAL DELIVERY OR FURTHER ACT, AND ANY SUCH LIEN OF ANY PLEDGE IS VALID OR BINDING AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT, CONTRACT OR OTHERWISE AGAINST THE BOARD OR THE AUTHORITY REGARDLESS OF WHETHER THE PARTIES HAVE NOTICE OF THE LIEN. THE OFFICIAL RESOLUTION OR TRUST INDENTURE OR ANY INSTRUMENT BY WHICH THIS PLEDGE IS CREATED, WHEN PLACED IN THE BOARD'S RECORDS, IS NOTICE TO ALL CONCERNED OF THE CREATION OF THE PLEDGE, AND THOSE INSTRUMENTS NEED NOT BE RECORDED IN ANY OTHER PLACE.

F. A MEMBER OF THE BOARD OR ANY PERSON EXECUTING THE LONG-TERM WATER AUGMENTATION BONDS IS NOT PERSONALLY LIABLE FOR THE PAYMENT OF THE LONG-TERM WATER AUGMENTATION BONDS. THE LONG-TERM WATER AUGMENTATION BONDS ARE VALID AND BINDING OBLIGATIONS NOTWITHSTANDING THAT BEFORE THE DELIVERY OF THE LONG-TERM WATER AUGMENTATION BONDS ANY OF THE PERSONS WHOSE SIGNATURES APPEAR ON THE LONG-TERM WATER AUGMENTATION BONDS CEASE TO BE MEMBERS OF THE BOARD. FROM AND AFTER THE SALE AND DELIVERY OF THE LONG-TERM WATER AUGMENTATION BONDS, THE BONDS ARE INCONTESTABLE BY THE BOARD.

G. THE BOARD, OUT OF ANY AVAILABLE MONIES, MAY PURCHASE LONG-TERM WATER AUGMENTATION BONDS, WHICH MAY THEN BE CANCELED, AT A PRICE NOT EXCEEDING EITHER OF THE FOLLOWING:

1. IF THE LONG-TERM WATER AUGMENTATION BONDS ARE THEN REDEEMABLE, THE REDEMPTION PRICE THEN APPLICABLE PLUS ACCRUED INTEREST TO THE DATE OF REDEMPTION.

2. IF THE LONG-TERM WATER AUGMENTATION BONDS ARE NOT THEN REDEEMABLE, THE REDEMPTION PRICE APPLICABLE ON THE FIRST DATE AFTER PURCHASE BY THE AUTHORITY ON WHICH THE LONG-TERM WATER AUGMENTATION BONDS BECOME SUBJECT TO REDEMPTION PLUS ACCRUED INTEREST TO THE DATE OF REDEMPTION.

49-1310. Long-term water augmentation bond obligations of the authority

LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE ARE OBLIGATIONS OF THE AUTHORITY, ARE PAYABLE ONLY ACCORDING TO THEIR TERMS AND ARE NOT GENERAL, SPECIAL OR OTHER OBLIGATIONS OF THIS STATE. THE LONG-TERM WATER AUGMENTATION BONDS DO NOT CONSTITUTE A LEGAL DEBT OF THIS

STATE AND ARE NOT ENFORCEABLE AGAINST THIS STATE. PAYMENT OF THE LONG-TERM WATER AUGMENTATION BONDS IS NOT ENFORCEABLE OUT OF ANY STATE MONIES OTHER THAN THE INCOME AND REVENUE PLEDGE AND ASSIGNED TO, OR IN TRUST FOR THE BENEFIT OF, THE HOLDER OR HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS.

49-1311. Certification of long-term water augmentation bonds by attorney general

A. THE BOARD MAY SUBMIT ANY LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE TO THE ATTORNEY GENERAL AFTER ALL PROCEEDINGS FOR THEIR AUTHORIZATION HAVE BEEN COMPLETED. WITHIN FIFTEEN DAYS AFTER SUBMISSION, THE ATTORNEY GENERAL SHALL EXAMINE AND PASS ON THE VALIDITY OF THE LONG-TERM WATER AUGMENTATION BONDS AND THE REGULARITY OF THE PROCEEDINGS.

B. IF THE PROCEEDINGS COMPLY WITH THIS ARTICLE, AND IF THE ATTORNEY GENERAL DETERMINES THAT, WHEN DELIVERED AND PAID FOR, THE LONG-TERM WATER AUGMENTATION BONDS WILL CONSTITUTE BINDING AND LEGAL OBLIGATIONS OF THE AUTHORITY, THE ATTORNEY GENERAL SHALL CERTIFY ON THE BACK OF EACH LONG-TERM WATER AUGMENTATION BOND, IN SUBSTANCE, THAT IT IS ISSUED ACCORDING TO THE CONSTITUTION AND LAWS OF THIS STATE.

49-1312. Long-term water augmentation bonds as legal investments

LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE ARE SECURITIES:

1. IN WHICH PUBLIC OFFICERS AND BODIES OF THIS STATE AND OF MUNICIPALITIES AND POLITICAL SUBDIVISIONS OF THIS STATE, ALL COMPANIES, ASSOCIATIONS AND OTHER PERSONS CARRYING ON AN INSURANCE BUSINESS, ALL FINANCIAL INSTITUTIONS, INVESTMENT COMPANIES AND OTHER PERSONS CARRYING ON A BANKING BUSINESS, ALL FIDUCIARIES AND ALL OTHER PERSONS WHO ARE AUTHORIZED TO INVEST IN OBLIGATIONS OF THIS STATE MAY PROPERLY AND LEGALLY INVEST.

2. THAT MAY BE DEPOSITED WITH PUBLIC OFFICERS OR BODIES OF THIS STATE AND MUNICIPALITIES AND POLITICAL SUBDIVISIONS OF THIS STATE FOR PURPOSES THAT REQUIRE THE DEPOSIT OF STATE BONDS OR OBLIGATIONS.

49-1313. Agreement of state

A. THIS STATE PLEDGES TO AND AGREES WITH THE HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS THAT THIS STATE WILL NOT LIMIT OR ALTER THE RIGHTS VESTED IN THE AUTHORITY OR ANY SUCCESSOR AGENCY TO COLLECT THE MONIES NECESSARY TO PRODUCE SUFFICIENT REVENUE TO FULFILL THE TERMS OF ANY AGREEMENTS MADE WITH THE HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS, OR IN ANY WAY IMPAIR THE RIGHTS AND REMEDIES OF THE BONDHOLDERS, UNTIL ALL LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE, TOGETHER WITH INTEREST ACCRUED THEREON, AND INCLUDING INTEREST ON ANY UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDINGS BY OR ON BEHALF OF THE BONDHOLDERS, ARE FULLY MET AND DISCHARGED.

B. THE BOARD AS AGENT FOR THIS STATE MAY INCLUDE THIS PLEDGE AND UNDERTAKING IN ITS RESOLUTIONS AND INDENTURES SECURING ITS LONG-TERM WATER AUGMENTATION BONDS.

ARTICLE 5. WATER CONSERVATION GRANT FUND

49-1331. Water conservation grant fund; exemption; administration; report

A. THE WATER CONSERVATION GRANT FUND IS ESTABLISHED TO BE MAINTAINED IN PERPETUITY CONSISTING OF ALL THE FOLLOWING:

1. LEGISLATIVE APPROPRIATIONS.

2. MONIES RECEIVED FOR WATER CONSERVATION PURPOSES FROM THE UNITED STATES GOVERNMENT.

3. INTEREST AND OTHER INCOME RECEIVED FROM INVESTING MONIES IN THE FUND.

4. GIFTS, GRANTS AND DONATIONS RECEIVED FOR WATER CONSERVATION PURPOSES FROM ANY PUBLIC OR PRIVATE SOURCE.

5. ANY OTHER MONIES RECEIVED BY THE AUTHORITY IN CONNECTION WITH THE PURPOSE OF THE FUND.

B. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

C. ALL MONIES DEPOSITED IN THE FUND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

D. THE AUTHORITY SHALL ADMINISTER THE FUND AND ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND.

E. MONIES AND OTHER ASSETS IN THE FUND SHALL BE USED SOLELY FOR THE PURPOSES AUTHORIZED BY THIS ARTICLE.

F. THE ANNUAL REPORT REQUIRED BY SECTION 49-1204 SHALL INCLUDE:

1. THE EXPENDITURES MADE FROM THE FUND IN THE PREVIOUS FISCAL YEAR.

2. WHETHER PROGRAMS OR PROJECTS FUNDED BY THE FUND IN THE PREVIOUS FISCAL YEAR DID IN FACT:

(a) RESULT IN LONG-TERM, SUSTAINABLE REDUCTIONS IN WATER USE.

(b) IMPROVE WATER USE EFFICIENCY.

(c) IMPROVE WATER RELIABILITY.

3. THE ENVIRONMENTAL IMPACTS OF PROGRAMS OR PROJECTS FUNDED BY THE FUND IN THE PREVIOUS FISCAL YEAR.

49-1332. Water conservation grant fund; purposes

A. MONIES IN THE WATER CONSERVATION GRANT FUND MUST FACILITATE VOLUNTARY WATER CONSERVATION PROGRAMS OR PROJECTS THAT ARE EXPECTED TO RESULT IN AT LEAST ONE OF THE FOLLOWING:

1. LONG-TERM REDUCTIONS IN WATER USE.

2. IMPROVEMENTS IN WATER USE EFFICIENCY.

3. IMPROVEMENTS IN WATER RELIABILITY.

B. MONIES IN THE WATER CONSERVATION GRANT FUND MAY BE USED FOR THE FOLLOWING:

1. EDUCATION AND RESEARCH PROGRAMS ON HOW TO REDUCE WATER CONSUMPTION, INCREASE WATER EFFICIENCY OR INCREASE WATER REUSE.

2. PROGRAMS AND PROJECTS FOR RAINWATER HARVESTING, GRAY WATER SYSTEMS, EFFICIENCY UPGRADES, INSTALLING DROUGHT-RESISTANT LANDSCAPING, TURF REMOVAL AND OTHER PRACTICES TO REDUCE WATER USE.

3. PROGRAMS OR PROJECTS TO PROMOTE GROUNDWATER RECHARGE AND IMPROVED AQUIFER HEALTH.

4. PROGRAMS OR PROJECTS TO IMPROVE GROUNDWATER CONSERVATION AND SURFACE WATER FLOWS.

5. LANDSCAPE WATERSHED PROTECTION, RESTORATION AND REHABILITATION, INCLUDING THROUGH GREEN INFRASTRUCTURE AND LOW-IMPACT DEVELOPMENT TO CONSERVE OR AUGMENT WATER SUPPLIES.

6. PROJECTS FACILITATING COORDINATED WATER MANAGEMENT, INCLUDING GROUNDWATER STORAGE AND RECOVERY.

7. PROGRAMS OR PROJECTS TO REDUCE STRUCTURAL WATER OVERUSE ISSUES.

8. PROGRAM IMPLEMENTATION AND ADMINISTRATION COSTS FOR ELIGIBLE PROGRAMS.

49-1333. Water conservation grant fund; procedures

A. IN COMPLIANCE WITH ANY APPLICABLE REQUIREMENTS, A CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE MAY APPLY TO THE AUTHORITY FOR AND ACCEPT GRANTS FROM THE WATER CONSERVATION GRANT FUND FOR A WATER CONSERVATION PROGRAM OR PROJECT THAT COMPLIES WITH THE REQUIREMENTS OF SECTIONS 49-1332 AND 49-1334. A NONGOVERNMENT ORGANIZATION THAT FOCUSES ON WATER CONSERVATION OR ENVIRONMENTAL PROTECTION MAY APPLY TO THE AUTHORITY FOR AND ACCEPT GRANTS FROM THE WATER CONSERVATION GRANT FUND FOR A WATER CONSERVATION PROGRAM OR PROJECT IF IT PARTNERS WITH A CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE.

B. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE ASSISTANCE.

2. ESTABLISH BY RULE CRITERIA THAT IS CONSISTENT WITH THIS ARTICLE BY WHICH ASSISTANCE WILL BE AWARDED.

3. DETERMINE THE ORDER AND PRIORITY OF WATER CONSERVATION PROGRAMS OR PROJECTS ASSISTED UNDER THIS SECTION BASED ON THE MERITS OF THE APPLICATION WITH RESPECT TO THE REQUIREMENTS OF SECTIONS 49-1332 AND 49-1334.

4. PROVIDE THAT A SINGLE WATER CONSERVATION PROGRAM GRANT MAY NOT EXCEED $3,000,000, A SINGLE WATER CONSERVATION PROJECT GRANT MAY NOT EXCEED $250,000 AND AT LEAST A TWENTY-FIVE PERCENT MATCH IS REQUIRED FOR EACH WATER CONSERVATION PROGRAM OR PROJECT. MONIES FROM ANY OTHER SOURCE MAY SATISFY THE MATCH REQUIREMENT.

49-1334. Evaluation criteria for water conservation programs and projects from the water conservation grant fund; procedures

THE AUTHORITY SHALL DETERMINE THE ORDER AND PRIORITY OF WATER CONSERVATION PROGRAMS AND PROJECTS PROPOSED TO BE FUNDED IN WHOLE OR IN PART WITH MONIES FROM THE WATER CONSERVATION GRANT FUND BASED ON THE FOLLOWING, AS APPLICABLE:

1. THE EXTENT TO WHICH THE WATER CONSERVATION PROGRAM OR PROJECT ACHIEVES ONE OR MORE OF THE RESULTS PRESCRIBED BY SECTION 49-1332, SUBSECTION A.

2. THE COSTS AND BENEFITS OF THE WATER CONSERVATION PROGRAM OR PROJECT, INCLUDING ENVIRONMENTAL COSTS AND BENEFITS.

3. IF THE WATER CONSERVATION PROGRAM OR PROJECT IS ELIGIBLE FOR FUNDING FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 OR THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271 AND IF THE NATURE OF THE WATER CONSERVATION PROGRAM OR PROJECT MAKES FUNDING FROM THE LONG-TERM WATER AUGMENTATION FUND OR THE WATER SUPPLY DEVELOPMENT REVOLVING FUND IMPRACTICAL.

4. THE ABILITY TO PROVIDE MULTIPLE BENEFITS.

5. THE DEGREE TO WHICH THE WATER CONSERVATION PROGRAM OR PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

6. THE QUALIFICATIONS AND CAPACITY OF AN APPLICANT.

7. THE FEASIBILITY OF THE WATER CONSERVATION PROGRAM OR PROJECT.

8. PUBLIC COMMENTS.

49-1335. Water conservation grant committee; membership; recommendations

A. THE WATER CONSERVATION GRANT COMMITTEE IS ESTABLISHED TO ADVISE THE BOARD AND CONSISTS OF THE FOLLOWING MEMBERS WHO ARE APPOINTED BY THE BOARD:

1. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES FIVE HUNDRED OR MORE CONNECTIONS.

2. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES LESS THAN FIVE HUNDRED CONNECTIONS.

3. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

4. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND PERSONS.

5. ONE MEMBER WHO REPRESENTS AN ADVOCACY GROUP WITH A PRIMARY FOCUS ON WATER CONSERVATION.

6. ONE MEMBER WHO REPRESENTS A UNIVERSITY IN THIS STATE AND WHO HAS SIGNIFICANT KNOWLEDGE IN WATER CONSERVATION.

7. ONE MEMBER WHO REPRESENTS A NATURAL RESOURCE CONSERVATION DISTRICT ESTABLISHED PURSUANT TO TITLE 37, CHAPTER 6.

8. THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

B. THE WATER CONSERVATION GRANT COMMITTEE SHALL REVIEW APPLICATIONS FOR GRANT REQUESTS FROM THE WATER CONSERVATION GRANT FUND AND SHALL MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS.

C. THE WATER CONSERVATION GRANT COMMITTEE SHALL MEET AT LEAST ONCE A MONTH TO REVIEW GRANT APPLICATIONS, EXCEPT THAT THE COMMITTEE NEED NOT MEET IN ANY MONTH IN WHICH NO APPLICATIONS ARE PENDING BEFORE THE COMMITTEE. THE BOARD MAY REQUIRE THE COMMITTEE TO HOLD ADDITIONAL MEETINGS TO CONSIDER APPLICATIONS THAT ARE OR MAY BECOME TIME SENSITIVE. THE COMMITTEE SHALL ALLOW MEMBERS OF THE PUBLIC TO PROVIDE COMMENT ON AN APPLICATION CONSIDERED BY THE COMMITTEE AT A MEETING.

D. THE WATER CONSERVATION GRANT COMMITTEE IS CONSIDERED A SUBCOMMITTEE OF THE BOARD FOR THE PURPOSES OF SECTION 49-1206.

Sec. 24. Transfer and renumber

Title 49, chapter 9, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, Arizona Revised Statutes, as chapter 11. Title 49, chapter 9, article 1, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, chapter 11, Arizona Revised Statutes, as article 1. The following sections are transferred and renumbered for placement in title 49, chapter 11, article 1:

Former Sections	New Sections
49-1301	49-1501
49-1302	49-1502
49-1303	49-1503

Sec. 25. Laws 2021, chapter 408, section 115 is amended to read:

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~~ AS PRESCRIBED BY TITLE 49, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES.

Sec. 26. Water and infrastructure finance authority advisory board; transfer to federal water programs committee

Notwithstanding section 41-5356, Arizona Revised Statutes, as amended by this act, all of the members of the water and infrastructure finance authority advisory board serving on the effective date of this act may continue to serve on the federal water programs committee established by section 49-1207, Arizona Revised Statutes, as added by this act, until the expiration of their normal terms. All subsequent appointments shall be as prescribed by statute.

Sec. 27. Drought mitigation revolving fund projects; transfer of monies

On the effective date of this section, all unexpended and unencumbered monies remaining in the drought mitigation revolving fund established by section 49-193.01, Arizona Revised Statutes, as transferred, renumbered and amended by this act, are transferred to the water supply development revolving fund established by section 49-1271, Arizona Revised Statutes, as amended by this act, except that $10,000,000 that is designated by Laws 2021, chapter 408, section 114, subsection B, paragraph 1 to facilitate forbearance of water deliveries that would avoid reductions in this state's Colorado River supplies, is transferred to the Arizona system conservation fund established by section 45-118, Arizona Revised Statutes.

Sec. 28. Initial terms of members of the water infrastructure finance authority board

A. Notwithstanding section 49-1206, Arizona Revised Statutes, as added by this act, the terms of initial appointees to the water infrastructure finance authority board are as follows:

1. The initial terms of the three members from a county with a population of four hundred thousand persons or more end on January 31, 2026.

2. The initial terms of the three members from a county with a population of less than four hundred thousand persons and the one member who specializes in finance or statewide water needs end on January 31, 2028.

B. For the initial term, the president of the senate and the minority leader of the senate shall appoint first, the governor shall appoint second and the speaker of the house of representatives and the minority leader of the house of representatives shall appoint third.

C. All subsequent appointments shall be for five-year terms as prescribed by statute.

Sec. 29. Succession

A. As provided by this act, on the first meeting of the water infrastructure finance authority of Arizona succeeds to the authority, powers, duties and responsibilities of the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions, as provided in this act. Until the first meeting of the water infrastructure finance authority board established by section 49-1206, Arizona Revised Statutes, as added by this act, the water infrastructure finance authority of Arizona shall continue to be governed by the Arizona finance authority board with the recommendations of the current water infrastructure finance authority advisory board as composed immediately before the effective date of this act.

B. This act does not alter the effect of any actions that were taken or impair the valid obligations of the Arizona finance authority or the water infrastructure finance authority of Arizona in existence before the effective date of this act.

C. Administrative rules and orders that were adopted by the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions continue in effect until superseded by administrative action by the water infrastructure finance authority of Arizona.

D. All administrative matters, contracts and judicial and quasi-judicial actions, whether completed, pending or in process, of the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions on the effective date of this act are transferred to and retain the same status with the water infrastructure finance authority of Arizona.

E. All certificates, licenses, registrations, permits and other indicia of qualification and authority that were issued by the Arizona finance authority and the water infrastructure finance authority of Arizona with respect to the water supply development revolving fund financial provisions retain their validity for the duration of their terms of validity as provided by law.

F. All equipment, records, furnishings and other property, all data and investigative findings, all obligations and all appropriated monies that remain unexpended and unencumbered on the effective date of this act of the Arizona finance authority with respect to the water supply development revolving fund financial provisions are retained by the water infrastructure finance authority of Arizona.

Sec. 30. Water infrastructure finance authority of Arizona; purpose

Pursuant to section 41-2955, subsection B, the legislature continues the water infrastructure finance authority of Arizona to provide a source of financial and other assistance for projects relating to water treatment and water supply development that improve current and long-term water supplies.

Sec. 31. Distribution of revenues; long-term water augmentation fund; intent

A. For fiscal year 2022-2023, beginning the month following the general effective date of this act, the state treasurer shall distribute the sum of $334,000,000 proportionately for each month remaining in the fiscal year from the portion of the revenues derived from the tax levied by title 42, chapter 5, articles 1 and 5, Arizona Revised Statutes, that is not designated as the distribution base, to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

B. The legislature intends that the distributions made in subsection A of this section not impact the portion of transaction privilege tax revenues that cities and counties in this state receive pursuant to section 42-5029, subsection D, Arizona Revised Statutes.

Sec. 32. Appropriation; long-term water augmentation fund; exemption

A. The sum of $333,000,000 is appropriated from the state general fund in fiscal year 2023-2024 to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

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.

Sec. 33. Appropriation; long-term water augmentation fund; exemption

A. The sum of $333,000,000 is appropriated from the state general fund in fiscal year 2024-2025 to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

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.

Sec. 34. Appropriation; department of water resources; water supply and demand assessment; exemption

A. The sum of $3,500,000 is appropriated from the state general fund in fiscal year 2022-2023 to the department of water resources for the annual water supply and demand assessment prescribed by this act.

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.

Sec. 35. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

APPROVED BY THE GOVERNOR JULY 6, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 6, 2022.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

1. Identification of the Proposed Rule Making

The Water Infrastructure Finance Authority (WIFA) of Arizona is initiating a rule making to reflect its current governing statutes. The Authority proposes to modify the existing rule (A.A.C. Title 18, Chapter 15) so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53.

On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring WIFA to the newly established Arizona Finance Authority (AFA). House Bill 2666 (HB 2666) dissolved the WIFA Board of Directors, and WIFA is now governed by the newly created AFA Board of Directors with a new WIFA Advisory Board. The rule making reflects the new governance of the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF).

The Water Supply Development Revolving Fund (WSDRF) was established during the 2007 legislative session but is, to date, unfunded. Its Committee was struck from statute by HB 2666. References to the now-defunct WSDRF Committee are found throughout WIFA's current rules. The rule making reflects the new governance of the WSDRF. Rules for the WSDRF were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules for the Clean Water and Drinking Water Revolving Fund programs. These programs are federally funded, and their rules are based on federal requirements which do not apply to the WSDRF, a state program. This rule making removes these requirements, thereby reducing the regulatory burden of the rule.

This rule making proposes other minor clarifying edits to improve the comprehension and legal certainty of the rules.

The rule making does not propose new or higher standards or new costs or fees that make it more difficult for communities to apply for and receive financial or technical assistance from WIFA.

2. Identification of the Persons Who Will be Directly Affected by, Bear the Costs of or Directly Benefit from the Proposed Rule Making.

WIFA is a public financing authority; it does not regulate any consumer or business. WIFA manages the CWSRF and DWSRF whose purposes are to provide financial and technical assistance to political subdivisions and Indian tribes for their wastewater, stormwater and nonpoint source projects, and to political subdivisions, Indian tribes, and private water companies for their drinking water projects. A political subdivision is defined by A.R.S. § 49-1201(9) as a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects. Private water companies must be regulated by the Arizona Corporation Commission to be eligible for DWSRF funding. Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply.

In fiscal year 2017, WIFA provided financial assistance to five drinking water systems and three wastewater systems. Through the Drinking Water Revolving Fund, $63 million was lent to communities around the state, while $4.6 million was lent through the Clean Water Revolving Fund.

The average number of loans per year from fiscal year 2013 to fiscal year 2017 was nine drinking water loans and three wastewater loans. In fiscal year 2017, technical assistance was provided to five drinking water systems and four wastewater systems, totaling $121,631 and $134,324 respectively.

In addition to providing assistance under the CWSRF and DWSRF, WIFA is authorized to provide financial and technical assistance to water providers for water supply development projects under the WSDRF. A water provider is defined in A.R.S. § 49-1201(13) as a municipal water delivery system, a county water augmentation authority, a county water authority, an Indian tribe or a community facilities district. At this time, there is no current funding for the WSDRF program, and no applications for assistance will be solicited until funding becomes available.

3. Cost Benefit Analysis

A. The Probable Costs and Benefits to the Implementing Agency and Other Agencies Directly Affected

This rule making primarily impacts WIFA but also impacts the Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ), and Arizona Department of Water Resources (ADWR).

a. WIFA is impacted favorably by this rule making as the amendments restructure the content, reduce redundancy, and provide for a direct presentation of the required actions of applying for, evaluating, and awarding financial and technical assistance. Rule amendments are not expected to increase WIFA's administrative costs of providing financial or technical assistance. No new full-time employees will be necessary to implement and enforce the proposed rule.

b. ACC is minimally affected by this rule making. Privately-owned drinking water facilities must request approval of long-term debt and any associated rate increase from the ACC prior to applying for financial assistance from WIFA. There are no additional costs to the ACC due to the rule amendments.

c. ADEQ is minimally impacted by this rule making. Wastewater and drinking water facilities provided with assistance from WIFA can mitigate outstanding compliance issues with ADEQ. There are no additional costs to ADEQ due to the rule amendments.

d. ADWR is impacted by this rule making. Before HB 2666 became effective, the Director of Water Resources served as Chairperson of the WSDRF Committee. The Committee no longer exists, and the Arizona Finance Authority Board of Directors now oversees the WSDRF. This rulemaking simplifies the process for applying for, evaluating and awarding financial and technical assistance from the WSDRF, by removing the non-applicable federal requirements. At this time, the impact on ADWR is minimal since there is no current funding for the WSDRF program.

B. The Probable Costs and Benefits to Political Subdivisions Directly Affected

This rule making has a beneficial impact to political subdivisions as defined by A.R.S. § 49-1201 by clarifying the rules. No increased costs are associated with this rule making.

Political subdivisions are positively impacted by WIFA's programs in that they can solve infrastructure problems, improve water quality, and ensure public health protection through financial and technical assistance obtained from WIFA. Without the financial and technical assistance available through WIFA, many wastewater and drinking water facilities would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Through the Clean Water and Drinking Water

federal capitalization grants and WIFA's 'AAA' bond rating, WIFA provides subsidization on the interest rates for wastewater and drinking water infrastructure projects. Communities designated as disadvantaged receive additional discounts, and in some cases, forgivable principal. Overall, the net impact upon the political subdivisions is a cost-savings benefit.

WIFA anticipates that when water supply development revolving funds become available, water providers will initiate requests for financial and technical assistance through the WSDF to address water supply needs. As with wastewater and drinking water facilities, water providers may find it difficult, if not impossible, to obtain funding to address their needs without the assistance available from WIFA.

C. The Probable Costs and Benefits to Businesses Directly Affected

This rule making has a beneficial impact to the private water companies eligible to borrow from the Drinking Water State Revolving Fund. The impact for private water companies is the same as for political subdivisions and is described above. This rule making has no anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions Directly Affected

There is no probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. Probable Impact on Small Businesses.

For the purposes of the CWSRF and DWSRF, WIFA utilizes the Environmental Protection Agency's (EPA) definition of small systems as those serving 10,000 persons or less. In Arizona, many of these small water systems are privately-owned and are, therefore, regulated by the Arizona Corporation Commission. (Privately-owned wastewater companies are not eligible for WIFA funding.)

There is a no impact upon small businesses from this rule making beyond the beneficial impacts described in Section 3. There are no administrative or other costs required for compliance with the proposed rule making. This rule making corrects or clarifies existing rule provisions and definitions to reduce confusion and improve understanding and readability. Additionally, there are no competitive disadvantages to small businesses expected as a result of this rule making.

The methods prescribed in A.R.S. § 41-1035 which an agency may use to reduce the impact on small businesses are listed below. WIFA does not regulate any consumer or business; nor does the rule making establish any reporting requirements, schedules, or deadlines, nor any design or operational standards. Therefore, the methods do not apply to this rule making.

i. Establish less stringent compliance or reporting requirements in the rule for small businesses.
The proposed rule making does not establish any compliance or reporting requirements.

ii. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
The proposed rule making does not establish any compliance or reporting schedules or deadlines.

iii. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.
The proposed rule making does not prescribe compliance or reporting requirements.

iv. Establish performance standards for small businesses to replace design and operational standards.
The proposed rule making does not establish design or operational standards.

v. Exempt small businesses from any or all requirements of the rule.
WIFA does not regulate any consumer or business; thus exemptions are not applicable.

Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply. Although acceptance of financial assistance from WIFA may trigger an increase in user rates for the consumer, WIFA makes significant efforts to maintain the affordability of its financial assistance, including below-market interest rates, and in some cases, forgivable principal. WIFA offers technical assistance to communities to help with the initial phases of an infrastructure project. In the end, the residents of Arizona benefit from the financial and technical assistance provided by WIFA.

6. Probable Effect on State Revenues.
The rule making will not have an impact on state revenues.

The Clean Water and Drinking Water State Revolving Funds are self-supporting programs which receive monies from federal capitalization grants authorized under the Clean Water Act and Safe Drinking Water Act; the issuance and sale of water quality revenue bonds; and loan repayments, interest and penalties. WIFA pays administrative costs from income received from fees (as collected through the subsidized combined interest and fee rate) on loan repayments or from four percent of each of the Clean Water and Drinking Water federal capitalization grants as authorized by law.

Funds for administering the Water Supply Development Revolving Fund program and providing assistance are authorized to be received from the issuance and sale of water supply development bonds; appropriation approved by the legislature; funds received from the United States government; loan repayments, interest and penalties; interest and other income received from investing monies in the fund; and gifts, grants and donations received from any public or private source. This program is unfunded.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making,
The proposed rule making does not impose any intrusive or costly requirements. It does not propose new or higher standards or new costs or fees. The Authority proposes to modify the existing rule so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53, as well as minor clarifying edits to improve the comprehension and legal certainty of the rules. Because of this, no alternative methods were considered.

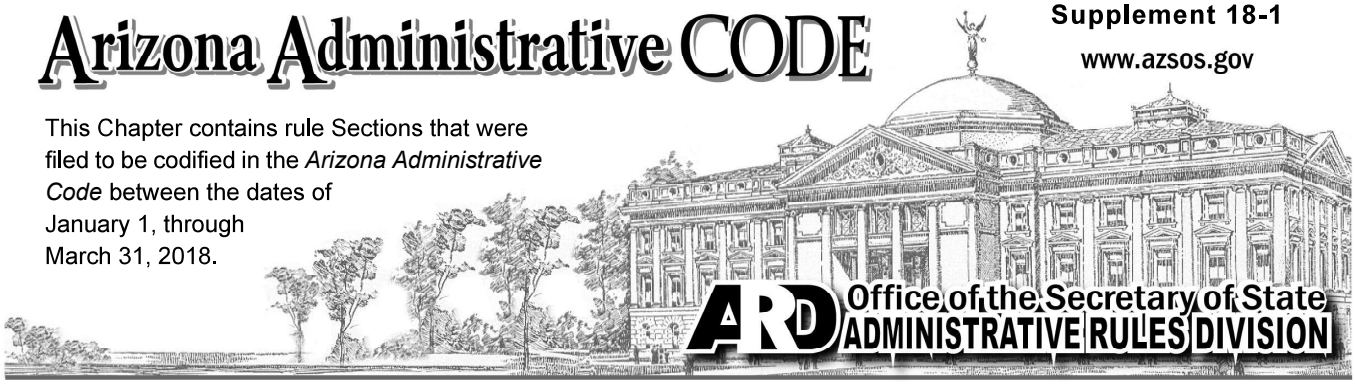
8. Description of Data on Which Rule is Based
This rule making was undertaken to reflect the current governing statutes, as a result of HB 2666. The rule making makes the rules consistent with recent statutory changes, and is not based on data.

Arizona Administrative CODE

Supplement 18-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.



TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about these rules? Contact:

Department: Water Infrastructure Finance Authority of Arizona
Name: Trish Incognito, Executive Director
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The release of this Chapter in supplement 18-1 replaces supplement 10-3, 19 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. CLEAN WATER REVOLVING FUND

ARTICLE 3. DRINKING WATER REVOLVING FUND

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

ARTICLE 5. TECHNICAL ASSISTANCE

Article 5, consisting of Sections R18-15-501 through R18-15-507, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Article 6, consisting of Sections R18-15-601 through R18-15-603, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Article 7, consisting of Section R18-15-701, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 1. GENERAL PROVISIONS

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

"Advisory Board" has same meaning as prescribed in A.R.S. § 41-5356(A)(5).

"Applicant" means a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider that is seeking financial or technical assistance from the Authority under the provisions of this Chapter.

"Application" means a request for financial or technical assistance submitted to the Board by an applicant.

"Authority" means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).

"Board" means the board of directors of the Arizona finance authority established by A.R.S. Title 41, Chapter 53, Article 2.

"Certified Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.

"Clean Water Revolving Fund" means the fund established by A.R.S. § 49-1221.

"DBE" means EPA's Disadvantaged Business Enterprise Program.

"Dedicated revenue source for repayment" means a source of revenue pledged by a borrower to repay the financial assistance.

"Department" means the Arizona Department of Environmental Quality.

"Disbursement" means the transfer of cash from a fund to a recipient.

"Discharge" has same meaning as prescribed in A.R.S. § 49-201(12).

"Drinking water facility" has same meaning as prescribed in A.R.S. § 49-1201(5).

"Drinking Water Revolving Fund" means the fund established by A.R.S. § 49-1241.

"EA" means an environmental assessment.

"EID" means an environmental information document.

"EIS" means an environmental impact statement.

"EPA" means the United States Environmental Protection Agency.

"Executive director" means the executive director of the Water Infrastructure Finance Authority of Arizona.

"Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

"Financial assistance" means the use of monies for any of the purposes identified in R18-15-102(B).

"Financial assistance agreement" means any agreement that defines the terms for financial assistance provided according to this Chapter.

"FONSI" means a finding of no significant impact.

"Fundable range" means a subset of the project priority list that demarcates the ranked projects which have been determined to be ready to proceed and will be provided with a project finance application.

"Governmental unit" means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

"Impaired water" means a navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

"Intended Use Plan" means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, and the intended uses of funds for technical assistance according to R18-15-502.

"Master priority list" means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

"Onsite system" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

"Planning and design assistance" means technical assistance that provides for the use of monies for a specific water facility, wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

"Planning and design assistance agreement" means any agreement that defines the terms for technical assistance provided according to Article 5 of this Chapter.

"Planning and design technical assistance applicant" means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking planning and design assistance from the Authority under the provisions of this Chapter.

"Planning and design technical assistance application" means a request for planning and design assistance submitted to the Board by an applicant in a format prescribed by the Authority.

"Planning and design loan repayment agreement" means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. § 49-1201(11).

"Professional assistance" means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

"Project" means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water

supply delivery system, or nonpoint source pollution control that can be bid separately and for which financial or technical assistance is being requested or provided.

"Project priority list" means the document developed by the Board according to R18-15-203 or R18-15-303 that ranks projects according to R18-15-204 or R18-15-304.

"Recipient" means an applicant who has entered into a financial assistance agreement or planning and design assistance agreement with the Authority.

"ROD" means a record of decision.

"Staff assistance" means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and design of water supply development projects according to A.R.S. § 49-1203(B)(17).

"Technical assistance" means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance.

"Wastewater treatment facility" has the same meaning as prescribed in A.R.S. § 49-1201(12).

"Water provider" has the same meaning as prescribed in A.R.S. § 49-1201(13).

"Water supply development" has the same meaning as prescribed in A.R.S. § 49-1201(14).

"Water Supply Development Revolving Fund" means the fund established by A.R.S. § 49-1271.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-102. Types of Assistance Available

A. The Authority may provide financial and technical assistance under the following programs if the Board determines funding is available:
1. Clean Water Revolving Fund Program and Clean Water Technical Assistance Program,
2. Drinking Water Revolving Fund Program and Drinking Water Technical Assistance Program,
3. Water Supply Development Revolving Fund Program and Water Supply Development Technical Assistance Program, and
4. Hardship Grant Fund Program.

B. Financial assistance available from the Authority includes any of the following:
1. Financial assistance loan repayment agreements;
2. The purchase or refinance of local debt obligations;
3. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
4. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and
5. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).

C. Technical assistance available from the Authority includes planning and design assistance, staff assistance, and professional assistance. Technical assistance may be offered at the Board's discretion.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former R18-15-102 renumbered to R18-15-103; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-103. Application Process

A. An applicant requesting assistance shall apply to the Authority for the financial or technical assistance described in R18-15-102 on forms provided by the Authority.

B. An applicant seeking financial assistance through the Clean Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 2 of this Chapter.

C. An applicant seeking financial assistance through the Drinking Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 3 of this Chapter.

D. An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.

E. An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.

F. An applicant shall mark any confidential information with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:
1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
2. The designated information is not confidential.
3. Additional information is required before a final confidentiality determination can be made.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-103 renumbered from R18-15-102 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-104. General Financial Assistance Application Requirements

A. The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).

B. The applicant shall demonstrate the applicant is legally authorized to apply for long-term indebtedness, and is legally authorized to declare its intent to obligate a dedicated revenue source for repayment under subsection (C).
1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:

a. One copy of the sample election ballot and election pamphlet, if applicable,
b. One copy of the governing body resolution calling for the election, and
c. Official evidence of the election results following the election.

2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the application for long-term indebtedness and an identification of the dedicated revenue source.
3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of the final documentation, notices, petitions, and related information authorizing the long-term indebtedness.
4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission.
5. All other applicants shall demonstrate that a majority of the beneficiaries consent to apply to the Authority for financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.

C. The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.

1. The applicant shall provide the following information:
   a. Amount of the financial assistance requested;
   b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous three financial operating years (fiscal or calendar);
   c. One copy of each budget, business plan, management plan, or financial plan from the current financial operating years (fiscal or calendar);
   d. One copy of the proposed budget, business plan, management plan, or financial plan for the next financial operating year (fiscal or calendar);
   e. Documentation of current rates and fees for drinking or wastewater services including, as applicable, any resolutions related to rates and fees passed by the governing body of a political subdivision; and
   f. Copies of documentation relating to outstanding indebtedness pledged to the dedicated source for repayment, including official statements, financial assistance agreements, and amortization schedules.
2. If any of the required information listed in subsection (C)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
3. The Authority may ask for additional financial information as necessary to evaluate the applicant's financial capability.

D. The applicant shall demonstrate the applicant is technically capable to construct, operate, and maintain the proposed project.

1. The applicant shall provide the following information:
   a. An estimate of the project costs in as much detail as possible, including an estimate of applicable planning, design, construction, and material costs;
   b. The number of connections to be served by the proposed project;
   c. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments;
   d. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project and determined applicable by the Authority for the stage of project completion;
   e. Biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project;
   f. A description of the service area, including maps; and
   g. A description of the existing physical facilities.
2. The Authority may ask for additional information as necessary to evaluate the applicant's technical capability.

E. The applicant shall demonstrate the applicant is capable of managing the system and the proposed project.

1. The applicant shall provide the following information:
   a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
   b. A list of professional and outside services retained by the applicant.
2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-105. General Financial Assistance Conditions

A. The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority.

B. The documentation required prior to execution of the financial assistance agreement shall at a minimum include:

1. If there is a governing body, one copy of the governing body resolution approving the execution of the financial assistance agreement,
2. A project budget, and
3. An estimated disbursement schedule.

C. The financial assistance agreement between the recipient and the Authority shall at a minimum specify:

1. Rates of interest, fees, and any costs as determined by the Authority;
2. Project details;
3. The maximum amount of principal and interest due on any payment date;
4. Debt service coverage requirements;
5. Reporting requirements;
6. Debt service reserve fund and repair and replacement reserve fund requirements;
7. The dedicated source for repayment and pledge;
8. The requirement that the recipient comply with applicable federal, state and local laws;

9. A schedule for repayment; and
10. Any other agreed-upon conditions.

D. The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

E. The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Chapter and the financial assistance agreement.

F. The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.

1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
2. The applicant shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

G. The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-106. Environmental Review

A. The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.

1. The Authority shall not execute a technical or financial assistance agreement with an applicant until the requirements of this section are met. For projects that include an environmental information document or an environmental impact statement, the Authority may execute a technical or financial assistance agreement with an applicant prior to the completion of the conditions of this section, provided that the applicant meets the requirements of this section before proceeding with the design of the selected alternative.
2. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of this section.

B. A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:

1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:
   a. Involve new or relocated discharges to surface water or groundwater,
   b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
   c. Will provide capacity to serve a population 30% greater than the existing population,
   d. Are not supported by the state or other regional growth plan or strategy, or
   e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.

C. The Authority shall deny a categorical exclusion if any of the following extraordinary circumstances apply to the project:

1. The project is known or expected to have potentially significant adverse environmental impacts on the quality of the human environment either individually or cumulatively over time.
2. The project is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
3. The project is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
4. The project is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archaeological, or cultural value, including but not limited to, property listed on or eligible for the Arizona or National Registers of Historic Places.
5. The project is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
6. The project is known or expected to cause significant adverse air quality effects.
7. The project is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized

Indian tribe approved land use or federal land management plans.

8. The project is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
9. The project is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
10. The project is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

D. If the Authority denies the categorical exclusion under subsection (C), the Authority shall conduct an EA according to subsection (E), unless the Authority decides to prepare an EIS according to subsections (F) and (G) without first undertaking an EA. If the Authority conducts an EA, the applicant shall:

1. Prepare an environmental information document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to undertake an environmental review and to allow development of an EA under subsection (E); or
2. Provide documentation, upon Authority approval, in another format if the documentation is of sufficient scope to allow the development of an EA under subsection (E).

E. The Authority shall conduct the EA that includes:

1. A brief discussion of:
   a. The need for the project;
   b. The alternatives, including a no action alternative;
   c. The affected environment, including baseline conditions that may be impacted by the project and alternatives;
   d. The environmental impacts of the project and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
   e. Other applicable environmental laws.
2. A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
3. Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the project will not have significant impacts; and
4. Incorporation of documents by reference, if appropriate, including the EID.

F. Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.

1. The Authority shall prepare or direct the applicant to prepare an EIS in the manner prescribed in subsection (G) if any of the following conditions exist.
   a. The project would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving water.
   b. The project is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
   c. The project is likely to have significant adverse effects on surface water reservoirs or navigation projects.
   d. The project would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
   e. The project would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for the protection of the environment.
   f. The project is likely to significantly affect the environment through the release of radioactive, hazardous, or toxic substances, or biota.
   g. The project involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
   h. The project is likely to significantly affect national natural landmarks or any property on or eligible for the Arizona or National Registers of Historic Places.
   i. The project is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
   j. The project in conjunction with related federal, state, or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
   k. The project is likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas.
   l. The project is a new regional wastewater treatment facility or water supply system for a community with a population greater than 100,000.
   m. The project is an expansion of an existing wastewater treatment facility that will increase existing discharge to an impaired water by more than 10 million gallons per day (mgd).
2. The Authority may issue a finding of no significant impact (FONSI) if the EA supports the finding that the project will not have a significant impact on the environment. The FONSI shall include the submitted EA and a brief description of the project, alternatives considered, and project impacts. The FONSI must also include any commitments to mitigation that are essential to render the impacts of the project not significant. The Authority shall issue the FONSI for public comment in accordance with subsection (J).

G. The Authority shall prepare or direct the applicant to prepare an EIS required by subsection (F)(1) when the project will significantly impact the environment, including any project for which the EA analysis demonstrates that significant impacts will occur and not be reduced or eliminated by changes to, or mitigation of, the project. The Authority shall perform the following actions:

1. As soon as practicable after its decision to prepare an EIS and before the scoping process, the Authority shall prepare a notice of intent. The notice of intent shall briefly describe the project and possible alternatives and the proposed scoping process. The Authority shall distribute the notice of intent to affected federal, state, and local agencies, any affected Indian tribe, the applicant, and other interested parties. The Authority shall issue the notice of intent for public comment in accordance with subsection (J)(3).

2. As soon as possible after the distribution and publication of the notice of intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the parties attending the meeting shall determine the scope of the EIS by considering a number of factors, including all of the following:
   a. The significant issues to be analyzed in depth in the EIS,
   b. The preliminary range of alternatives to be considered,
   c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties, and
   d. The method for EIS preparation and the public participation strategy.
3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues also may be addressed, or others eliminated, and the reasons documented as part of the EIS.
4. After the analysis of issues is conducted according to subsection (G)(3), the Authority shall issue a draft EIS for public comment according to subsection (J)(4).
5. Following public comment according to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
   a. The draft EIS;
   b. An analysis of all reasonable alternatives and the no action alternative;
   c. A summary of any coordination or consultation undertaken with any federal, state, or local government, or federally-recognized Indian tribe;
   d. A summary of the public participation process;
   e. Comments received on the draft EIS;
   f. A list of persons commenting on the draft EIS;
   g. The Authority's responses to significant comments received;
   h. A determination of consistency with the Certified Water Quality Management Plan, if applicable;
   i. The names and qualifications of the persons primarily responsible for preparing the EIS; and
   j. Any other information added by the Authority.
6. The Authority shall prepare or direct the applicant to prepare a supplemental EIS when appropriate, including when substantial changes are made to the project that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the project.

H. After issuance of a final EIS under subsection (G)(5), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include a brief description of the project, alternatives considered, and project impacts. In addition, the ROD must include any commitments to mitigation, an explanation if the environmental preferred alternative was not selected, and any responses to substantive comments on the final EIS. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.

I. For all determinations (categorical exclusions, FONSIs, or RODs) that are five years old or older and for which the project has not been implemented, the Authority shall re-evaluate the project, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the project and complete an appropriate environmental review document or reaffirm the Authority's original determination. The Authority shall provide public notice of the re-evaluation according to subsection (J)(5).

J. The Authority shall conduct public notice and participation under this Section as follows:
1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
2. If a FONSI is issued under subsection (F)(2), the Authority shall provide public notice that the FONSI is available for public review by publishing the notice as a legal notice at least once in one or more newspapers of general circulation in the county or counties concerned. The notice shall provide that comments on the FONSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FONSI shall immediately become effective. The Authority may proceed with the project subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.
3. If a notice of intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned, that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 45 days from the date of publication of the notice. When the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comments.
5. If the Authority reaffirms or revises a decision according to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section repealed; new R18-15-106 renumbered from R18-15-107 and amended at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-107. Disputes

A. Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the executive director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial

adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.

B. The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board. The formal letter of dispute shall include the following information:

1. The name, address, and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. A detailed statement of the legal and factual grounds of the dispute including:
   a. Copies of relevant documents, and
   b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
4. The form of relief requested.

C. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.

D. Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the executive director not more than 15 days after the receipt by the party of the preliminary decision.

E. The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former R18-15-107 renumbered to R18-15-106; new R18-15-107 renumbered from R18-15-112 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-108. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section R18-15-108 renumbered from R18-15-109 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-109. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-109 renumbered to R18-15-108; new Section R18-15-109 renumbered from R18-15-110 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-110. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-110 renumbered to R18-15-111; new Section adopted effective June 4, 1998 (Supp. 98-2). Former Section R18-15-110 renumbered to R18-15-109; new Section R18-15-110 renumbered from R18-15-111 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-111. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-111 renumbered to R18-15-112; new Section R18-15-111 renumbered from R18-15-110 and amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-111 renumbered to R18-15-110; new Section R18-15-111 renumbered from R18-15-112 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-112. Renumbered

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-112 renumbered to R18-15-113; new Section R18-15-112 renumbered from R18-15-111 (Supp. 98-2). Former Section R18-15-112 renumbered to R18-15-111; new Section R18-15-112 renumbered from R18-15-113 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-112 renumbered to R18-15-107 by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-113. Renumbered

Historical Note

Section R18-15-113 renumbered from R18-15-112 (Supp. 98-2). Section R18-15-113 renumbered to R18-15-112 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4).

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria

To receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is eligible under A.R.S. § 49-1224(A) to request financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-202. Clean Water Revolving Fund Intended Use Plan

A. The Authority annually shall develop and publish a Clean Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Clean Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-203. If the Intended Use Plan

is to be submitted as one of the documents required to obtain a federal capitalization grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 to 1387, the Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of the draft Clean Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Clean Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-202 renumbered from R18-15-203 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-203. Clean Water Revolving Fund Project Priority List

A. The Authority annually shall prepare a Clean Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-202. The Board may waive the requirement to develop a Clean Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Clean Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Clean Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Clean Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-204(A), by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Clean Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water quality issues and determine the total points of each project according to R18-15-204. At a minimum, the Clean Water Revolving Fund Project Priority List shall identify:

1. The applicant,
2. Project title,
3. Type of project,
4. The amount requested for financial assistance,
5. The subsidy according to R18-15-204(C),
6. Whether the project is within the fundable range according to R18-15-205, and
7. The rank of each project by its total points, determined according to R18-15-204.

D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-202, the Board may allow:

1. Updates and corrections to the adopted Clean Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after public notice; or
2. Additions to the Clean Water Revolving Fund Project Priority List, if the additions are adopted by the Board after public notice.

E. After public notice, the Board may remove a project from the Clean Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project priority list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-203 renumbered to R18-15-202; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project on the Clean Water Revolving Fund Project Priority List based on the total points of each project. The Authority shall consider the following categories to determine the total points of each project:

1. The Authority shall evaluate the current conditions of the project, including existing environmental, structural, and regulatory integrity and the degree to which the project is consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387.
2. The Authority shall evaluate the degree to which the project improves or protects water quality.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
   a. Consolidation of facilities, operations, and ownership;
   b. Extending service to existing areas currently served by another facility; or
   c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water quality improvement score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same total points, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy for each project on the Clean Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity score under subsection

(A)(6) and the total points of the project. The Authority shall incorporate the subsidy in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Clean Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range, the Authority shall evaluate each project for evidence of debt authorization according to R18-15-104(B).

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section R18-15-205 renumbered from R18-15-206 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Clean Water Revolving Fund Project Priority List and is determined to be in the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Clean Water Revolving Fund Project Priority List and in the fundable range.

B. The Authority shall not present an application to the Board for consideration until all the following conditions are met:

1. The project is on the Clean Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
2. The applicant has provided supporting documentation according to R18-15-205(B);
3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability as described in R18-15-104;
4. For nonpoint source projects, the applicant has provided evidence that the project is consistent with Section 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 to 1387; and
5. The proposed project is consistent with the Certified Water Quality Management Plan.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-206 renumbered to R18-15-205; new Section R18-15-206 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
3. A summary of the applicant's technical capability including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. The applicant's history of compliance with, as applicable, the Clean Water Act, 33 U.S.C. 1251 to 1387, related Arizona statutes, and related rules, regulations, and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

B. After an opportunity for public comment, the Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:

1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Clean Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Clean Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-208. Clean Water Revolving Fund Requirements

A. The duly authorized agent, principal or officer of the applicant shall certify that the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a wastewater treatment facility project.

B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Drinking Water Revolving Fund, the applicant shall demonstrate that the applicant is a drinking water facility as defined by A.R.S. § 49-1201 requesting financial assistance for a purpose as defined in A.R.S. § 49-1243(A); the proposed project is to plan, design, construct, acquire, or improve a drinking water facility or refinance an eligible drinking water facility; and the proposed project appears on the Drinking Water Revolving Fund Project Priority List developed under R18-15-303.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-302. Drinking Water Revolving Fund Intended Use Plan

A. The Authority annually shall develop and publish a Drinking Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Drinking Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-303. If an Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, the Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of the draft Drinking Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Drinking Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-302 renumbered from R18-15-303 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-303. Drinking Water Revolving Fund Project Priority List

A. The Authority annually shall prepare a Drinking Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-302. The Board may waive the requirement to develop an annual Drinking Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Drinking Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Drinking Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Drinking Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-304(A) by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Drinking Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water quality issues and determine the total points of each project according to R18-15-304. At a minimum, the Drinking Water Revolving Fund Project Priority List shall identify:

1. The applicant;
2. Project title;
3. Type of project;
4. Population of service area;
5. The amount requested for financial assistance;
6. The subsidy according to R18-15-304(C);
7. Whether the project is within the fundable range according to R18-15-305; and
8. The rank of each project by its total points, determined according to R18-15-304.

D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-302, the Board may allow:

1. Updates and corrections to the adopted Drinking Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after public notice; or
2. Additions to the Drinking Water Revolving Fund Project Priority List, if the additions are adopted by the Board after public notice.

E. After public notice, the Board may remove a project from the Drinking Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;

2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project priority list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-303 renumbered to R18-15-302; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project listed on the Drinking Water Revolving Fund Project Priority List based on the total points of each project. The Authority shall consider the following categories to determine the total points of each project:
1. The Authority shall evaluate the current conditions of the system through the system's scores on the Department's master priority list.
2. The Authority shall evaluate the degree to which the project will result in improvement to the water system.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
   a. Consolidation of facilities, operations, and ownership;
   b. Extending service to existing areas currently served by another facility; or
   c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water system improvement score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same total points, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy for each project on the Drinking Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity score and the total points of the project. The Authority shall incorporate the subsidy in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Drinking Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range the Authority shall evaluate each project for evidence of debt authorization according to R18-15-104(B).

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-305 repealed; new Section R18-15-305 renumbered from R18-15-306 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Drinking Water Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Drinking Water Revolving Fund Project Priority List.

B. The Authority shall not present an application to the Board for consideration until all the following conditions are met:
1. The project is on the Drinking Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
2. The applicant has provided supporting documentation according to R18-15-305(B); and
3. The applicant has demonstrated legal capability, financial capability, technical capability and managerial capability as described in R18-15-104.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-306 renumbered to R18-15-305; new Section R18-15-306 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. At a minimum, the analysis shall include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability, including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;

3. A summary of the applicant's technical capability, including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. The applicant's history of compliance with, as applicable, the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, related Arizona statutes, and related rules, regulations and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

B. After an opportunity for public comment, the Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Drinking Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Drinking Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-308. Drinking Water Revolving Fund Requirements

A. The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is a water provider as defined by A.R.S. § 49-1201(13) requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund project list developed under R18-15-402.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-402. Water Supply Development Revolving Fund Project List

A. The Authority annually shall prepare a Water Supply Development Revolving Fund project list. The Authority is not required to prepare a Water Supply Development Revolving Fund project list if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund project list. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund project list. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund project list on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project list application form the criteria under each ranking category in R18-15-403(A) by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Water Supply Development Revolving Fund project list, the Authority shall consider all project list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the order and priority of each project according to R18-15-403. At a minimum, the

Water Supply Development Revolving Fund project list shall identify:

1. The applicant;
2. Project title;
3. Population of water provider's service area;
4. The amount requested for financial assistance; and
5. The order and priority of each project, determined according to R18-15-403.

D. The Authority shall provide for a public comment period of the draft Water Supply Development Revolving Fund project list for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the project list and then adopt the Water Supply Development Revolving Fund project list at a public meeting.

E. After adoption of the annual project list, the Board may allow:

1. Updates and corrections to the adopted Water Supply Development Revolving Fund project list, if the updates and corrections are adopted by the Board after an opportunity for public notice; or
2. Additions to the Water Supply Development Revolving Fund project list, if the additions are adopted by the Board after an opportunity for public notice.

F. After an opportunity for public notice, the Board may remove a project from the Water Supply Development Revolving Fund project list under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-402 repealed; new Section R18-15-402 renumbered from R18-15-403 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

A. The Authority shall consider the following categories to determine the order and priority of each project on the Water Supply Development Revolving Fund project list.

1. The Authority shall evaluate the existing, near-term, and long-term water demands of the water provider as compared to the existing water supplies of the water provider.
2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.
3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.
4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.
5. The Authority shall evaluate the applicant's need for financial assistance.

B. Two or more projects may receive the same total points. If sufficient water supply development revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest water demand score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest conservation and water management score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. If projects continue to remain tied, the Board shall determine the priority of the tied projects.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-403 renumbered to R18-15-402; new Section R18-15-403 renumbered from R18-15-404 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund project list. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Water Supply Development Revolving Fund project list.

B. The Authority shall not forward an application for financial assistance to the Board for consideration until all the following conditions are met:

1. The water supply development project has been prioritized;
2. The applicant has provided supporting documentation according to R18-15-104;
3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104; and
4. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-404 renumbered to R18-15-403; new Section R18-15-404 renumbered from R18-15-406 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;

3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. A summary of any previous assistance provided by the Authority to the applicant; and
7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies.

B. The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund project list that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The Board shall consider each application in the order the project appears on the current Water Supply Development Revolving Fund project list. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-405 repealed; new Section R18-15-405 renumbered from R18-15-407 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-406. Water Supply Development Revolving Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-406 renumbered to R18-15-404; new Section R18-15-406 renumbered from R18-15-408 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-407. Renumbered

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-407 renumbered to R18-15-405 by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-408. Renumbered

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-408 renumbered to R18-15-406 by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance

The Authority may provide Clean Water technical assistance, Drinking Water technical assistance, and Water Supply Development technical assistance. The Authority shall provide technical assistance in compliance with A.R.S. § 49-1203(B)(16) and (17).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-501 renumbered to R18-15-502; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-502. Technical Assistance Intended Use Plan

A. The Authority annually shall develop and publish one or more Technical Assistance Intended Use Plans that identify intended uses of funds available for Clean Water technical assistance and Drinking Water technical assistance. The Intended Use Plan shall identify whether funds are available and the amount of funds available for planning and design assistance, staff assistance, and professional assistance for Clean Water and Drinking Water. The Authority may develop Technical Assistance Intended Use Plans separately for Clean Water and Drinking Water or as parts of the Intended Use Plans required under R18-15-202 and R18-15-302. If the Technical Assistance Intended Use Plan is to be submitted as a document required to obtain a federal capitalization grant, the Technical Assistance Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of any draft Technical Assistance Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments received and prepare responses. The Authority shall provide a summary of the written comments and the Authority's responses regarding the Clean Water and Drinking Water Technical Assistance

Intended Use Plans to the Board. After review of the comments and the Authority's responses to comments received during the public review and written comment period, the Board, as applicable, shall adopt the applicable Technical Assistance Intended Use Plan or Plans at a public meeting with any changes made in response to public comments or comments by members of the Board.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-502 renumbered from R18-15-501 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-503. Clean Water Planning and Design Assistance

A. Planning and design assistance to a specific wastewater treatment facility shall assist that system to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of the wastewater treatment facility. Projects for any other purpose permitted by the Clean Water Act including nonpoint source projects are also eligible. The Board shall approve funds available for planning and design assistance in the annual Clean Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive planning and design assistance under the Clean Water Technical Assistance Program, the applicant shall demonstrate the applicant is eligible under R18-15-201. An eligible applicant shall apply for planning and design assistance on or before a date specified by the Authority and on an application form specified by the Authority.

C. An applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the applicant's match requirement according to criteria established in the Request for Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the applications received to determine which projects are eligible under the Clean Water Act, 33 U.S.C. 1381 to 1387. Eligible applications shall specify a demonstrated need of the applicant for assistance in securing financial assistance for development and implementation of a wastewater capital improvement project or stormwater or nonpoint source project.

F. The Authority shall determine planning and design assistance awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance awards at a public meeting, the Authority shall notify all applicants whether or not they received an award.

H. An unsuccessful applicant may submit an appeal in writing in accordance with A.R.S. § 41-2704.

I. The Authority and the applicant shall enter into a planning and design assistance agreement that shall include at a minimum:

1. A scope of work,
2. The amount awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release proceeds subject to a disbursement request if the request is consistent with the planning and design assistance agreement and the disbursement schedule.

1. The recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-504. Drinking Water Planning and Design Assistance

A. Planning and design assistance to a specific drinking water facility, excluding a nonprofit noncommunity water system, shall assist that facility to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of a community water system. The Board shall approve funds available for planning and design assistance in the annual Drinking Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive planning and design assistance under the Drinking Water Technical Assistance Program, the applicant shall demonstrate the applicant owns a drinking water facility, excluding a nonprofit noncommunity water system. An eligible applicant shall apply for planning and design assistance on or before a date specified by the Authority and on an application form specified by the Authority.

C. An applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the applicant's match requirement according to criteria established in the Request for Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the applications received to determine which projects are eligible under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. Eligible applications shall specify a demonstrated need of the applicant for assistance in securing financial assistance for development and implementation of a drinking water capital improvement project.

F. The Authority shall determine planning and design assistance awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance awards at a public meeting, the Authority shall notify all applicants whether or not they received an award.

H. An unsuccessful applicant may submit an appeal in writing according to A.R.S. § 41-2704.

I. The Authority and the applicant shall enter into a planning and design assistance agreement that shall include at a minimum:

1. A scope of work,
2. The amount awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release proceeds subject to a disbursement request if the request is consistent with the planning and design assistance agreement and the disbursement schedule.

1. The recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-504 repealed; new Section R18-15-504 renumbered from R18-15-505 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-505. Water Supply Development Planning and Design Assistance Grants

A. Planning and design assistance grant funding to a water provider shall assist the water provider in the planning or design of a water supply development project. A single planning and design assistance grant award shall not exceed $100,000. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive a planning and design assistance grant under the Water Supply Development Technical Assistance Program, the grant applicant shall demonstrate the applicant is a water provider as defined in A.R.S. § 49-1201 and meet the requirements of A.R.S. § 49-1273(C). An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.

C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the grant applications received to determine which projects are eligible. Eligible applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for planning and design of a water supply capital improvement project.

F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.

H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.

I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:

1. A scope of work,
2. The amount of the grant awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.

1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The grant recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-505 renumbered to R18-15-504; new Section R18-15-505 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-5-506. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-507. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-508. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-509. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-510. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-511. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-601. Hardship Grant Fund Administration

A. The Authority shall establish a separate account or accounts for the Hardship Grant Fund Program from any monies received according to A.R.S. § 49-1267(A). The Authority shall only use the monies from the Hardship Grant Fund Program for:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities; and
2. Providing training and technical assistance related to operation and maintenance of wastewater treatment facilities.

B. The Authority shall identify any funding available for financial assistance under the Hardship Grant Fund Program in the annual Clean Water Revolving Fund Intended Use Plan described in R18-15-202 and any funding available for technical assistance in the Clean Water Technical Assistance Intended Use Plan described in R18-15-502. If the Board determines no funding is available for the Hardship Grant Fund Program, the Authority shall not evaluate any applications for financial assistance or grant applications for technical assistance for funding from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-602. Hardship Grant Fund Financial Assistance

A. If funding is available in the Hardship Grant Fund Program, the Authority shall determine if any of the applicants requesting placement on the Clean Water Revolving Fund Project Priority List meet the requirements according to A.R.S. § 49-1268(A)(2). Criteria by which assistance will be awarded shall be based on criteria established in the capitalization grant providing the funding.

B. The Authority shall make the determination of applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-204. Of the applicants eligible to receive financial assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on an applicant's financial capability and ability to generate sufficient revenues to pay for debt service.

C. The Authority shall proceed according to Article 2 of this Chapter for any applicant meeting the eligibility requirements for the Hardship Grant Fund Program. In addition to proceeding under R18-15-207, the Authority shall identify any applicant that qualifies for Hardship Grant Fund Program financial assistance and shall make a recommendation to the Board regarding the amount of funding to provide the applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-603. Hardship Grant Fund Technical Assistance

A. If funding is available in the Hardship Grant Fund Program, the Authority shall identify in the Request for Grant Applications prepared according to A.R.S. § 41-2702(B) the amount of funding for technical assistance available from the Hardship Grant Fund Program.

B. The Authority shall make the determination of grant applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-503. Of the grant applicants eligible to receive technical assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on the financial capability of a grant applicant.

C. The Authority shall proceed according to R18-15-503 for any grant applicant requesting assistance for operation and maintenance for a wastewater treatment facility. In addition to proceeding under R18-15-503(F), the Authority shall identify any grant applicant that qualifies for Hardship Grant Fund Program technical assistance and shall make a recommendation to the Board regarding the amount of funding to provide the grant applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal

A. The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the applicant's local fiscal capacity under R18-15-204(A)(6) or R18-15-304(A)(6), or financial need under R18-15-404(A)(5), and an applicant's ability to generate sufficient revenues to pay debt service.

B. The Authority may forgive principal on Clean Water and Drinking Water loans, bond purchase agreements, and linked deposit guarantees based on:

1. The applicant's local fiscal capacity under R18-15-204(A)(6) and R18-15-304(A)(6),
2. Whether the applicant cannot otherwise afford the project,
3. Whether the project qualifies for the Green Project Reserve as defined by EPA, and
4. Whether the project mitigates stormwater runoff.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property. Notwithstanding any other law and unless expressly waived by the authority, the authority is not subject to any statutory requirement to pay another party's attorney fees or costs in any administrative or judicial proceeding.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to eligible entities for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance from monies in the water supply development revolving fund to finance water supply development as prescribed by this article.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third-party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

7. Provide linked deposit guarantees through third-party lenders to political subdivisions and drinking water facilities.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this chapter, administering the clean water revolving fund and the drinking water revolving fund and issuing water quality bonds.

11. Hire a director who serves at the pleasure of the board and who shall hire staff for the authority.

12. Contract for or employ the services of outside advisors, attorneys, engineers, financial and other consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with developing or financing wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance in accordance with section 49-1273. Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of assistance under this chapter and the administration of the funds established by this chapter.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. The water infrastructure finance authority of Arizona is not subject to title 41, chapter 23. In coordination with the department of administration, the authority shall establish procurement procedures by rule to administer the long-term water augmentation fund.

F. For the purposes of the safe drinking water act and the clean water act, the department is the state agency with primary responsibility for administering this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

49-1222. Clean water revolving fund; administration

A. The clean water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with the requirements of this article and the clean water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the clean water revolving fund and any other fund that is administered by the board.

49-1224. Clean water revolving fund financial assistance; procedures; rules

A. In compliance with any applicable requirements, a political subdivision may apply to the authority for, accept and incur indebtedness as a result of a loan, or other financial assistance under section 49-1223, subsection A, paragraphs 1, 2 and 3, from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the political subdivision. An Indian tribe may apply to the authority for, accept and incur indebtedness as a result of a loan or refinancing under section 49-1223, subsection A, paragraphs 1 and 2 from the clean water revolving fund to support a wastewater treatment facility or nonpoint source project owned by the Indian tribe. To qualify for financial assistance under this section the wastewater treatment facility or nonpoint source project must appear on this state's priority list pursuant to section 212 of the clean water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1225. Clean water revolving fund financial assistance; terms

A. Financial assistance from the clean water revolving fund shall be evidenced by a financial assistance agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for wastewater treatment facility and nonpoint source loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates and interest free loans under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend a financial assistance agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed financial agreement, loan or bond. The authority shall not impose a redemption premium or interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the clean water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also

withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1242. Drinking water revolving fund; administration; capitalization grant transfer account

A. The drinking water revolving fund is established. The board shall administer the fund pursuant to rule and in compliance with this article and the safe drinking water act.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. The board shall use the monies and other assets in the fund solely for the purposes authorized by this article.

D. The board shall establish a capitalization grant transfer account and as many other accounts and subaccounts as required to administer the drinking water revolving fund and any other fund administered by the board.

49-1244. Drinking water revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, a drinking water facility may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance pursuant to section 49-1243, subsection A, paragraphs 2, 3 and 4 from the drinking water revolving fund to construct, acquire or improve a drinking water facility. To qualify for financial assistance pursuant to this section, the drinking water facility must appear on this state's priority list pursuant to the safe drinking water act.

B. In compliance with any applicable requirements, the board shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including requirements for local participation in project costs, if deemed advisable. The criteria shall include a determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water quality issues.

C. The authority shall review on its merits each application received and shall inform the applicant of the board's determination within ninety days after receipt of a complete and correct application. If the application is not approved, the board shall notify the applicant, stating the reasons. If the application is approved, the board may condition the approval on assurances the board deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1245. Drinking water revolving fund financial assistance; terms

A. A loan from the drinking water revolving fund shall be evidenced by a loan repayment agreement or bonds of a political subdivision, delivered to and held by the authority.

B. A loan under this section:

1. Shall be repaid in not to exceed thirty years from the date incurred for drinking water facility loans.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction and one year beyond completion of the construction be capitalized in the loan.

3. Shall be conditioned on the establishment of a dedicated revenue source for repaying the loan.

4. To an Indian tribe shall either be conditioned on the establishment of a dedicated revenue source under the control of a tribally chartered corporation, or any other tribal entity that is subject to suit by the attorney general to enforce the loan contract, or be secured by assets that, in the event of default of the loan contract, are subject to execution by the attorney general without the waiver of any claim of sovereign immunity by the tribe.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may also provide for flexible interest rates, interest free loans and forgivable principal under rules adopted by the authority. All financial assistance agreements or bonds of a political subdivision shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority shall not unilaterally amend the financial assistance agreement, loan or bond after its execution. The authority shall not impose a redemption premium as a condition of refinancing or receiving prepayment on a financial assistance agreement, loan or bond if the financial assistance agreement, loan or bond did not contain a redemption premium.

D. The approval of a loan is conditioned on a written commitment by the political subdivision or Indian tribe to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. All monies received from political subdivisions or Indian tribes as loan repayments, interest and penalties shall be deposited in the appropriate accounts of the drinking water revolving fund.

F. A loan made to a political subdivision under this section after June 30, 2001 may be secured additionally by an irrevocable pledge of the shared state revenues due to the political subdivision for the duration of the loan as prescribed by a resolution of the authority's board. If the authority's board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements after June 30, 2001, the authority's board shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers. If a pledge is required and a political subdivision fails to make any payment due to the authority under its loan repayment agreement or bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting political subdivision that the political subdivision has failed to make the required payment and shall direct a withholding of state shared revenues as prescribed in subsection G of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the political subdivision.

G. On receipt of a certificate of default from the authority, the state treasurer to the extent not expressly prohibited by law shall withhold the monies due to the defaulting political subdivision from the next succeeding distribution of monies pursuant to section 42-5029. In the case of a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies

to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds of the political subdivision if so certified by the defaulting political subdivision to the state treasurer and the authority. The political subdivision shall not certify deposits as necessary for payment for bonds unless the bonds were issued before the date of the loan repayment agreement and the bonds were secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, an eligible entity may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance from the water supply development revolving fund for water supply development projects in this state. In compliance with any applicable requirements, an eligible entity may also apply to the authority for and accept grants, staff assistance or technical assistance for a water supply development project in this state.

B. The authority shall do all of the following:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including:

(a) For any assistance:

(i) A determination of the applicant's financial ability to construct, operate and maintain the project if the applicant receives the assistance.

(ii) A determination of the applicant's ability to manage the project.

(iii) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(iv) A determination of the applicant's ability to acquire any necessary regulatory permits.

(b) If the applicant is applying for a loan:

(i) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the authority, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(ii) A determination of the applicant's legal capability to enter into a loan repayment agreement.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

(a) The ability of the project to provide multiple water supply development benefits.

(b) The cost-effectiveness of the project.

(c) The reliability and long-term security of the water supply to be developed through the project.

(d) The degree to which the project will maximize or leverage multiple available funding sources, including federal funding.

(e) The feasibility of the project, including the feasibility of the proposed design and operation of any project.

(f) Comments from water users, local citizens and affected jurisdictions.

(g) Existing, near-term and long-term water demands compared to the volume and reliability of existing water supplies of the proposed recipients of the water supply.

(h) Existing and planned conservation, best management practices and water management programs of the applicant or the proposed recipients of the water supply.

(i) The ability of the project to provide water supply development benefits to multiple jurisdictions within the state.

(j) Other criteria that the authority deems appropriate.

C. The authority shall conduct background checks, financial checks and other reviews deemed appropriate for individual applicants, applicants' boards of directors and other partners of the applicants.

D. The authority shall review on its merits each application received and shall inform the applicant of the authority's determination. If the application is not approved, the authority shall notify the applicant, stating the reasons. If the application is approved, the authority may condition the approval on assurances the authority deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1275. Water supply development revolving fund; loans; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the eligible entity has bonding authority, or by a loan repayment agreement, delivered to and held by the authority.

B. A loan under this section shall:

1. Be conditioned on establishing a dedicated revenue source for repaying the loan.

2. Be repaid in a period and on terms determined by the authority.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may adopt rules that provide for flexible interest rates and interest-free loans. All loan agreements or bonds of an eligible entity shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority may not unilaterally amend a loan repayment agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed loan repayment agreement, loan or bond. The authority may not impose a redemption premium or an interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a loan repayment agreement, loan or bond if the loan repayment agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the eligible entity to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to an eligible entity that is a political subdivision of this state may be secured additionally by an irrevocable pledge of any shared state revenues due to the eligible entity for the duration of the loan as prescribed by the authority. As applicable to loans additionally secured with shared state revenues, the authority may enter into agreements to specify the allocation of shared state revenues in relation to individual borrowers from such authorities. If a pledge of shared state revenues as additional security for a loan is required and the eligible entity fails to make any payment due to the authority under its loan repayment agreement or the eligible entity's bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting eligible entity that the eligible entity has failed to make the required payment and shall direct a withholding of shared state revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the eligible entity.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting eligible entity from the next succeeding distribution of monies pursuant to section 42-5029. In the case of an eligible entity that is a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds or indebtedness of the eligible entity if so certified by the defaulting eligible entity to the state treasurer and the authority. The defaulting eligible entity shall not certify deposits as necessary for payment for bonds or indebtedness unless the bonds were issued or the indebtedness incurred before the date of the loan repayment agreement and the bonds or indebtedness was secured by a pledge of distributions made pursuant to sections 42-5029 and 43-206.

G. By resolution of the board, the authority may impose any additional requirements it considers necessary to ensure that the loan principal and interest are timely paid.

H. All monies received from eligible entities as loan repayments, interest and penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the water supply development revolving fund.

I. For an eligible entity that is a political subdivision of this state, the revenues of the eligible entity's utility system or systems may be pledged to the payment of a loan without an election, if the pledge of revenues does not violate any covenant pertaining to the utility system or systems or the revenues pledged to secure outstanding bonds or other obligations or indebtedness of the eligible entity.

J. For an eligible entity that is a political subdivision of this state, if the revenues from a secondary property tax levy constitute revenues pledged by the eligible entity to repay a loan, the eligible entity shall submit the question of entering and performing a loan repayment agreement to the qualified electors of the eligible entity at an election held on the first Tuesday following the first Monday in November.

K. An election is not required if voter approval has previously been obtained for substantially the same project with another funding source.

L. Payments made pursuant to a loan repayment agreement are not subject to section 42-17106.

M. For an eligible entity that is a political subdivision of this state, a loan repayment agreement under this section does not create a debt of the eligible entity, and the authority may not require that payment of a loan repayment agreement be made from other than the revenues pledged by the eligible entity.

N. An eligible entity may employ attorneys, accountants, financial consultants and other experts in their fields as deemed necessary to perform services with respect to a loan repayment agreement.

O. At the direction of the authority, an eligible entity shall pay, and is authorized to pay, the authority's costs in issuing water supply development bonds or otherwise borrowing to fund a loan.

ARIZONA DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 4, Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 24, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4, Articles 1-3

Summary

This Five-Year Review Report (5YRR) from Arizona Department of Transportation (ADOT) or (Department), covers twenty-four (24) rules in Title 17, Chapter 4 regarding Title, Registration, and Driver Licenses. The report covers the following articles:

Article 1 - General Provisions
Article 2 - Vehicle Title
Article 3 - Vehicle Registration

In the previous 5YRR, approved by the Council in 2018, the Department indicated that it planned to amend the rules to provide clarification on existing processes to enhance public safety, correct outdated information and statutory references, and to ensure the rules were clear, concise, and understandable. The Department indicates that it did not complete the anticipated amendments because they "were noncritical, did not have a significant impact on the enforceability of the rules, and would have involved a significant rulemaking effort to accomplish only minor changes to the rule verbiage . . . [and] could wait until more substantive amendments needed to be made in each of the indicated Sections or they were otherwise required to be amended as part of a larger legislative implementation project."

Proposed Action

Going forward, the Department indicates that it plans to file a Notice of Proposed Expedited Rulemaking by December 2023 and anticipates submitting its Notice of Final Expedited Rulemaking to the Council by June 2024.

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 states that the economic impact of these rules has been the same as estimated in the economic impact statements prepared on the last amendments to each of the rules. The Department indicates that since the last amendments the Department has implemented an electronic title and registration system that can allow certain title and registration transactions to be initiated and completed online without the vehicle owner having to physically visit an office of the Department's Motor Vehicle Division. Before issuing an electronic certificate of title and registration in the state of Arizona, the Department runs each vehicle identification number through the National Motor Vehicle Title Information System, which instantly queries the title and registration records of other states and returns information the Department of its systems can use to verify whether or not the vehicle is currently titled, registered, or otherwise documented, reported stolen, or branded in any other state.

Stakeholders include the Department, applicants, the American Association of Motor Vehicle Administrators, Arizona Auto Auctions, Arizona Automobile Association, Arizona Automobile Dealers Association, Arizona Department of Insurance and Financial Institutions, Arizona Department of Public Safety, Arizona Independent Automobile Dealers Association, Arizona Trucking Association, Banks, Credit Unions, and Manufactured Housing Industry of Arizona.

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

The Department indicates that in rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. Further, the Department indicates that the rules impose minimal costs. Therefore, the Department has determined that all rules located under 17 A.A.C. 4, Articles 1, 2, and 3 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department 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 Department proposes amendments to twenty-two (22) rules to improve clarity, conciseness, and understandability. For example, the proposed amendments include deleting duplicate definitions, deleting definitions for unused terms, changing the term "Division" to "Department" to reflect organizational changes, re-writing a section to reflect information currently required on Certificate of Title form, deleting references to forms that are no longer required, re-writing a section to reflect the Department's new process for releasing a lien, deleting a reference to materials that no longer need to be filed with the Secretary of State, correcting a zip code, and updating a reference to reflect current Government Auditing Standards used.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department identifies eight (8) rules that are not consistent with other rules and statutes, and proposes the following amendments:

Rule	Explanation
R17-4-204	The Department indicates this rule should simply reference A.R.S. § 28-370 because the statute also allows the Director, officers, and employees of the Department the Director designates to witness the seller sign the title transfer.
R17-4-206	Correct subsection (A)(2) to read "25 or more years," instead of "older than 25 years." Correct subsection (A)(3) to read "more than 20 years," instead of "between 21 and 25 years."
R17-4-301	Change to read "person with a disability" instead of "disabled person" as required under Laws 2014, Ch. 215, § 77.
R17-4-303	Change subsection (B)(5) to read "or a person with a disability, except a veteran with a disability of 100%," instead of "or a disabled person other than a 100% disabled veteran."
R17-4-304	Delete subsection (B)(5) because the Department indicates "all non-commercial trailers under 10,000 lbs gross vehicle weight (GVW) are permanently registered after paying the one-time registration fee provided under A.R.S. § 28-2003, and any commercial trailer with a declared GVW of 10,000 lbs or less is subject to registration on an annual basis.
R17-4-305	Delete the reference to "title service companies" in subsection (B)(1) because the Department indicates that title service companies are no longer

	authorized to issue temporary registration plates on behalf of a licensed dealer.
R17-4-307	Clarify subsection (B) because the Department indicates that the "fee is not applicable to the owner of a vehicle used for transporting passengers with a seating capacity of not more than eight passengers, including the driver, in accordance with A.R.S. § 28-4151(B).
R17-4-311	Change the statutory reference in the introductory paragraph to read A.R.S. § 28-2404, instead of A.R.S. § 28-2404(D). Add the Choose Life license plate to the list of special organization plates.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates that the rules are generally effective in achieving their objectives, but making the updates proposed in its report would improve effectiveness.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are enforced as written, except if inconsistent with other rules and statutes as indicated in its proposed course of action.

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 states that the rules are not more stringent than 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 Department indicates that "R17-4-312 became effective August 7, 2010. However, the off-highway vehicle user indicia issued by the Department under this rule falls within the definition of a "general permit" as provided under A.R.S. § 41-1037, in that each indicia issued to a vehicle owner or operator under the rule subjects that vehicle owner or operator to the same activities, practices, requirements, and restrictions applicable to all other owners and operators of an off-highway vehicle."

11. Conclusion

As indicated above, the Department has proposed amendments to several of its rules to improve clarity, conciseness, and understandability; effectiveness; and consistency with other rules and regulations. The Department indicates that it anticipates submitting a Notice of Proposed Expedited Rulemaking by December 29, 2023, and anticipates that the rules will come before the Council by June 2024.

Council staff recommends approval of this report.

June 30, 2023

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Transportation, 17 A.A.C. 4, Articles 1, 2, and 3, Five-year Review Report

Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering rules located under 17 A.A.C. Chapter 4, Articles 1, 2, and 3, which is due to the Council on June 30, 2023. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301.

The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure

Government Relations and Rules

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 4

Department of Transportation

Title, Registration, and Driver Licenses

Article 1 - General Provisions

Article 2 - Vehicle Title

Article 3 - Vehicle Registration

Submitted to the Governor's Regulatory Review Council
June 2023

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Articles 1, 2, and 3

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Section A

Report Summary

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Articles 1, 2, and 3

Report Summary

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 to adopt rules for collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and for exercising complete and exclusive operational control and jurisdiction over the use of state highways and routes on the State Highway System, including Interstate highways, to prevent any abuse or unauthorized use of those highways and routes.

Arizona Administrative Code Title 17, Chapter 4, Articles 1, 2, and 3, contain 24 rules that prescribe vehicle title and registration requirements applicable to any person involved in the ownership or sale of a motor vehicle in this state. The rules also include information on a variety of registration options for motor vehicle owners and operators with various types of vehicles, including eligibility for staggered registration on apportioned commercial motor vehicle fleets, biennial registration, temporary registration plates, private fire and emergency vehicle permits, official vehicle plates, and personalized or special organization plates. Additionally, the rules include information on the off-highway vehicle indicia design, placement and fee, the motor vehicle registration and license plate reinstatement fee required for failing to provide evidence of financial responsibility on request of the Department, the rental vehicle surcharge reimbursement process, and the fees required to be paid when ordering a duplicate special license plate by mail.

The Department was unable to complete any course of action indicated in its previous five-year review report for these rules. The Department's previously stated course of action was to amend the rules to provide further clarification on existing processes to enhance public safety, correct outdated information and statutory references, and ensure that the rules were clear, concise, and understandable. Since the anticipated amendments indicated in the previous report were noncritical, did not have a significant impact on the enforceability of the rules, and would have involved a significant rulemaking effort to accomplish only minor changes to the rule verbiage such as updating the word "Division" to "Department" to reflect organizational changes made within the Department, the Department determined that the amendments could wait until more substantive amendments needed to be made in each of the indicated Sections or they were otherwise required to be amended as part of a larger legislative implementation project. However, the Department did request permission from the previous Governor's administration to proceed with rulemaking that would have included making most of the anticipated amendments, but approval to move forward with the rulemaking was not received before the change of administration.

The Department remains committed to moving forward with all of the anticipated amendments indicated under items 4 and 6 of this report. Going forward, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to complete the amendments by December 29, 2023, if approved by the Governor. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Articles 1, 2, and 3

Section B

Analysis of Individual Rules

Governor's Regulatory Review Council

Five-Year-Review Report

Arizona Department of Transportation

17 A.A.C. Chapter 4, Articles 1, 2, and 3

1. Authorization of the rule by existing statutes

General Statutory Authority for all rules located under Articles 1, 2, and 3:

A.R.S. §§ 28-363, 28-366, and 28-7045.

Specific Statutory Authority is as provided below:

Rule	Specific Statutory Authority:
R17-4-101	A.R.S. §§ 28-101, 28-3001, and 6 CFR 37.3
R17-4-201	A.R.S. §§ 28-101, 28-2001, and 28-3001
R17-4-202	A.R.S. §§ 28-2055, 28-2058, and 28-2064
R17-4-203	A.R.S. §§ 28-2051, 28-2065, and 28-2157
R17-4-204	A.R.S. §§ 28-370 and 28-2065
R17-4-205	A.R.S. § 14-3971
R17-4-206	A.R.S. §§ 28-369 and 28-2052
R17-4-207	A.R.S. § 28-2132
R17-4-208	A.R.S. § 28-2134
R17-4-301	A.R.S. §§ 28-101, 28-1171, 28-2231, 28-2401, 28-5100, and 49-542
R17-4-302	A.R.S. §§ 28-2159, 28-2162, 28-2232, and 28-2261
R17-4-303	A.R.S. § 28-2159
R17-4-304	A.R.S. §§ 28-2159 and 28-2162
R17-4-305	A.R.S. § 28-4546
R17-4-306	A.R.S. § 28-2294
R17-4-307	A.R.S. § 28-4151
R17-4-308	A.R.S. § 28-2511
R17-4-309	A.R.S. § 28-624
R17-4-310	A.R.S. §§ 28-2402, 28-2403, and 28-2406
R17-4-311	A.R.S. § 28-2404
R17-4-312	A.R.S. § 28-1177
R17-4-350	A.R.S. § 28-5810

Rule	Specific Statutory Authority:
R17-4-351	A.R.S. §§ 28-2151 and 28-2351
R17-4-352	A.R.S. §§ 28-2151 and 28-2351

2. The objective of each rule:

The objective of each rule is as provided below:

R17-4-101	This rule provides the public with information regarding the meaning of terms used by the Department throughout this Chapter to ensure greater clarity for customers seeking information on how the Department administers its vehicle title, registration, and driver license programs in the State of Arizona.
R17-4-201	This rule provides the public with information regarding the meaning of terms used by the Department throughout this Article to ensure greater clarity for vehicle owners and operators seeking information on how to acquire and maintain ownership of a vehicle located in the State of Arizona.
R17-4-202	This rule provides the public with information regarding the Certificate of Title form issued by the Department to a vehicle owner as evidence of vehicle ownership in the State of Arizona.
R17-4-203	This rule provides the public with information regarding the form a person must complete when applying to the Department for title and registration of a vehicle located within the State of Arizona.
R17-4-204	This rule provides the public with information regarding the Department's obligation to witness and acknowledge vehicle owner signature(s) when selling a vehicle with an Arizona title, or require that the vehicle owner's signature be witnessed by a notary public to facilitate transfer of the vehicle to a new owner.
R17-4-205	This rule provides the public with information regarding how the Department may indicate the legal status (legally established relationships) on a Certificate of Title relative to the different forms of vehicle co-ownership recognized in the State of Arizona and provides requirements and procedures that must be followed when conducting title transactions that may invoke the rights of any vehicle co-owner.
R17-4-206	This rule provides the public with information regarding the process and documentation requirements an applicant must follow when seeking to obtain a title for a foreign-manufactured vehicle imported to the United States.
R17-4-207	This rule provides the public with information regarding the requirements necessary for filing and recording a vehicle lien or encumbrance.
R17-4-208	This rule provides the public, including lien holders and vehicle or mobile home owners seeking to remove a lien recorded on a vehicle or mobile home title, with information regarding the Department's documentation requirements for proving that the lien is satisfied.

R17-4-301	This rule provides the public with information regarding the meaning of terms used by the Department throughout this Article to ensure greater clarity for vehicle owners and operators seeking information on how to acquire and maintain the registration of a vehicle operated in the State of Arizona.
R17-4-302	This rule provides the public with information regarding the apportioned registration periods and process used by the Department when registering a commercial vehicle fleet and prescribes the continuing responsibilities an apportioned commercial vehicle fleet owner must follow.
R17-4-303	This rule provides the public with information regarding which vehicles are eligible for biennial registration and which vehicles are excluded from eligibility for biennial registration.
R17-4-304	This rule provides the public with information regarding how the Department shall determine the expiration date of a vehicle's registration period. The rule also references which vehicles are excluded from the staggered registration process under various statutes.
R17-4-305	This rule provides the public, including licensed new and used motor vehicle dealers, with information regarding the availability of temporary registration plates for use on new and used vehicles sold by a dealer, prescribes the process a licensed new or used motor vehicle dealer shall use when issuing or voiding a temporary registration plate, and defines terms used in the rule.
R17-4-306	This rule provides the public with information regarding the nonresident daily commuter indicia that, for an $8 fee, the Department may issue to a vehicle owner who resides in a contiguous state where the vehicle is currently registered and the vehicle is used to commute into this state for employment purposes within 75 air miles of the border.
R17-4-307	This rule provides the public with information regarding the $50 fee imposed by the Department on reinstatement of a motor vehicle registration and license plate after a suspension for non-compliance with the financial responsibility laws and requirements of this state.
R17-4-308	This rule provides the public with information regarding "official vehicle" license plates available for issuance by the Department for vehicles owned by a foreign government, consul, or any other representative of a foreign government, the United States, a state or political subdivision, a tribal government, or a provider of ambulance, firefighting, or rescue services used solely for the purpose of providing emergency services, or by a nonprofit organization approved by the Arizona Department of Emergency and Military Affairs, Emergency Management Division under A.R.S. § 26-318.
R17-4-309	This rule provides the public, including private fire departments, with information regarding the application, usage, and operational requirements for a private fire emergency vehicle permit.

R17-4-310	This rule provides the public with information regarding the Department's application, eligibility, review, and issuance requirements for obtaining personalized license plates.
R17-4-311	This rule provides the public with information regarding the availability of special organization plates, as authorized by the Department before September 30, 2009, and which will remain valid license plates issued by this state until specifically terminated by the legislature.
R17-4-312	This rule provides the public with information regarding the design and placement of the off-highway vehicle user indicia required on all off-road vehicles operating in this state, as provided under A.R.S. § 28-1177, including the application and fee requirements.
R17-4-350	This rule provides the public, including all rental businesses that rent vehicles to the public without a driver, with information regarding the annual reporting and recordkeeping requirements associated with the rental vehicle surcharges collected and remitted to the state of Arizona under A.R.S. § 28-5810.

3. Are the rules effective in achieving their objectives? **Yes _X_ No ___**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

These rules are generally effective in achieving their objectives, but updating the related citations and providing modernization in the rule drafting style as identified under items 4, 6, and 10 of this report, will improve the effectiveness of the rules.

4. Are the rules consistent with other rules and statutes? **Yes ___ No _X_**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

These rules are not consistent with applicable state or federal statutes as provided below:

Rule	Explanation
R17-4-204	This rule should be reworded to simply reference A.R.S. § 28-370, since the statute also allows the Director, officers, and employees of the Department the Director designates to witness the seller sign the title transfer.
R17-4-206	Under subsection (A)(2), the phrase "older than 25 years" needs to be corrected to read "25 or more years;" and Under subsection (A)(3), the phrase "between 21 and 25 years" needs to be corrected to read "more than 20 years."
R17-4-301	The term "disabled person" needs to be changed to read "person with a disability" as required under Laws 2014, Ch. 215, § 77.
R17-4-303	Under subsection (B)(5), the phrase "or disabled person other than a 100% disabled veteran" needs to be changed to read "or a person with a disability, except a veteran with a disability of 100%," as required under Laws 2014, Ch. 215, § 77.
R17-4-304	Subsection (B)(5) needs to be deleted since all non-commercial trailers under 10,000 lbs. gross

Rule	Explanation
	vehicle weight (GVW) are permanently registered after paying the one-time registration fee provided under A.R.S. § 28-2003, and any commercial trailer with a declared GVW of 10,000 lbs. or less is subject to registration on an annual basis.
R17-4-305	The rule is inconsistent with statute since title service companies are no longer authorized to issue temporary registration plates on behalf of a licensed dealer. A.R.S. § 28-5006 was repealed effective April 1, 2012, by Laws 2011, 1st Reg. Sess., Ch. 190, § 15, so the Department will delete the reference to "title service companies" in Subsection (B)(1).
R17-4-307	Subsection (B) should be amended to clarify that the fee is not applicable to motor carriers, but is applicable to the owner of a vehicle used for transporting passengers with a seating capacity of not more than eight passengers, including the driver, in accordance with A.R.S. § 28-4151(B).
R17-4-311	The statutory reference to A.R.S. § 28-2404(D) in the introductory paragraph needs to read A.R.S. § 28-2404; and The Choose Life license plate needs to be added to the list of special organization plates.

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.

These rules are enforced as written, except if inconsistent with other rules or statutes as indicated under item 4.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

If not, please identify the rule(s) not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

The Department's rulemaking activities are no longer conducted at the Division level. As provided under A.R.S. Title 28, the rulemaking authority for these rules is specifically granted by the legislature to either the Department or the Director, as applicable. In February of 2009, the Director began a major effort to reorganize and consolidate the Department's budget units to increase efficiency of the Department's service-delivery processes and systems. As part of that reorganization, all rulemaking resources of the Department's separate Divisions were consolidated and placed under the administrative wing of the Director's Office. Now all Department rulemaking activities are exclusively conducted at the Department level and all existing rules are now administered by one ADOT.

The Department believes that these rules are generally clear, concise, and understandable, but updating the related citations and providing modernization in the rule drafting style as identified below, and under items 4 and 10 of this report, will improve the clarity, conciseness, and understandability of the rules.

Rule	Explanation

Rule	Explanation
R17-4-101	The introductory paragraph needs to additionally reference the definitions under A.R.S. § 28-1301; The term "day" as defined under R17-4-301 needs to be moved to this Section since the term is also used under Article 7 of this Chapter; The term "CDL" as defined under R17-4-413 needs to be moved to this Section since the term is also used under Article 7 of this Chapter; The term "registration" as defined under R17-4-301 needs to be moved to this Section since the term is also used under Articles 2, 4, and 8 of this Chapter; The term "plate number" as defined under R17-4-310 needs to be moved to this Section since the term is also used under Article 8 of this Chapter; and The terms "gore area", "VIN", and "vehicle identification number" as defined under R17-4-401 need to be moved to this Section since the terms only reference the statutorily prescribed definitions, which are not exclusive to Article 4 of this Chapter.
R17-4-201	The term "date of lien" is not used in the rules and should be changed to "lien date"; The term "division" referencing the Motor Vehicle Division needs to be removed; The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; The term "Low-speed vehicle" is not used in this Chapter and needs to be removed; and The term "registered importer" contains a reference to 49 CFR 30141, which needs to be corrected to read 49 U.S.C. 30141(c).
R17-4-202	This rule should either be repealed or updated to reflect all of the information currently included on a Certificate of Title form; The terms "Motor Vehicle Division" and "MVD" need to be changed to "Department" to reflect organizational changes made by the Department; and The terms "Division's and Division" need to be changed to "Department's and Department."
R17-4-203	This rule should either be repealed or updated to reflect all of the information currently required on a Certificate of Title and Registration Application form; The terms "Division's and Division" need to be changed to "Department's and Department" to reflect organizational changes made by the Department; The term "Motor Vehicle Division" needs to be changed to "Department"; and Under subsection (A)(5)(b), the citation to R17-4-205(B) needs to be corrected to read R17-4-205, since the intended language is located under both subsections (A) and (B).
R17-4-204	All references to the terms "Motor Vehicle Division," "(MVD)," or "MVD agent" need to be changed to "Department" to reflect organizational changes made by the Department.
R17-4-205	Under subsections (B) and (C), the term "Division" needs to be changed to "Department" to reflect organizational changes made by the Department.

Rule	Explanation
R17-4-206	The terms "Division" and "Division's" need to be changed to "Department" or "Department's", as applicable, to reflect organizational changes made by the Department; and Under subsection (A)(1)(b), the words "MVD title and registration application" should be updated to reference the Title and Registration Application form provided by the Department on the Department's website at azdot.gov.
R17-4-207	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; A reference to the Department's online process for recording a lien needs to be added to this Section and the overly specific online link to lien filing forms should be updated to read azdot.gov to avoid a possible broken link in the future; and Subsection (C) regarding the lien filing notice needs to be removed.
R17-4-208	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; Under subsection (A), the language needs to be updated to reflect that the most recently issued certificate of title is only required if the printed title is available; Subsections (A)(3), (A)(4), and (A)(5) should be removed, since those forms are no longer required, and (A)(6) should be renumbered accordingly; and Subsection (B) should be rewritten to reflect the Department's new process for releasing a lien.
R17-4-301	The introductory paragraph needs to additionally reference the definitions under R17-4-101 if definitions are moved under R17-4-101 as indicated above; The term "day" needs to be moved to R17-4-101 since the term is also used under Article 7 of this Chapter; The term "disabled person" needs to corrected to read "person with a disability"; The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; The term "Division Director" needs to be deleted; Under the term "emergency vehicle permit," the reference to the "Division's Enforcement Services Program" needs to be changed to the "Department;" The phrase "and the Office of the Secretary of State" at the end of the definition of "Operator Requirements" referring to the filing of incorporation by reference material with the Secretary of State needs to be deleted; and The term "registration" needs to be moved to R17-4-101 since the term applies to the entire Chapter.

Rule	Explanation
R17-4-302 through R17-4-305	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department.
R17-4-307	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department.
R17-4-308	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department.
R17-4-309	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; The reference to the "Division's Enforcement Services Program" needs to be changed to the "Department"; and The 85007 zip code under subsection (B) should read 85001.
R17-4-310	The term's "Division" and "Division Director" need to be removed since they are better defined under R17-4-301 as applicable to the entire Article; The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department; The term "plate number" as defined under R17-4-310 needs to be moved to this Section since the term is also used under Article 8 of this Chapter; and Under subsection (E)(4), the language can be clarified by replacing the first part of that sentence with "The Department shall cancel the vehicle owner's license plate if…" and remove the words "of a vehicle".
R17-4-311	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department.
R17-4-312	The term "Division" needs to be changed to "Department" throughout this rule to reflect organizational changes made by the Department.
R17-4-350	Under subsection (D), the specific reference to the 2011 Revision of the Government Auditing Standards needs to be removed. The Department conducts all audits in accordance with the generally accepted Government Auditing Standards as most recently revised and issued by the Comptroller General of the United States and the United States General Accountability Office in effect at the time of the audit.
R17-4-351	The term "special plate" is not used in R17-4-352. Delete the term and rewrite the end of the sentence to read "...has the same meaning as the term "special plates" as prescribed under A.R.S. § 28-2401.

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:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. Economic, small business, and consumer impact comparison:

The economic impact of these rules has been the same as estimated in the economic impact statements prepared on the last amendments to each of the rules. However, since those last amendments the Department has implemented an electronic title and registration system that can allow certain title and registration transactions to be initiated and completed online without the vehicle owner having to physically visit an office of the Department's Motor Vehicle Division. Before issuing an electronic certificate of title and registration in the state of Arizona, the Department runs each vehicle identification number through the National Motor Vehicle Title Information System, which instantly queries the title and registration records of other states and returns information the Department or its systems can use to verify whether or not the vehicle is currently titled, registered, or otherwise documented, reported stolen, or branded in any other state.

R17-4-202 prescribes the information that the Department must produce for the Certificate of Title form, including information on the title, vehicle, lienholder, vehicle owner, ownership change information, dealer reassignment information, and other information required by the Department for internal processing and recordkeeping. The Certificate of Title form has existed for many years. The primary cost of this rule is to the Motor Vehicle Division, which produces and makes this form available to the public and to automobile dealers. The agency incurs costs on an annual basis to print the title form and make it available to the public. Automobile dealers may incur minimal costs to store, process, or maintain paper or electronic Certificates of Title on every vehicle the dealer offers for sale. The Certificate of Title form is an important document that contains necessary information to show ownership of a vehicle, the vehicle identification number, as well as lienholder and odometer information. The benefits of the Certificate of Title form outweigh the costs to have the form.

R17-4-203 requires an applicant for a motor vehicle Certificate of Title and registration to complete an application form with information relating to vehicle identification, the mechanical condition of the vehicle, the ownership status, the physical site (if titling a mobile home), owner and co-owner information, applicant signatures, and odometer disclosure information. The Department incurs on-going costs to print and make the form available to individuals and automobile dealers in both paper and electronic formats, however, the benefits of having the information are vital to the Department, law enforcement and the public, and far outweigh the costs of the rule.

Stakeholder groups having an interest in these rules include:

American Association of Motor Vehicle Administrators	Arizona Department of Transportation (ADOT)
Arizona Auto Auctions	Arizona Independent Automobile Dealers Association
Arizona Automobile Association	Arizona Trucking Association (AzTA)

Arizona Automobile Dealers Association	Banks
Arizona Department of Insurance and Financial Institutions	Credit Unions
Arizona Department of Public Safety (DPS)	Manufactured Housing Industry of Arizona (MHIA)

R17-4-311 was last amended by exempt rulemaking effective June 1, 2007, so no economic impact statement was prepared or required. The Department collects a fee of $25 for each original issuance and each annual renewal of a special plate as prescribed under A.R.S. § 28-2402. Of the $25 fee payable by an applicant, $8 is a special plate administration fee for deposit into the State Highway Fund and $17 is an annual donation to the organizational sponsor of the plate. Depending on the purpose for which the special plates were intended, issuance may be limited to members only, or the sponsoring organization may promote issuance to the general public for fund-raising purposes. The License Plate Commission, established in 1992, was repealed by the legislature effective September 30, 2009, by Laws 2009, Ch.37, § 3. On and after September 30, 2009, any new organizational special plates must be approved by the legislature and specifically prescribed by statute. Arizona vehicle owners and operators may now choose from a selection of over 94 different styles of license plates. The number of registered vehicles using organization special plates as of June 30th of each year is as follows:

Organization Special License Plates			
	Number of Registered Vehicles Using Organization Special Plates on June 30:		
License Plate Type:	**2013**	**2018**	**2023**
Arizona Historical Society	148	118	3,995
Firefighter	3,892	3,893	4,812
Fraternal Order of Police	753	764	854
Legion of Valor	6	3	18
University of Phoenix	154	96	176
Wildlife Conservation	6,349	8,537	16,023
Choose Life	1,466	1,223	1,460

The economic impact of this rule falls primarily on an applicant for a special plate, who is required to pay the $25 fee. In addition, if an organization wants to redesign their license plate, the organization may pay a fee of $32,000 to the Department to implement and issue the redesigned license plate.

The number of organizations actively promoting these special license plates is limited and over the last 10 years, as a result of the Department's continued issuance of these organizational special plates, Arizona vehicle owners and operators have provided annual financial support for those organizations, somewhere in the range of:

Organization Special License Plates - Revenue Generated ($$)			
License Plate Type:	**2013**	**2018**	**2023**
Arizona Historical Society (The Arizona Historical Society)	2,516	2,006	67,915
Firefighter (Professional Fire Fighters of Arizona)	66,164	66,181	81,804
Fraternal Order of Police (Fraternal Order of Police)	12,801	12,988	14,518
Legion of Valor (Highway User Revenue Fund)	102	51	306
University of Phoenix (University of Phoenix Alumni Network)	2,618	1,632	2,992
Wildlife Conservation (Arizona Sportsmen for Wildlife Conservation)	107,933	145,129	272,391
Choose Life (Arizona Life Coalition % Center for Arizona Policy)	24,922	20,791	24,820
Total Funding:	217,056	248,778	464,746

R17-4-206 requires that certain foreign-manufactured motor vehicles must be converted and certified to meet the requirements of the United States Environmental Protection Agency and Federal Motor Vehicle Safety Standards before the foreign-manufactured vehicle can be permanently imported to the United States (U.S.) and

subsequently titled and registered with the Department for use on the roadways of this state. An owner of a foreign-manufactured vehicle is required under 49 CFR 591 to engage the services of a registered importer to convert and certify the vehicle as safe for use on U.S. highways. The gray-market vehicle owner is subject to costs that are greatly variable and unquantifiable, but likely range from moderate to substantial depending on the type of vehicle, its manufacturer, the model and year of the vehicle, and the availability of all appropriate replacement parts needed to complete the vehicle conversion. However, these costs are associated with the federal requirements for importation of foreign-manufactured vehicles and not a result of this rule. As of June 30, 2023, Department records indicate that there are 3,016 converted and certified gray-market vehicles currently titled and registered for use on Arizona's roadways.

R17-4-309 provides the application and operational requirements necessary for the operator of a private emergency service vehicle to obtain a Private Fire Emergency Vehicle Permit from the Department, which subjects the private emergency service vehicle operator to the same equipment and operating requirements and privileges prescribed under A.R.S. § 28-624 for the operation of authorized emergency vehicles owned by municipalities and other political subdivisions of this state. As of June 30, 2023, Department records indicate that there are 936 emergency service vehicles currently titled and registered in Arizona.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

The Department has received no analysis regarding any of the rules that compares the rule's impact on this state's business competitiveness with the impact on businesses in other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ___ No _X_ *Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department was unable to complete any course of action indicated in its previous five-year review report for these rules. The Department's previously stated course of action was to amend the rules to provide further clarification on existing processes to enhance public safety, correct outdated information and statutory references, and ensure that the rules were clear, concise, and understandable.

Since the anticipated amendments indicated in the previous report were noncritical, did not have a significant impact on the enforceability of the rules, and would have involved a significant rulemaking effort to accomplish only minor changes to the rule verbiage such as updating the word "Division" to "Department" to reflect organizational changes made within the Department, the Department determined that the amendments could wait until more substantive amendments needed to be made in each of the indicated Sections or they were otherwise required to be amended as part of a larger legislative implementation project. The Department requested permission from the previous Governor's administration to proceed with rulemaking that would have included making most of the anticipated amendments, but approval to move forward with rulemaking was not received before the new Administration began.

The Department remains committed to moving forward with all of the anticipated amendments indicated under items 4 and 6 of this report. Going forward, the Department anticipates filing a Notice of Proposed Expedited

Rulemaking to complete the amendments by December 29, 2023, if approved by the Governor. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking.

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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives:

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. These rules impose minimal costs. Therefore, the Department has determined that all rules located under 17 A.A.C. 4, Articles 1, 2, and 3 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

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)?

R17-4-201, R17-4-202, R17-4-203, and R17-4-204 all contain provisions applicable to subject matter regulated at the federal level under 49 CFR 580 and 49 U.S.C. 32701 through 32711, but the rules are not more stringent than the corresponding federal regulations.

R17-4-206 - 49 CFR 592.4, and 40 CFR 86, are all applicable to the subject matter of this rule, but the rule is not more stringent than the corresponding federal regulations.

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:

R17-4-312 became effective August 7, 2010. However, the off-highway vehicle user indicia issued by the Department under this rule falls within the definition of a "general permit" as provided under A.R.S. § 41-1037, in that each indicia issued to a vehicle owner or operator under the rule subjects that vehicle owner or operator to the same activities, practices, requirements, and restrictions applicable to all other owners and operators of an off-highway vehicle.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking. If approval for rulemaking is received, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to amend these rules as indicated under items 4, 6, and 10 by December 29, 2023.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Articles 1, 2, and 3

Section C

Economic Impact Statements

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 2. Titles & Registration

R17-4-204, R17-4-206, and R17-4-208

Economic, Small Business and Consumer Impact Statement

(Note: 2023 Rule Numbers are R17-4-202 and R17-4-204)

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

R17-4-204 is a revision of MVD's certificate of title form rule to define for the public the nature and content of the title certificate. The rulemaking arose from a 5-year review (F-98-0401) to update the rule to reflect current Division policy in titling vehicles.

R17-4-206 is an existing rule update to reflect current Division procedure in verifying the seller's signature to affect title transfer. The previous rule language was outdated and not followed in practice. This revision was prescribed in an earlier MVD 5-year review report (F-98-0401).

R17-4-208 is a repeal for which MVD is claiming an A.R.S. § 41-1055 (D) (3) exemption. Repeal is a natural course for this archaic, duplicative rule, the provisions of which have been completely written into the language of A.R.S. § 28-2063 (B). No further discussion of this repeal will appear in this statement.

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

For R17-4-204:

Since A.R.S. § 28-2051 requires title certificates of all motor vehicles, trailers, and semitrailers in the State of Arizona, any owning business or consumer will bear the costs of titling a subject vehicle within this state. The Division incurs an estimated $8.17 cost per titling transaction. This includes the cost of the tamper-resistant paper, data entry, printing, and agency employee handling costs in executing each titling action. The state titles an estimated 1.7 million vehicles a year. Thus, the aggregate cost of issuing title certificates is substantial (greater than $10,000) to the Division. The Division recoups titling costs in total revenue generated through annual vehicle registration fees. The benefit to the state, insurance entities, and vehicle owners in the mandatory issue of title certificates is anticipated reduction in fraudulent ownership claims and litigation.

For R17-4-206:

The only cost to a vehicle seller in transferring vehicle ownership would be a required fee by a Notary Public to acknowledge the seller's signature. Notary fees for signature acknowledgements are $2 each as prescribed under A.R.S. § 41-316. This is a minimal per transfer cost to the consumer. There is no cost to the seller if a signature is witnessed by an MVD agent. Witnessing valid signatures is an employee task included in general MVD field office agent assigned and remunerative duties.

3. **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:**

George R. Pavia, Division Rules Coordinator
Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

B. Economic, small business and consumer impact statement

1. **Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

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

Every owner of a vehicle subject to titling under A.R.S. § 28-2051 (A) shall both bear the costs and benefit of R17-4-204 provisions. The Division alone shall bear the cost of blank certificate printing. Production and processing labor costs could be borne by any one of the following: MVD, county assessors acting as ADOT agents, or private sector titling agencies and authorized 3rd parties in state government partnership. All non-MVD entities engaged in the vehicle titling function benefit with increased revenues as described in items 3 and 6. Any costs associated with the provisions of requiring acknowledgement of a seller's signature under R17-4-206 shall be borne by the vehicle seller and the Division. The benefit of legal ownership transfer protection established by proper execution of R17-4-206 extends to the Division, the vehicle seller, and subsequent owner. The Secretary of State and GRRC also incur administrative costs as part of the rulemaking process.

3. **Cost-benefit analysis**

Cost-revenue scale

a. **Probable costs and benefits to the Motor Vehicle Division and other agencies:**

R17-4-204: Title certificates cost MVD $8.17 per transaction which includes tamper-resistant paper, printing, and employee handling. The agency operates at a net loss from title production costs alone. Losses are recouped through fees charged for vehicle registration.

R17-4-206: Costs to MVD associated with seller-signature acknowledgement at time of vehicle ownership transfer are strictly clerical in nature (included in salaried FTE function).

The Secretary of State and GRRC incur administrative costs associated with rulemaking and publishing. R17-4-204 and R17-4-206 appear to have no other state agency costs.

A benefit of R17-4-204 and R17-4-206 to all parties involved or affected by vehicle titling is potential reduction of ownership dispute since a properly issued or transferred title is a principal means of affirming legal ownership.

b. **Probable costs and benefits to political subdivisions:**

R17-4-204: Arizona counties through tax assessors acting as ADOT agents are permitted to retain $1 per each titling transaction within a county's jurisdiction. Costs to the counties would be purely administrative, included as part of FTE salaried duties.

R17-4-206 has no apparent cost or benefit to Arizona political subdivisions.

A benefit of R17-4-204 and R17-4-206 to all parties involved or affected by vehicle titling is potential reduction of ownership dispute since a properly issued or transferred title is a principal means of affirming legal ownership.

c. Probable costs and benefits to businesses:

Vehicle titling costs of R17-4-204 to businesses are the same as costs to general consumers; namely $7 for each mobile home title certificate, $4 per title certificate for all other vehicle types. These fees are prescribed under A.R.S. § 28-2003.

The cost of R17-4-206, seller-signature acknowledgement, is also the same for businesses as for individual consumers. A witnessing notary public may charge $2 per acknowledgement as prescribed under A.R.S. § 41-316. Acknowledgement of seller-signature by an authorized MVD agent bears no cost to a business transferring vehicle ownership.

A benefit of R17-4-204 and R17-4-206 to all parties involved or affected by vehicle titling is potential reduction of ownership dispute since a properly issued or transferred title is a principal means of affirming legal ownership.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
Titled vehicle owner (R17-4-204)	Minimal	None
Titled vehicle seller (R17-4-206)	None to minimal; Depends whether acknowledgement is performed by an MVD agent or a fee-requiring Notary Public.	None
Arizona counties through assessors acting as ADOT agents (R17-4-204)	Minimal.	Minimal to substantial; A.R.S. § 28-2005 allows counties to retain $1 per transaction. Total revenue depends on the number of annual county transactions.

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
MVD (R17-4-204)	Substantial; $8.17 labor and materials per titling transaction. Average 1.7 million vehicles titled annually.	None (qualified); The titling process is legislatively mandated. Costs to the agency are recouped via vehicle registration fees.
MVD (R17-4-206)	Minimal; FTE labor to acknowledge a seller signature if engaged to do so.	None; Seller signature acknowledgements are performed as a service.
Authorized 3rd party or title agency (R17-204)	Minimal; Labor and processing per transaction.	Minimal to substantial; Depends on the number of titles issued annually.
Authorized 3rd party or title agency (R17-206)	Minimal; Labor and processing per transaction.	Minimal.
Notaries Public (R17-4-206)	None.	Minimal; $2 fee per acknowledgement
Secretary of State; GRRC: administrative costs (R17-4-204 & 206)	Minimal; Labor for internal processing.	None.

4. Probable impact on public and private employment:

R17-4-204's and R17-4-206's impact on MVD's employment is extensive. The Division operates 65 field offices with a maximum total staff of 900 statewide. The customer service program estimates the titling and transfer process at up to 2/3 of the workload. The Division is also in authorized government partnership with 62 3rd party entities, 58 of which are contracted to perform the state vehicle titling function. It can be assumed by logical extension that employment by 3rd parties is affected at a comparable ratio to that of MVD to adequately staff for performing the titling function. Auto dealers will also have employees who must be able to serve as titling agents presumably in addition to other sales-service tasks.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

3rd parties in partnership with MVD are small businesses unless they are a contracted dealership of over 100 employees or a diversified conglomerate, e.g. IBM.

b. Administrative costs and other costs required for compliance:

Principal 3rd party costs are in the form of employee salaries for carrying out titling or title transfer activities. There may also be costs associated with transmitting required data and records to MVD.

c. Description of the methods used by Motor Vehicle Division for reduction of impact on small businesses:

Materials for issuing titles to customers and official record keeping are provided without cost to 3rd parties by the Division as part of government partnership agreement.

d. Probable costs and benefit to private persons and consumers:

The costs per title transaction or transfer for private persons and consumers are the same as for business. See item (B)(3)(c).

6. Probable effect on state revenues:

R17-4-204: The cost of the titling function ($8.17 per transaction over an average 1.7 million vehicles per year) and the title fee received ($4 or $7 depending on vehicle type) causes the state to incur a net loss based on the titling function alone. Losses are recouped through vehicle registration fees.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

Since issuing and transferring vehicle titles is mandated of the Division in statute, a less costly method of achieving the proposed rulemaking cannot be conceived without risk to program integrity. Greater incidence of fraud, abuse, and legal ownership litigation would occur.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The Division believes there is an adequate amount of existing data to give a largely accurate assessment of economic small business and consumer impact in this statement.

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES & REGISTRATION

R17-4-205, R17-4-207

Economic, Small Business and Consumer Impact Statement

(Note: 2023 Rule Numbers are R17-4-203 and R17-4-205)

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking;

This rulemaking action updates rule language to improve understandability, clarity, and conciseness. The revision also seeks to simplify the rule by eliminating unnecessary language. This rulemaking results from the 5-year review report (F-98-0401) approved by the Governor's Regulatory Review Council on May 5, 1998.

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

The agency imposes no direct cost on any entity with these rules. Vehicle-owning businesses and consumers benefit with the assurance of legal vehicle ownership and right of survivorship. MVD-contracted competitive government 3rd-party entities are issued materials at no cost to perform the functions required under these rules. In turn, 3rd-parties profit from undisclosed, non-reportable service fees from customers. The MVD hearings subdivision also has a theoretical reduction in vehicle ownership contest cases. The Division recoups its costs through annual title and registration fees collected statewide.

3. 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:

George R. Pavia, Department Rules Supervisor
Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	**Persons to benefit**
MVD; form production and staff salary percentage for processing	MVD; assumed savings from hearing caseload reduction in contested ownership cases

Persons to bear costs	Persons to benefit
Competitive government partnership 3rd-parties; employee salary percentage to process data	3rd-parties; service fees
	All vehicle owners; public and private

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	more than $10,000

a. Probable costs and benefits to the Motor Vehicle Division and other agencies:

MVD incurs costs in form production that are the means for gathering the information specified in these rules' provisions. The program reports printing and distribution of approximately 3 million forms annually at a cost of 3¢ each. There is a not-readily-quantifiable portion of each FTE salary for data entry and processing of the information collected under these 2 rules. Logically, the cost would be minimal per transaction. Title and registration fees collected cover costs of forms and data entry. There is also a not-readily-quantifiable per hearing cost incurred by the Division's hearing section for conducting ownership dispute hearings. GRRC and the Secretary of State incur the usual minimal costs of rulemaking processing and publishing. There are no known costs to other state agencies associated with these 2 rules.

b. Probable costs and benefits to political subdivisions:

There are no known costs to state political subdivisions from this rule.

c. Probable costs and benefits to businesses:

There are no direct costs to businesses for the provisions of these 2 rules. The costs are indirect and are included in the title and registration fees. The benefits are proof and protection of legal vehicle ownership.

Contracted 3rd-party entities in competitive government partnership with MVD do incur costs and benefit from the provisions of these rules. 3rd-parties are issued the necessary forms at no cost by the Division. The 3rd-parties must expend employee salaries for processing forms on behalf of clientele. In turn, the 3rd parties are permitted to charge service fees. This net benefit to 3rd-party entities is not readily quantifiable by the agency since the agency does not regulate or require reporting of 3rd-party service fees. It is assumed the 3rd-parties maintain their fees at a level allowing them to remain competitive in the market and still realize a net profit from their title and registration function.

d. Cost-benefit summary and conclusion:

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
MVD customer service program	Substantial; in costs of forms production and employee processing	Substantial; recouped costs in collected annual title and registration fees
MVD hearing section	None	Not readily quantifiable; in theoretical reduction of vehicle co-ownership contested matters
Businesses and private consumers owning vehicles	None; covered by costs of normal title and registration function	Not quantifiable; benefit in assured vehicle legal ownership and right of survivorship
3rd-party government partnership entities with MVD	Minimal to substantial; depending on workload in title and registration function over total employee salaries	Not readily quantifiable; service fees are not regulated or reportable to MVD
GRRC and Secretary of State	Minimal; rulemaking process and publishing	None

4. Probable impact on public and private employment:

Public employment is impacted by the need for Division staff throughout the state to administer the title and registration process. MVD has a current field office staff of approximately 850. A non-readily-quantifiable percentage of agency employee work time is necessary for the processing of forms and data entry. Of course the total number of agency employees is contingent upon workload driven by the annual average number of vehicles to be titled and registered. Private employment is impacted by the existence of the 3rd-party competitive government partnership program under which private sector employees also administer the title and registration function. Currently, there are 60 3rd-party entities contracted to perform titling and registration procedures with an aggregate staff of approximately 200. The agency program estimates the number of 3rd-party contracts to increase, but cannot accurately estimate an increase ratio projection. Accordingly, this would be contingent upon the net increase in the number of vehicles registered within the state linked to population growth. For fiscal year 2000, the program reports an estimated 1.7 million vehicles titled statewide. For the same period, just under 30% of the titling and registration function was performed by 3rd-party entities.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Small businesses subject to the proposed rulemaking would be any business with motor vehicle ownership as an asset and any MVD-contracted government partnership 3rd-party entity with fewer than 100 employees.

b. Administrative costs and other costs required for compliance:

None, other than regular title and registration fees assessed under provision of other statutes and administrative rules.

c. Description of the methods used by Motor Vehicle Division for reduction of impact on small businesses:

There are no direct costs to businesses in this rulemaking. In particular, 3rd-party entities are not charged for forms and other support materials necessary to comply with the rule's provisions. These are issued to the 3rd-parties at no cost.

d. Probable costs and benefit to private persons and consumers:

None, other than regular title and registration fees assessed under provision of other statutes and administrative rules. Consumers do experience the general benefit of assurance of legal vehicle ownership and right of survivorship under these rule provisions.

6. Probable effect on state revenues:

The agency experiences no direct net increase or decrease in revenue under these rule provisions. A not-readily-quantifiable savings is generally assumed by the assumed averting of vehicle ownership contested cases before the agency's hearings subdivision.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

None, since the rule provisions already incur no direct costs to any parties affected by these rules.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

Apart from the not-readily-quantifiable factors in estimating 3rd-party service fees and employee salary ratios, the agency feels it has made an adequate assessment of this rulemaking's economic impact.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 2. VEHICLE TITLE

R17-4-201, R17-4-207, and R17-4-208

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on February 3, 2004. The Arizona Department of Transportation, Motor Vehicle Division (Division), has amended the existing rules to codify title-holding and electronic lien filing/electronic lien clearance requirements, conform to current statute, remove and update related citations. Changes are also made to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

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

The anticipated economic impact of these rules on the Division is substantial due to the requirements that the Division design, implement, and maintain electronic lien and title records for members of the Electronic Lien and Title (ELT) program and mail the Arizona Certificate of Title to the lienholder of record (title-holding). In addition, the Division will have minimal benefit from having a rule that is easier to understand and apply.

The Division anticipates that the economic impact of these rules on small businesses is moderate to substantial due to the requirement that lenders (lienholders) maintain an electronic or paper filing system for Arizona Certificates of Title (titles) when the small business is the lienholder of record. The Division currently partners with 73 ELT Lienholders, recording approximately 15,300 electronic liens each month.

The Division anticipates that the economic impact of these rules on the consumer is minimal.

3. 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 M. Cook, Administrative Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
Arizona Department of Transportation, Motor Vehicle Division	Substantial	Minimal
Businesses concerned with the provisions of 17 A.A.C. 4, Article 2	Moderate to Substantial	NA
Consumers concerned with the provisions of 17 A.A.C. 4, Article 2	NA	NA

3. Cost-benefit analysis

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

Minimal less than $10,000

Moderate $10,000 to $49,000

Substantial $50,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rule:

The Division incurred substantial costs to program, implement, and maintain the ELT program. The initial programming costs were approximately $260,000. Maintaining the ELT program costs the Division approximately $80,000, annually.

The Division receives approximately 5,891 ELT lien releases each month. The Division will benefit from cost savings due to decreased mail costs, decreased labor costs, office space, and paper forms resulting from the implementation of the ELT program.

In addition, world commerce is steadily moving towards a paperless society and the Division needs to keep pace with widely accepted business practices.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule:

The Division anticipates that the costs and benefits of these rules on political subdivisions of this state are negligible.

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 Division anticipates that the costs to lienholders will be moderate to substantial due to the administrative costs to maintain and process paper or electronic titles.

Lienholders will benefit by improved security, which will help to prevent fraudulent activities.

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 Division is the only public agency directly impacted by the rulemaking. The Division has approximately three full-time employees assigned to the ELT system. Maintaining the ELT program costs the Division approximately $80,000, annually.

The Division anticipates the probable impact on private businesses (lienholders) directly affected by this rulemaking to be moderate to substantial. Lienholders, both large and small, will need additional employees to implement and maintain a paper or electronic filing system for titles where they are the designated lienholder.

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

a. Identification of small businesses subject to the proposed rulemaking:

Small businesses subject to the rulemaking are lienholders, such as financial institutions, title loan companies, and small dealers that carry their own loans.

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

The Division anticipates that the administrative costs for compliance are moderate to substantial due to the requirement that lienholders maintain an electronic or paper filing system for Arizona Certificate of Titles when the lienholder is named the lienholder of record. Qualified lienholders who opt to participate in the ELT program will need to establish connectivity with the Division's ELT system for the transmitting of electronic lien filings and lien releases.

c. Description of the methods ADOT may use to reduce the impact on small businesses:

The title-holding requirement is statutory. The Division considered the different title maintenance methods that lienholders could employ and eventually implemented the ELT system, which greatly reduced the impact on lienholders who opt to become ELT participants. In addition, the Division offered training classes for businesses interested in learning about and complying with title-holding and the ELT program.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

Private persons and consumers could realize minimal to substantial benefits from the clarity of this rulemaking. It will allow for quicker and easier understanding of the title-holding and lien filing/ lien clearance processes.

6. Statement of probable effect on state revenues:

The Division anticipates no effect on state revenues due to this rulemaking.

7. Description of any less intrusive or less costly alternative methods of achieving the proposed rulemaking:

The Division has determined that there is no less intrusive or less costly method that would fulfill the requirements of A.R.S. § 28-2134.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in quantitative 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 agency believes it has sufficient data for accurate assessment of this rulemaking's impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES & REGISTRATION

R17-4-209

Economic, Small Business and Consumer Impact Statement

(Note: 2023 Rule Number is R17-4-206)

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking;

This rulemaking arises from a 5-year review report (F-98-0401) approved by GRRC on May 5, 1998. The purpose of the rule is to prescribe additional titling standards for motor vehicles not manufactured in compliance with United States safety and emission standards (commonly called "Gray Market Vehicles") to ensure compliance prior to the issuance of an Arizona title. In its current form, the rule is outdated. In this rulemaking, the Division will update language to current standards and incorporate revised provisions to bring the rule in line with current Division requirements.

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

The State of Arizona subscribes to prescribed federal safety and emission standards in this rulemaking and, notwithstanding, will allow the importation of foreign vehicles into the state. Any foreign vehicle owner, business or individual, could incur expenses of greater than $20,000 per imported vehicle to bring an import into federal compliance if it cannot be documented that the vehicle was originally so manufactured. To maintain enforcement of these provisions, the Division annually inspects 400-500 imported vehicles absorbing inspection costs with collected fees. Non-compliant vehicles may be brought into compliance through processing by registered importers (and their subcontracted entities). For services rendered, the registered importers and subcontractors can substantially profit from each imported vehicle processed for federal compliance.

3. 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:

George R. Pavia, Administrative Rules Unit Supervisor
Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

   Any owner of a vehicle not manufactured to US specifications brought into the state, depending upon the vehicle's age, could be subject to bear the costs of this rule's provisions. Specific entities benefiting from requirements of the rule would be federally registered importers of motor vehicles. More generally, the state's motoring public stands to benefit with increased assurance of on-road vehicle safety and maintained emission standards.

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	more than $10,000

   a. Probable costs and benefits to the Motor Vehicle Division and other agencies:

   The costs to MVD are for the performance of required vehicle inspections to ensure vehicles entering the state from outside the US conform to required standards. Fees charged by MVD for the inspections range from $20 to $50 depending on the level of inspection required. There is necessary capital expenditure for the Division to acquire and maintain facilities, equipment, and staff to conduct the inspections and perform associated clerical functions. MVD estimates it makes 400 to 500 inspections annually on gray market category vehicles. There are minimal costs to the Governor's Regulatory Review Council and the Secretary of State in administration and publishing. No other state agencies are known to be affected.

   b. Probable costs and benefits to political subdivisions:

   There are no known costs to state political subdivisions imposed by this rule.

   c. Probable costs and benefits to businesses:

   Federally registered importers incur costs and benefit from overhead, labor, and fees charged for bringing vehicles from other countries into compliance with US standards. It is assumed by MVD that a registered importer's profit margin is moderate for Canadian manufactured vehicles to substantial for vehicles manufactured in other countries. MVD is not able to further quantify financial benefit to registered importers for their services, as these are undisclosed figures protected by private business interests.

   d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
MVD	Costs of vehicle inspections and necessary administrative processing effectively balance against fee revenues generated.	

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
Registered importers	Minimal to moderate (for labor and processing)	Moderate to substantial (for possible charges of greater than $20,000 to the consumer to bring an imported vehicle into compliance depending on degree of necessary modifications)
Transporters or other subcontractors engaged by registered importers	Minimal to Moderate (materials and labor)	Moderate to Substantial (depending on scope of work performed per vehicle)
Owners of foreign vehicles not manufactured according to US safety standards brought into the state	Substantial (could be in excess of $20,000 to bring a vehicle into compliance)	None known directly attributable to the proposed rule provisions
Governor's Regulatory Review Council and the Arizona Secretary of State	Minimal administrative costs related to rulemaking and publishing.	None

4. Probable impact on public and private employment:

The public employment impact is in maintaining sufficient enforcement staff to be able to perform the 400-500 yearly inspections on foreign manufactured vehicles brought into the state. The extent of private employment impact is not clearly known. It is known registered importers engage commercial transporters to move vehicles in and out of the state. Registered importers will also engage subcontractors to effect any compliance required vehicle modifications such as glass or braking mechanisms.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Registered importers, their transporters, and subcontractors are small businesses certainly affected by this rulemaking. Any small business importing a vehicle not manufactured to US specifications into Arizona, could also be subject to the provisions of the proposed rule depending on the vehicle's age, weight, point of manufacture as described in the rule.

b. Administrative costs and other costs required for compliance:

Registered importers will incur the standard NHTSA administrative fees for vehicle compliance packages. Transporters and subcontractors will have material and labor costs depending upon the scope of work required.

c. Description of the methods used by Motor Vehicle Division for reduction of impact on small businesses:

None. Registered importers, transporters, and subcontractors are positively impacted by the rulemaking. Therefore, there is no need to reduce impact on these entities. Impact reduction on small businesses wishing to import known non-compliant foreign vehicles is not within agency capability as the required standards are federal provisions.

d. Probable costs and benefit to private persons and consumers:

Costs to small businesses and also private consumers for bringing a non-compliant foreign import vehicle into federal standard compliance can be substantial, $20,000 or more per vehicle depending on necessary modifications. Benefits of this rule's provisions are maintained integrity to US and state environmental standards, and enhanced vehicle value for compliance to federal standards.

6. Probable effect on state revenues:

The provisions of the proposed rule neither positively nor negatively impact state revenues. Inspection costs and resultant administrative processing offset the imposed fees.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

None, since the Arizona statutes permit the importation of foreign manufactured vehicles and also require compliance to federal safety and environmental specifications.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

As discussed in (B)(3)(c), MVD is not able to clearly quantify financial benefits to federally registered vehicle importer business entities. Profit margins are varied and held in confidence as matters of private business interest.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-301, R17-4-302, R17-4-303, and R17-4-304

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on December 7, 1999. The Arizona Department of Transportation, Motor Vehicle Division (Division), has amended the existing rules to codify current biennial, fleet, and staggered registration requirements, conform to current statute, and remove and update related citations. Changes are also made to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

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

The previous biennial registration rule limited the biennial option to vehicles with a vehicle license tax assessment of $75, or less, per two year period. This rulemaking removes the dollar restriction, thus allowing the owner of any eligible vehicle to request a biennial registration.

Currently, there are 6,610,264 motor vehicles registered in Arizona. The Division gains substantial benefits by expanding the biennial registration program due to reduced registration transactions. In addition, the Division will have minimal benefit from having a rule that is easier to understand and apply.

Currently, there are 36,162 fleet vehicles registered in Arizona. It is difficult to quantify the dollar amounts associated with fleet refunds, however, the Division anticipates minimal to substantial costs due to the Division issuing fleet refunds in accordance with A.R.S. § 28-2356. In addition, political subdivisions of this state may be affected due to reduced Highway User Revenue Funds (HURF) resulting from fleet refund requests.

Businesses and consumers that opt to register vehicles on a biennial basis will benefit by a reduced registration fee. This fee has not changed from the previous rule. However, eligibility requirements for the biennial registration are expanded, thus allowing more vehicles to qualify for the biennial registration.

In addition, fleet businesses will benefit, as they are eligible to apply for a refund of any credited fees for vehicles replaced or removed from a fleet, as prescribed under A.R.S. § 28-2356.

3. 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 M. Cook, Administrative Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to Bear Costs	Persons to Benefit
Arizona Department of Transportation, Motor Vehicle Division	Businesses concerned with the provisions of 17 A.A.C. 4, Article 3
Political subdivisions of this state	Consumers concerned with the provisions of 17 A.A.C. 4, Article 3

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 ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Division anticipates that the costs associated with this rulemaking will be minimal to substantial. It is difficult to quantify the costs as any costs incurred are due to the issuance of fleet refunds in accordance with A.R.S. § 28-2356.

The Division anticipates substantial benefits from this rulemaking due to the cost savings gained from the reduced number of registration transactions processed each year due to the expansion of the biennial registration program.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rules:

There are no costs to political subdivisions of this state from this rulemaking.

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 Division anticipates that businesses will incur no additional cost related to this rulemaking.

Businesses that opt to register vehicles on a biennial basis will benefit from a reduced registration fee. This fee has not changed from the previous rule. However, eligibility requirements for the biennial registration are expanded, thus allowing more vehicles to qualify for the biennial registration.

Fleet businesses will benefit since the rulemaking now allows fleet business owners to apply for a refund of the unused portion of their vehicle license tax fees when a vehicle is replaced or removed from the businesses fleet.

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 Division anticipates that the rulemaking will have no impact on public or private employment.

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

   a. **Identification of small businesses subject to the proposed rulemaking:**

      Businesses that operate any vehicle subject to registration under A.R.S. Title 28, Chapters 7, 15 and 16.

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

      Businesses may incur minimal administrative costs due to processing refund requests. However, the Division anticipates that the ability to obtain a refund, for fees previously forfeited, outweigh the small businesses administrative costs.

   c. **Description of the methods ADOT may use to reduce the impact on small businesses:**

      The Division is implementing the biennial registration and fleet refund processes to help small businesses better manage their vehicle and fleet registrations and help reduce administrative costs.

   d. **Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:**

      Private persons and consumers that opt to register vehicles on a biennial basis will benefit by a reduced registration fee. In addition, private persons and consumers will benefit from rules that are easier to understand.

6. **Statement of probable effect on state revenues:**

   The Division anticipates that the costs associated with this rulemaking will be minimal to substantial. It is difficult to quantify the costs as any costs incurred are due to the issuance of fleet refunds in accordance with A.R.S. § 28-2356.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

   The Division has determined that there is no less intrusive or less costly alternative method for achieving the proposed rulemaking as the rule amendments are statutorily driven.

C. **Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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 Division believes it has accurately summarized this rulemaking's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION -

ARTICLE 3. VEHICLE REGISTRATION

R17-4-305

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

The Motor Vehicle Division "MVD" is amending this rule due to legislative changes that require new and used motor vehicle dealers and title service companies to send Temporary Registration Plate "TRP" information through an authorized third party or the Division's authorized third-party electronic service provider. Approximately 739,700 Temporary Registrations Plates were issued in fiscal year 2005.

There are two entities that can build an electronic "TRP" application:

- The Division's authorized third-party electronic service provider ServiceArizona.com, and
- A participating authorized third party.

The "TRP" information sent will be recorded in the Division's vehicle title and registration database and the information shall be made available to law enforcement officers as required by statute. The previous process did not require the electronic recording of "TRP" information on the title and registration database. This process precluded any compliance efforts by law enforcement since the ability to electronically query the owner of a "TRP" did not exist. Additionally, A.R.S. § 28-4549 states that each dealer or title service company sending an electronic record of the "TRP" through the Division's authorized third-party electronic service provider shall pay a fee of one dollar to the Division's authorized third-party electronic service provider. Approximately 739,400 "TRPs" were sent through the Division's authorized third-party electronic service provider in fiscal year 2005.

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

The Division experiences minimal cost for rulemaking only. New and used motor vehicle dealers and title service companies may experience a minimal to moderate economic impact to obtain computer equipment and Internet access to enable the sending of "TRP" information via a participating authorized third party or the Division's authorized third-party electronic service provider, depending on whether or not the dealer or title service company has the technology. Those dealers and title service companies without electronic capability may experience a moderate to significant economic impact, as these entities will not be authorized to issue "TRPs." Additionally, both dealers and title service companies experience a minimal impact for the one-dollar fee charged for sending an electronic record of the "TRP" through the Division's authorized third-party electronic service provider.

3. 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:

Troy A. Walters, Rules Analyst
Administrative Rules Unit
Department of Transportation, Mail Drop 530M
1801 W. Jefferson, Room 407
Phoenix, AZ 85007

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
ADOT/MVD	Law Enforcement
New and Used Motor Vehicle Dealers	Motoring Public/Authorized Electronic Service Delivery Providers
Title Service Companies	Motoring Public/Authorized Electronic Service Delivery Providers

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 more than $10,000

a. Probable costs and benefits to ADOT and other agencies:

The Division experiences minimal costs for rulemaking and programming.

b. Probable costs and benefits to political subdivisions:

There are no costs to political subdivisions of this state from this rule.

c. Probable costs and benefits to businesses:

New and used motor vehicle dealers and title service companies may experience minimal to moderate costs for computer software and Internet access. Motor vehicle dealers and title service companies may experience a moderate to significant impact if they do not have electronic capability since they would not be able to issue "TRPs" and therefore, would not be able to sell vehicles. However, most new and used motor vehicle dealers and title service companies enjoy the convenience of printing "TRPs" from their own computers on an as-needed basis.

d. Cost-benefit summary and conclusion:

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
ADOT/MVD	None	None
New and Used Motor Vehicle Dealers	Minimal to moderate. Computer software/training. $1 for using an electronic service delivery provider.	None
Title Service Companies	Minimal to moderate. Computer software/training. $1 for using an electronic service delivery provider.	None
Authorized Electronic Service Delivery Providers	None	Minimal to Moderate by receiving $1 per transaction from motor vehicle dealers and title service companies for using the provider

4. **Probable impact on public and private employment:**

   There is no impact on public and private employment.

5. **Probable impact on small businesses:**

   a. **Identification of small businesses subject to the proposed rulemaking:**

      New and used motor vehicle dealers and title service companies. However, most new motor vehicle dealers would not be considered small businesses and have the electronic capability to provide this service with minimal impact.

   b. **Administrative costs and other costs required for compliance:**

      There are minimal to significant costs when a motor vehicle dealer or title service company does not have the electronic capability to issue "TRPs" as the dealer or title service company would have to purchase computers and software plus pay for setup, training, and technical support.

   c. **Description of the methods used by ADOT for reduction of impact on small businesses:**

      None

   d. **Probable costs and benefit to private persons and consumers:**

      Dealers and title service companies may pass on the cost of using an authorized electronic service provider, which is one dollar per transaction, to the consumer. Law enforcement benefits by being able to query the "TRP" and immediately identify the owner of the vehicle displaying a "TRP."

6. **Probable effect on state revenues:**

   No effect on state revenue is expected. The means by which to obtain a "TRP" have changed, not the cost.

7. **Less intrusive or less costly alternative methods of achieving the proposed rulemaking:**

   The Division is unaware of less intrusive or costly alternative methods in achieving this rulemaking.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The agency believes it has accurately assessed the rule's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-306

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

The rule provides for the biennial $8 fee that covers administrative costs of the program, as authorized under A.R.S. § 28-2294(D), and meets the requirements described under A.R.S § 41-1008. The current rule must be revised since the implementing statutes have been renumbered, as noted in the proposed agency action of the 5-year review report (F-98-0401) and approved by the Governor's Regulatory Review Council on May 5, 1998. The agency is revising this Section to reflect current program requirements and publishing styles of GRRC and the Secretary of State.

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

This rulemaking updates the current rule for clarity, decreasing the cost of agency enforcement. The $8 fee is unchanged from the previous rule and covers a 2-year period. The application and identification prescribed for the nonresident daily commuter privilege allows for evaluation of the impact of nonresident commuter vehicles on air quality and highway infrastructure and assists public safety enforcement through better identification of motor vehicles.

3. 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:

Brent P. Heiss, Rules Analyst
Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. Seventh Street, Suite 160
Phoenix, AZ 85014-5079

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
ADOT	ADOT

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 greater

a. Probable costs and benefits to ADOT and other agencies:

ADOT bears minimal costs associated with this rulemaking process. There are approximately 60 to 100 nonresident daily commuter privileges issued in Arizona per year over the past three years. ADOT will have minimal benefit from having a rule that is easier to understand and apply.

b. Probable costs and benefits to political subdivisions:

There are no costs to political subdivisions of this state from this rule.

c. Probable costs and benefits to businesses:

Businesses should have no cost related to this rule. Businesses will benefit from this rule in allowing them to recruit from a larger work force across borders without having to impact workers with registration costs for their vehicles.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
ADOT	Minimal costs for rulemaking	Minimal cost decrease
General Public	None	Minimal to substantial cost decreases

4. Probable impact on public and private employment:

This rulemaking should have no impact on public or private employment.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Border businesses and those seasonal resort type businesses will benefit from the ability to draw on a larger workforce.

b. Administrative costs and other costs required for compliance:

Minimal

c. Description of the methods used by ADOT for reduction of impact on small businesses:

None. The impact is beneficial because it allows small businesses to draw on border town employees.

d. Probable costs and benefit to private persons and consumers:

Individual citizens could realize minimal to substantial benefits from the clarity of this rule. It will allow for quicker and easier understanding of the nonresident daily commuter privilege process.

6. Probable effect on state revenues:

Minimal effect on state revenues

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

None

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The Department believes it has accurately summarized this rulemaking's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee

Economic, Small Business, and Consumer Impact Statement

A. Economic, small business, and consumer impact summary

1. Identification of the proposed rulemaking:

A.R.S. § 28-4151 establishes a $50 reinstatement fee for a motor vehicle registration and license plate that were suspended due to the cancellation or nonrenewal of a motor vehicle liability insurance policy. The rule's revision arises from proposed agency action in the 5-year-review report (F-98-0401) approved by the Governor's Regulatory Review Council on May 5, 1998. The agency agrees that an amendment to A.R.S. § 28-4151 requires an explanation of an exception to the $50 fee. Motor carriers subject to the financial responsibility requirements of Arizona Revised Statutes, Title 28, Chapter 9, Article 2, are exempt from this fee. The amendment also updates the rule's language to be clear, concise, and understandable as required by both the Secretary of State and the Governor's Regulatory Review Council.

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

The uninsured motorists subject to the $50 motor vehicle registration and license plate reinstatement fee are identified through a process connection between the Division and motor vehicle insurance companies. Uninsured motorists identified to the system have their vehicle registration and license plate suspended until the motorist acquires and provides proof of mandatory vehicle liability insurance, benefiting the motor vehicle insurance industry. Before reinstatement can occur, the $50 fee must be paid. Uninsured drivers may experience costs for alternative transportation and time off to complete the insurance acquisition and reinstatement processes. The general driving public that possesses mandatory liability coverage may benefit because the reduction of uninsured motorists may lower costs for uninsured motorist insurance, or uncovered losses resulting from collisions with uninsured motorists.

3. 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:

Ellen Damron, Rules Analyst
Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Richard Schweinsburg, Executive Consultant
Arizona Department of Transportation

Motor Vehicle Division, Mail Drop 500M

1801 W. Jefferson

Phoenix, Arizona 85007

B. Economic, small business, and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
Arizona Department of Transportation, Motor Vehicle Division	Arizona Department of Transportation, Motor Vehicle Division
Uninsured motorists	Driving public
State Treasurer	State Treasurer

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 more than $10,000

a. Probable costs and benefits to ADOT and other agencies:

There is substantial cost to the Arizona Department of Transportation, Motor Vehicle Division, to execute the suspension, notification, and reinstatement provisions of the implementing statutes.

Reduction of uninsured motorists on Arizona highways may provide minimal to moderate benefit to the general driving public in the form of reduced premiums for uninsured motorist coverage.

The State Treasurer's office experiences minimal costs for the wire transfer and monitoring of the reinstatement fees fund, administered by the Division through legislative appropriation.

b. Probable costs and benefits to political subdivisions:

COSTS:

- There are substantial costs to the Division for the enforcement of the $50 fee for motor vehicle registration and license plate reinstatement relative to systems, personnel, and general operations costs.
- The State Treasurer incurs minimal costs for the wire transfer of the $50 reinstatement fees from the Division to the Treasurer.

BENEFITS:

- Suspension reduces uninsured motorists driving on Arizona roads.

- At a minimal cost, the reinstatement fees reside in a fund with the State Treasurer, which is administered by the Division through legislative appropriation. The Treasurer receives an administration fee for the fund.

c. Probable costs and benefits to businesses:

- There are no costs associated with the $50 reinstatement fee for businesses.
- The motor vehicle insurance industry does experience substantial benefit because an individual requesting registration and license plate reinstatement must provide proof of motor vehicle insurance coverage prior to paying the $50 fee.
- The driving public may benefit through reduced motor vehicle insurance premiums for uninsured motorist coverage.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
Arizona Department of Transportation, Motor Vehicle Division: administering uninsured motorist suspension of registration and license plates	Substantial costs to support the $50 reinstatement fee process	Costs are offset by the increase in the number of suspensions and resulting substantial increase in reinstatement fee collection
Uninsured Motorists: suspended registration and license plate	Minimal costs for purchase of vehicle insurance coverage Minimal to substantial income loss without use of vehicle while registration and license plate are suspended Minimal cost for alternative transportation Pay $50 reinstatement fee	Increase income at minimal to substantial levels with reinstatement of registration and license plate.
Insured vehicle owner or lessee: involved in vehicle accidents with uninsured driver	Minimal costs for alternative transportation due to loss or damage of their own vehicle Possible higher premiums for uninsured motorist coverage	Non-quantified benefit from a reduction in losses through fewer uninsured motorists being involved in vehicle accidents

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
General driving public: purchases uninsured motorist coverage	Minimal to moderate increased costs for such insurance	Suspensions can provide non-quantifiable reduction in uninsured coverage costs

4. Probable impact on public and private employment:

- There is moderate impact to public employment for systems and clerical support for all phases of the motor vehicle registration and license plate reinstatement process.
- Private employment may be positively impacted because those with vehicle registration and license plate suspensions resulting from lack of vehicle insurance coverage must purchase and provide evidence of vehicle insurance coverage prior to reinstatement.

5. Probable impact on small businesses:

Small businesses may experience minimal to substantial costs if an owner experiences a suspended registration and license plate for not having motor vehicle insurance coverage.

a. Identification of small businesses subject to the proposed rulemaking:

Small businesses that use motor vehicles in doing business must have motor vehicle insurance coverage.

b. Administrative costs and other costs required for compliance:

There are minimal to moderate oversight costs associated with the $50 reinstatement fee for a suspended registration and license plate.

c. Description of the methods used by ADOT for reduction of impact on small businesses:

None

d. Probable costs and benefit to private persons and consumers:

- Uninsured motorists will experience minimal costs to obtain mandatory liability insurance for the reinstatement of both vehicle registration and license plate.
- Uninsured motorists will experience minimal costs to seek and pay for alternative transportation while their vehicle is under suspension of the registration and license plate.
- The $50 reinstatement fee is a minimal cost to an uninsured motorist seeking reinstatement of registration and a license plate.
- The driving public who possesses mandatory insurance may receive a minimal cost reduction for uninsured motorist liability coverage as the result of the improved identification and suspension of uninsured motorists.
- Drivers who maintain mandatory insurance may sustain fewer financial losses resulting from accidents with uninsured motorists because the vehicle registration and license plate suspension process helps reduce the number of uninsured drivers. Based on income from the $50 fee, approximately 10,000 drivers annually have their vehicle registration and license plate suspended for not having mandatory insurance.

6. **Probable effect on state revenues:**

   The $50 reinstatement fee can annually generate $500,000 or more for the motor vehicle liability insurance reinstatement fund.

7. **Less intrusive or less costly alternative methods of achieving the proposed rulemaking:**

   Motor carriers are exempted from the $50 reinstatement fee because they are subject to Arizona Revised Statutes, Title 28, Chapter 9, Article 2. The Division is unaware of less intrusive or costly alternative methods in achieving this rulemaking.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The Division's cost-tracking structure is difficult to assess accurately. The Division's systems environment is an older one, and any ad hoc report must be generated by a programming process. A 10-line report with three fields, containing unadjusted data, costs $500. Most Division funding has been administered from a lump sum budget.

As a result, precise data about process costs are not available. Research yielded no data on the economic impact of suspensions on small businesses with uninsured vehicles. No data was found relative to any possible downward adjustment in motor vehicle insurance costs as the result of the identification and suspension of uninsured motorists.

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-308

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking;

This rule explains motor vehicle license plate issuance for tribal or government-owned motor vehicles; foreign governments engaged in official business within the state; providers engaged only in emergency services with ambulance, firefighting and rescue equipment; and nonprofit organizations, approved by the Department of Emergency and Military Affairs (DEMA), who operate certain emergency vehicles for disaster or search and rescue operations. Vehicle license plates for exempted entities were previously issued for a 5-year period without a year designation. The Motor Vehicle Division issues license plates to exempted entities, as prescribed by A.R.S. § 28-2511, and in the form prescribed in Arizona Revised Statutes, title 38, chapter 3, article 10. The existing rule does not reflect the Division's current practices for government motor vehicle registration and license plate issuance, or changes in statutory language. This rulemaking arose from proposed agency action in the 5-year review report, F-98-0401, approved by the Governor's Regulatory Review Council on May 5, 1998. This rule revision will also update language to conform to current standards of the Governor's Regulatory Review Council and the Secretary of State.

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

This rule does not directly impact the economic condition of the general driving public or small business. The rule extends the courtesy of no-fee registration and license plates to state government and its subdivisions; tribal entities; nonprofit-operated emergency vehicles; providers of ambulance, firefighting and rescue services only engaged in emergency services; foreign governments, and their official representatives. The Division absorbs the costs for these motor vehicle license plates. The rule provides a cost-avoidance to government entities that perform official duties, DEMA-approved nonprofit organizations, and providers that operate only emergency services.

3. 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:

Ellen Damron, Rules Analyst
ADOT Rules Unit
Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 N. Seventh Street, Suite 160

Phoenix, AZ 85014-5017

Telephone: (602) 712-6722

FAX: (602) 241-1624

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
Arizona Department of Transportation, Motor Vehicle Division	ADOT, Motor Vehicle Division and entities that fall within A.R.S. §§ 28-2511 and 28-2410
Department of Emergency and Military Affairs	DEMA-approved nonprofit groups
	Emergency vehicle operators and Arizona taxpayers

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 more than $10,000

a. Probable costs and benefits to ADOT and other agencies:

The Motor Vehicle Division has minimal additional costs associated with this rulemaking. The Division has substantial ongoing costs for the program since the Division processes titles and provides all motor vehicle special designation license plates for exempted entities, emergency service providers, and Department of Emergency and Military Affairs approved nonprofit organizations with emergency vehicles used for general emergency and disaster events. ADOT Equipment Services, the Department of Public Safety, and other government entities with motor vehicle fleets, experience substantial costs for new or salvage motor vehicle titles, and maintaining motor vehicle registration and license plate records. DEMA experiences minimal costs for certifying nonprofit organizations.

b. Probable costs and benefits to political subdivisions:

There is a substantial cost avoidance for political subdivisions since the Division does not require registration and license plate fees. There are moderate to substantial costs for maintaining registration and motor vehicle license plate records within an agency possessing a motor vehicle fleet.

c. Probable costs and benefits to businesses:

Nonprofit organizations with an exemption approved by the Director of the Division of Emergency and Military Affairs (DEMA), benefit since the Division does not charge fees for either the motor vehicle registration or vehicle license plates for their emergency vehicles. Emergency vehicle service

providers are also exempt under A.R.S. § 28-2511. This statute creates an operational cost avoidance for exempted organizations. It indirectly provides benefits to the general public, and thereby potentially to other businesses, since emergency vehicles are available in crisis situations to assist everyone.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
Arizona Department of Transportation, Motor Vehicle Division	Substantial ongoing support costs for title records, supplying license plates	Exempted entities experience substantial cost avoidance since there are no costs for registration and license plates fees
Levels of state and tribal government, including enforcement agencies	Moderate to substantial costs for motor vehicle titles, vehicle records maintenance	Substantial cost avoidance because records are self-maintained
DEMA-approved, nonprofit organizations who own certain emergency vehicles	Minimal to substantial costs for titles, records maintenance	Minimal to substantial cost avoidance for self-maintained records and license plate transfer update
Consuls, other representatives of foreign governments	Minimal to substantial costs for titles, records maintenance	Minimal to substantial cost avoidance for records maintenance if required to post with MVD
Department of Emergency and Military Affairs	Minimal costs for certifying nonprofit organizations with emergency response vehicles	MVD receives motor vehicle titles, provides fee exemption for registration, license plates
Arizona taxpayers	Substantial cost for vehicle fleet records	Reduced costs since registration and plate records are maintained by agencies

4. Probable impact on public and private employment:

There are related support functions performed by Division employees for motor vehicle fleet titles and distinctive license plates for United States vehicles; state levels of government; tribal governments; approved nonprofit organizations; emergency services companies; and foreign governments. These organizations need employees to complete motor vehicle title requirements and maintain internal records for vehicle fleet registrations and license plates.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

There is minimal to substantial cost avoidance for emergency vehicle services providers, and DEMA-approved nonprofit organizations that provide emergency assistance because these groups are exempt from the motor vehicle registration and license plate fees.

b. Administrative costs and other costs required for compliance:

The Division has minimal to substantial ongoing costs for various functions related to the exemptions provided under A.R.S. § 28-2511. Levels of state government, tribal government, emergency vehicle services and nonprofit organizations exempt under A.R.S. § 26-318, may experience minimal to substantial costs for acquiring titles and maintaining records of motor vehicle registration and license plates, based upon the number of vehicles operated by an organization.

c. Description of the methods used by ADOT for reduction of impact on small businesses:

Small emergency vehicle services providers receive their specially designated plates free from the Division, and are also exempt from motor vehicle registration fees as prescribed under A.R.S. § 28-2511.

d. Probable costs and benefit to private persons and consumers:

There is a reduced impact on taxpayers because costs for motor vehicle license plates are borne only once by the Division.

6. Probable effect on state revenues:

There are substantial costs for processing new motor vehicle titles and providing free license plates as prescribed under A.R.S. § 28-2511. Title processing costs are partially offset by the $4 title fee required for all new vehicles.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

The Division is examining the possibility of electronic title processing for entities. Such a process will permit the improved application of resources and provides the possibility of a cost savings and cost avoidance for tribal and various levels of state government.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The data limitations include the unavailability of specific information from each of the exempted entities relative to their costs for maintaining registration and license plate records. Since the largest number of costs fall under cost avoidance rather than dollar savings or expenditures, most entities do not track, or fully track, such items.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-309

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

This rulemaking action arises from a Five-Year Review Report approved by the Governor's Regulatory Review Council on February 4, 2003. The Arizona Department of Transportation, Motor Vehicle Division, has amended the existing rule to codify current processes and to ensure conformity to the Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

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

The Division will benefit from having a rule that is more clear, concise and understandable.

The Division anticipates incurring minimal costs imposed by this rulemaking. The anticipated costs are those associated with rulemaking activity and administering the program. Currently, there is only one private fire department operating six fire engines for which a Private Fire Emergency Vehicle Permit may be requested.

The Division anticipates that the economic impact of this rulemaking on small businesses and members of the public are moderate to substantial for businesses that apply for a private fire emergency vehicle permit. Applying for a private fire emergency vehicle permit is a voluntary procedure. Businesses and members of the public that do not apply will have no costs. Those that do apply will incur costs associated with obtaining liability insurance, fire engine maintenance, and qualified operators for the vehicles.

The Division anticipates that this rulemaking will have no economic impact on consumers as the proposed rule only applies to private fire engines currently being used for emergency responses and places no additional requirements on historic fire engines that are used for exhibitions. However, private persons and consumers may benefit from the private fire departments ability to affect an expedited response to a fire or accident.

3. 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 M. Cook, Administrative Rules Analyst

Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division

1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
Fax: (602) 712-3081
E-mail: ccook@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
Arizona Department of Transportation, Motor Vehicle Division	Private Fire Departments
Private Fire Departments	Insurance companies

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 ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Division will incur minimal costs associated with rulemaking and administering the program. The Secretary of State and the Governor's Regulatory Review Council (GRRC) will incur minimal costs associated with the rulemaking process.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule:

The Division anticipates that political subdivisions of this state will incur no additional cost related to this rulemaking.

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:

Businesses that do not want to receive a permit for a private fire emergency vehicle and businesses that receive emergency vehicle permits from another source (such as a city) will incur no costs from this rulemaking.

Businesses applying for a private fire emergency vehicle permit under this rulemaking could incur moderate to substantial costs, depending upon how much insurance the business currently has for the fire engine and depending upon whether or not the business currently employs qualified operators.

Businesses that are applying for a private fire emergency vehicle permit are likely to do so in order to ensure that their property and employees are better protected from the dangers of fire and accident. The benefit could be minimal to more than substantial. In the event of a fire or accident, an expedited response could be the difference between life and death or salvageable property and destruction.

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:**

Given that the Division has only received six requests for private emergency vehicle permits from one company, the Division anticipates that there will be no impact on private or public employment.

Political subdivisions have the authority to permit their own emergency vehicles as well as those of their contractors (if any). Because this rulemaking has no impact on the subdivision's ability to continue this process, municipal employment will not be affected.

It is possible that a private firm interested in operating their own private emergency vehicles will need to hire a qualified operator for their fire vehicles. In that case, the rulemaking may help create jobs.

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

   a. **Identification of small businesses subject to the proposed rulemaking:**

   Any small business that desires an emergency vehicle permit is subject to this rulemaking. However, applying for a private fire emergency vehicle permit is a voluntary procedure. Businesses that do not apply will incur no costs.

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

   A small business that applies for a private emergency vehicle permit will bear moderate to substantial costs associated with obtaining liability insurance, maintaining the fire engine and fire fighting equipment, and employing qualified operators.

   c. **Description of the methods the Arizona Department of Transportation may use to reduce the impact on small businesses:**

   Given that a private fire engine, for which a permit has been issued, is entitled to violate a host of normally applicable traffic laws which help to guarantee the safety of the public, it is important that a business receiving a private fire emergency vehicle permit is able to operate the fire engine safely.

   As with the original rulemaking, the Division has contacted the Phoenix Fire Department (PFD) and confirmed that the National Fire Protection Association's Standard 102 (NFPA 102) for operators of fire vehicles is the minimal level of training that should be required. In PFD's practice, they supplement NFPA 102 with further training they have developed themselves. The Division believes this minimum level of training is necessary for safe operation and it is not possible to reduce the level of training in order to lessen the impact on small business.

   The Division also has the responsibility to set insurance standards for permittees. In consultation with the Department of Administration's Risk Management Section, the Attorney General's office, the Department of Justice's Property & Casualty Department, and the Arizona Department of

Transportation's Risk Management Section, the Division set the liability level at $5 million. In light of the perceived increased risk to the public when a private fire department is operating these vehicles in an emergency, the Division considers this level reasonable. While there is no way to predict the level of liability that might flow from an accident involving a private emergency vehicle, the levels of insurance should be adequate in most cases. The Division does not believe that the $5 million level of liability should be lowered in order to reduce the impact of this rulemaking.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The Division anticipates that this rulemaking will have no economic impact on private persons and consumers. However, private persons and consumers may benefit from the private fire departments ability to affect an expedited response to a fire or accident.

6. Statement of probable effect on state revenues:

The Division anticipates no effect on state revenues due to this rulemaking.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

The Division believes there is no less intrusive or less costly alternative method for achieving the proposed rulemaking.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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 Division believes it has accurately summarized this rulemaking's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 3. VEHICLE REGISTRATION

R17-4-310

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking;

R17-4-310 gives the procedure for receiving personalized license plates. This rulemaking action arises from a five-year review report approved by the Governor's Regulatory Review Council on December 7, 1999 (F-99-1202). The Department plans to revise this rule for clarity.

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

Because this rulemaking will make the rule clearer, it will benefit the public by making the rule easier to understand and follow. The rulemaking will impose moderate to substantial costs on ADOT for rule development and regulatory review.

3. 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:

Brent P. Heiss, Rules Analyst
Department of Transportation
Administrative Rules Unit
Motor Vehicle Division, Mail Drop 507M
3737 N. 7th Street
Phoenix, Arizona 85014-5079

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
ADOT	ADOT
Businesses purchasing personalized license plates	Businesses purchasing personalized license plates

Private citizens purchasing personalized license plates	Private citizens purchasing personalized license plates

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	more than $10,000

a. Probable costs and benefits to ADOT and other agencies:

ADOT bears moderate costs associated with this rulemaking process. There are approximately 100,000 personalized license plates issued in Arizona. ADOT will have a minimal benefit from having a rule that is easier to understand and apply. ADOT will have moderate to substantial costs in committee oversight of the personalized license plate approval/denial and appeal process. During the request process only a not readily quantifiable amount are denied as most requestors receive their second or third choice and only fifty or less plates a year are given a final denial during the appeal process. Those applicants receive a full refund of their application fees.

b. Probable costs and benefits to political subdivisions:

There are no costs to political subdivisions of this state from this rule.

c. Probable costs and benefits to businesses:

Businesses should have no cost to this rule.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
ADOT	Moderate to substantial costs for rulemaking	Substantial revenue increase for clarity/specificity in plate ordering and purchasing process
Businesses purchasing personalized license plates	Minimal	Not readily quantifiable

Private citizens purchasing personalized license plates	Minimal	Not readily quantifiable

4. **Probable impact on public and private employment:**

   This rulemaking should have no impact on public or private employment.

5. **Probable impact on small businesses:**

   a. **Identification of small businesses subject to the proposed rulemaking:**

      Only businesses that have personalized plates on their vehicles will incur minimal cost in plate fee. They could also realize not readily quantifiable benefits from potential advertising using the personalized plate program.

   b. **Administrative costs and other costs required for compliance:**

      None

   c. **Description of the methods used by ADOT for reduction of impact on small businesses:**

      None

   d. **Probable costs and benefit to private persons and consumers:**

      Individual citizens could realize not readily quantifiable benefits from the clarity of the rulemaking has made for applying for personalized license plates for their vehicles. Personalized plate costs are minimal at $25 per plate request. Personalized plates are principally a luxury item.

6. **Probable effect on state revenues:**

   None

7. **Less intrusive or less costly alternative methods of achieving the proposed rulemaking:**

   None

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The Department believes it has accurately summarized this rulemaking's economic impact.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-301 and R17-4-312

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation engages in this rulemaking to prescribe the application procedure, design and placement, and user fee associated with the off-highway vehicle user indicia prescribed under A.R.S. § 28-1177.

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

The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities that purchase the off-highway vehicle indicia.

3. 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: Dora Vasquez, Administrative Rules Supervisor
Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007
Telephone: (602) 712-8159
Fax: (602) 712-3373
E-mail: dvasquez@azdot.gov

B. 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 to bear costs	**Persons to benefit**
Public upon purchase of an Off Highway Vehicle Decal	State of Arizona
Arizona Department of Transportation	Public

Persons to bear costs	Persons to benefit
	Arizona Game and Fish Department
	Arizona State Parks Department
	Arizona State Land Department
	Cities and Towns

3. Cost benefit analysis:

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

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The anticipated economic impact to the Department is substantial and includes the costs associated with implementation of the rules, system programming changes, and the resources necessary for rulemaking. However, the state of Arizona and the various agencies involved with the implementation of the Off-Highway Vehicle (OHV) Decal legislation, as well as the public will benefit substantially.

To determine probable costs the following is considered:

Vehicle Population

Game and Fish conducted a survey in which 120,000 vehicles were identified as qualifying as off-highway vehicles that are not currently titled with MVD.

MVD identified 44,000 all-terrain vehicles registered as of November, 2008.

MVD identified 155,000 motorcycles registered as of November, 2008.

MVD identified 258,000 vehicles with off-highway plates as of November, 2008.

Estimated Qualifying Vehicles

MVD, in consultation with Game and Fish, determined that the number of vehicles requiring the off-highway vehicle decal will be 425,500, based on:

108,000 90% of 120,000 vehicles identified in a Game and Fish survey

44,000 100% of all terrain vehicles

15,500 10% of 155,000 motorcycles

258,000 100% of plated off-highway vehicles

To cover ServiceArizona transaction fees, ensure adequate revenue to cover unforeseen OHV-related losses of Vehicle License Tax and registration fees to the Highway User Revenue Fund, and to reimburse MVD's actual costs directly associated with issuing the OHV decals, representatives from

State Parks, Game & Fish, and State Land Trust unanimously agreed that the OHV decal should be priced at **$25.00**.

MVD annual OHV-related expenses:

The department has determined that there are four areas of costs that must be covered to implement and maintain the OHV decal program. The following calculations are based on the number of vehicles expected to require the purchase of an OHV decal and either title and register or now convert to an off-road plate.

The costs associated are:

Eight Employee Equivalents (ongoing & variable)	$440,000
Decal Fee Production (ongoing)	$780,000
Programming (Initial Year)	$189,000
OHV-specific System Maintenance (ongoing)	$12,000
Total Initial Implementation Costs	**$1,421,000**

In addition, the Department anticipates ongoing annual costs of $1.2 million, which includes transaction fees associated with ServiceArizona and Third Party MVD providers.

The costs are calculated based on fiscal year activity and with the expectation that all 425,500 vehicles are registered with a decal.

Benefits:

Using a base figure of $25 per vehicle for 400,000 vehicles it is projected that $10 million in new revenue will be generated as a result of the OHV Decal program. With $2.7 million already existing in the OHV Program fund the total anticipated amount of dollars available as a result of the program is $12.7 million. The following benefit scenario is optimistic and may not capture all of the costs associated with the program:

OHV New Revenue $10 million + $2.7 existing funds	
$12.7 million	
OHV Fund **$9.7 mil** (70%)	MVD 30% **$3 mil** (30%)

The $9.7 million in OHV funds will be distributed in the following manner:

OHV Fund	
Arizona State Parks	$5.8 mil (60%)
Arizona Game and Fish	$3.4 mil (35%)
State Land Department	$485,000 (5% of new revenue only)

The funds generated and allocated to MVD (30%) are intended to provide cost recovery for MVD expenses as well as to compensate for the loss of Vehicle License Tax (VLT) as a result of replacing the current VLT for small off-highway vehicles operating on-road with a flat $3 tax.

Of the anticipated $5.8 million allocated to the Arizona State Parks Department $5.1 million or at least 88% will be allocated for grant funding for groups to use the money to launch programs such as improving trails, facilities, and signage. The remaining 12% will be expended on program administration.

The Arizona Game and Fish Department will utilize funds for law enforcement, information, and education and the State Land Department will expend funds on access mitigation and law enforcement.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

The Department anticipates no costs to local government as a result of this rulemaking. Benefits to local governments include an increase in state HURF distribution and a new opportunity for grant funding through the State Parks OHV Grant Program.

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 Department anticipates no impact to the revenue or payroll expenditures of businesses directly affected by the proposed rulemaking.

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

The Department anticipates no economic impact on private and public employment as a result of this rulemaking.

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

The Department anticipates no impact to small businesses as a result of this rulemaking.

a. Identification of the small businesses subject to the proposed rulemaking:

The small businesses subject to these rules are those identified under (3)(c) and also qualify under A.R.S. § 41-1001(19).

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

The Department anticipates, as a result of this rulemaking, that no administrative or other costs will be incurred by small business.

c. Description of the methods ADOT may use to reduce the impact on small businesses:

None

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The Department anticipates a minimal cost to private persons and consumers who purchase the OHV decal. Benefits include increased funding for informational and educational programs related to safety, the environment, and off-highway vehicle recreation. Improved usage areas for consumers as the State Land Department will have additional resources to mitigate damage to the land, for necessary

environmental, historical, and cultural compliance, and increased law enforcement presence in off-highway areas across the state of Arizona.

6. **Statement of the probable effect on state revenues:**

   The Department anticipates an increase in state revenue as a result of the proposed rulemaking.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

   See 5(c)

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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:

None

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-350

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

In accordance with A.R.S. § 28-5810, a rental vehicle business is required to collect a 5% Rental Vehicle Surcharge on rental contracts for vehicles rented for a period of 180 days or less. Rental vehicle businesses shall submit to the Department any Rental Vehicle Surcharges collected in excess of Vehicle License Tax (VLT) paid to the Department for the rental vehicles regardless of whether the vehicle was rented in this state or in another state or jurisdiction.

The Department engages in this rulemaking to clarify and provide more specific information, to reference the most current version of the U.S. Government Accountability Office's *Government Auditing Standards*, and to ensure conformity with the format, style, and grammar requirements of the Department, Administrative Procedure Act, Secretary of State's Office, and Governor's Regulatory Review Council.

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

The U.S. Government Accountability Office's *Government Auditing Standards* has been revised from the 2003 version referenced in the rule. It is necessary to update the rules to reflect the most recent guidelines generally accepted by the auditing industry.

There are currently 133 rental vehicle businesses required by statute to collect, report, and remit Rental Vehicle Surcharges. In 2012, 28 companies failed to submit an annual report and are in noncompliance status. The additional language and formatting revisions are intended to help the rental vehicle businesses better understand the requirements of the rule.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Lack of understanding of and noncompliance with the rule by rental vehicle businesses could result in financial assessments. Rental vehicle businesses that fail to keep and maintain proper records or fail to provide records for audit purposes may result in the Department assessing the rental vehicle company the total surcharge amount estimated to have been collected. In the past year, the Department collected $239,761.30 in assessments from rental vehicle businesses.

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

The Department anticipates that by providing a clearer understanding of what is expected from the rental vehicle businesses and how they are impacted, the noncompliance rate will decrease.

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

In accordance with A.R.S. § 28-5810, a rental vehicle business is required to collect a 5% surcharge on rental contracts for vehicles rented for a period of 180 days or less. Rental vehicle businesses submit to the Department all Rental Vehicle Surcharges collected in excess of any VLT paid to the Department for the rental vehicles regardless of whether the vehicle was rented in this state or in another state or jurisdiction.

Currently, there are 133 rental vehicle businesses required to collect, report, and remit applicable Rental Vehicle Surcharges pursuant to A.R.S. § 28-5810. The Department collected $11,136,250.97 from excess surcharges received in 2011. The Department also collected $239,761.30 from assessments against 10 noncompliant businesses. In 2012, 28 rental vehicle businesses failed to submit an annual report and were referred to the Department's auditors.

The Department anticipates that the state will incur moderate to substantial benefits in increased VLT revenue collection as a result of this rule.

The Department expects to incur minimal costs for administration and compliance since this rulemaking is generally intended to assist rental vehicle businesses by providing clarification of Department auditing guidelines. In addition, there is no cost for the current edition of the *Government Auditing Standards*, since it is available as a free download from the U.S. Government Accountability Office's website at http://www.gao.gov/yellowbook.

Rental vehicle businesses will incur minimal administrative costs associated with the clarified recordkeeping requirements outlined in this rulemaking. Any new rental vehicle businesses that begin to report due to the clarified addition of motorcycle, moped, and recreational vehicle to the rule may incur minimal to substantial costs.

3. **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: Candace Olson

Address: Government Relations and Policy Development Office
Arizona Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4534

Fax: (602) 712-3232

E-mail: COlson2@azdot.gov

B. 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 to bear costs	Persons directly benefiting
Arizona Department of Transportation	Arizona Department of Transportation
Rental Vehicle Businesses	Rental Vehicle Businesses
	Counties
	Incorporated Cities and Towns

3. **Analysis of costs and benefits occurring in this state:**

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

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

a. **Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

The Department expects to incur minimal costs since this rulemaking is generally intended to assist rental vehicle businesses by providing clarification of Department auditing guidelines. The Department expects to incur minimal administrative costs to accommodate the collection of the new additional listed recordkeeping elements from the rental vehicle businesses. There is no cost for the current edition of the *Government Auditing Standards*, since it is available as a free download from the U.S. Government Accountability Office's website. The Department does not anticipate any additional compliance costs for the clarified listing of motorcycle, moped, and recreational vehicle to the types of rental vehicles since these rental vehicle businesses currently report to the Department, but if additional companies do begin to report because of the rule's clarification the cost could be minimal or moderate depending on the number of companies and the Department resources needed to accommodate.

The Department anticipates moderate to substantial benefits from the new rule due to its increased clarity, consistency with current industry standards, increased compliance, and by spending fewer resources on providing individual clarification of the rules to regulated businesses and enforcing the rule. There are 28 noncompliant businesses that may owe excess surcharges. The majority of the compliant rental vehicle businesses remits excess surcharges under $10,000, so depending on how many of the 28 noncompliant businesses would owe an excess surcharge, the potential amount that could be remitted may range from $10,000 and higher, even possibly over $100,000. In addition, while the Department does not anticipate any additional benefits from the clarified listing of motorcycles, mopeds, and recreational vehicles to the types of rental vehicles, if any new businesses begin reporting,

the benefit could be moderate or substantial depending on the number of companies and the Department resources needed to accommodate.

The remittance of the possible additional excess surcharges from the increased number of compliant companies could moderately to substantially benefit the state since the monies will be distributed in accordance with the VLT distribution formula. VLT is distributed to the State Treasurer's Office to be apportioned among the counties for any transportation related purposes, to the State General Fund to aid school financial assistance, to the Arizona Highway User Revenue Fund, to County General Funds, to the State Highway Fund, and to incorporated cities and towns. VLT distributed to the Arizona Highway User Revenue Fund is used for highway and street purposes, including the cost of administering the state highway system and the laws creating such fees, excises, or license taxes, statutory refunds and adjustments provided by law, payment of principal and interest on highway and street bonds and obligations, expenses of state enforcement of traffic laws and state administration of traffic safety programs, payment of costs of publication and distribution of Arizona Highways magazine, state costs of construction, reconstruction, maintenance or repair of public highways, streets or bridges, costs of rights-of-way acquisitions and expenses related thereto, roadside development, and for distribution to counties, incorporated cities and towns to be used by them solely for highway and street purposes, including costs of rights-of-way acquisitions and expenses related thereto, construction, reconstruction, maintenance, repair, roadside development, of county, city and town roads, streets, and bridges and payment of principal and interest on highway and street bonds.

The Department is not required to notify the Joint Legislative Budget Committee (JLBC) under A.R.S. § 41-1055(B)(3)(a) since no new full time employees are necessary to implement these 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 remittance of the possible additional excess surcharges from the increased number of compliant companies could minimally to moderately benefit the counties and the incorporated cities and towns receiving any VLT revenues as mentioned in paragraph (B)(3)(a) above.

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:

To maintain compliance with the provisions of this rule, rental vehicle businesses will likely incur minimal administrative costs associated with the clarified recordkeeping requirements. Businesses may choose to buy the most current edition of the *Government Auditing Standards*, which is available as a free download from the U.S. Government Accountability Office's website. There are no new fees associated with this rulemaking. If a rental vehicle business is found by the Department to be noncompliant with provisions of this rule, the Department may impose an assessment against the business resulting in the loss of the total surcharge amount collected instead of any excess surcharge amount.

While rental vehicle businesses that rent out motorcycles, mopeds, and recreational vehicles currently report to the Department, if any new businesses begin to report because of the clarification to the rule, the Department anticipates that any new reporting rental vehicle businesses will incur minimal to substantial costs.

Rental vehicle businesses may benefit in the sense that reporting and surcharge reimbursement requirements are more clear and concise. A compliant business is eligible for reimbursement of any VLT paid on rental vehicles without facing the total loss of any collected surcharge, as would occur if the business is found in noncompliance and subject to an assessment.

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 Department anticipates no economic impact on private and public employment as a result of this rulemaking.

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

a. Identification of the small businesses subject to the proposed rulemaking:

The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), are the rental vehicle businesses that rent motor vehicles without drivers for a period of 180 days or less.

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

Rental vehicle businesses may incur minimal administrative costs associated with the clarified recordkeeping requirements.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The changes made in this rulemaking should have a minimal impact on small businesses. Any other method may be considered too complicated, burdensome, or over-regulatory.

Since collection and remittance of the Rental Vehicle Surcharge is required by statute, the Department is unable to exclude small businesses.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The Department does not anticipate a cost or benefit associated with this rulemaking to impact private persons or consumers.

6. Statement of the probable effect on state revenues:

The state will benefit from the timely collection of any excess Rental Vehicle Surcharges to be distributed in accordance with the VLT distribution formula. VLT is distributed to the State Treasurer's Office to be apportioned among the counties for any transportation related purposes, to the State General Fund to aid school financial assistance, to the Arizona Highway User Revenue Fund, to County General Funds, to the State Highway Fund, and to incorporated cities and towns. The Department may also expend fewer resources on enforcing the rule and providing individual clarification to regulated businesses.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

   The process chosen by the Department is the least costly as rental vehicle businesses are required to submit to the Department an annual report based on accounting and revenue typically maintained for tax reporting purposes.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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:

None

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-351 and R17-4-352

A. Economic, small business and consumer impact summary:

1. Identification of the rulemaking:

This rulemaking implements statutory changes made in 2018 legislation, which requires the Arizona Department of Transportation (ADOT) to establish a duplicate special license plate fee in rule. A.R.S. § 28-2351(A) provides that notwithstanding any other law, the Department shall provide every vehicle owner one license plate for each registered vehicle. A vehicle owner who requests a duplicate special license plate is required to pay the duplicate special license plate fee established in this rule.

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

Under previous legislation, the Department provided every owner with one license plate for each registered vehicle. Previously, a vehicle owner who paid any fee required by the Department, could request either one or two license plates for a vehicle for which the owner requested a special license plate, but the Department did not have specific rulemaking authority to charge a fee for the duplicate special license plate.

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:

Prior to passage of Laws 2018, Chapter 279, § 3, the Department provided every owner one license plate for each vehicle registered. At the request of the owner and on payment of any required fee, the Department was required to provide either one or two license plates for a vehicle for which the owner requested special license plates. The Department did not have specific rulemaking authority to establish a duplicate special license plate fee. A vehicle owner will no longer be able to obtain a duplicate special license plate at no cost and will need to pay a $10 fee for each duplicate special license plate requested.

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

As a result of this rulemaking, an owner of a registered vehicle who requests a duplicate special license plate will be required to pay to the Department the new one-time $10 fee to obtain each duplicate special license plate, which may reduce the number of requests for a duplicate special license plate.

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

The duplicate special license plate fee is applicable only for those vehicle owners who request a duplicate special license plate. At this time the Department has 69 special license plate designs. For some special

license plates, the vehicle owner must be a member or former member of a certain organization, have a certain type of vehicle, or may choose a special license plate in order to donate a portion of the initial or renewal special license plate fee to that organization. A vehicle owner is required to have one license plate on the rear of the owner's vehicle. The Department is establishing a one-time fee of $10 for each duplicate special license plate requested. A.R.S. § 28-2151 also authorizes the Department to charge a vehicle owner the current postage and handling cost to send a duplicate special license plate to a vehicle owner. The current postage and handling cost to mail a full-size license plate is $5.53, or $4.80 for a smaller license plate for a motorcycle or a small trailer.

Those small businesses, as defined in A.R.S. § 41-1001, that have light duty vehicles with commercial registration that are used for commercial purposes 1,000 or more hours per registration year, cannot obtain a special license plate, and would not be impacted under these rules. If a vehicle is registered in the name of a commercial enterprise, the vehicle must be registered commercially unless the applicant certifies that the vehicle is not used for commercial purposes. Subject to these requirements, some small businesses with light-duty vehicles that are not registered commercially, but are used commercially less than 1,000 hours per registration cycle, could choose a special license plate, and would be be required to pay the duplicate special license plate fee and mailing costs.

3. 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: Jane McVay
Address: Arizona Department of Transportation
Rules and Policy Development
206 S. 17th Avenue, Mail Drop 180A
Phoenix, AZ 85007
Telephone: (602) 712-4279
E-mail: jmcvay@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the 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 rulemaking:

Persons to bear costs	**Persons directly benefiting**
Arizona Department of Transportation	Arizona transportation infrastructure users, residents, and tourists.
Drivers who request a duplicate special license plate	Arizona transportation infrastructure users, residents, and tourists.

3. Analysis of costs and benefits occurring in this state:

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

Minimal	less than $10,000
Moderate	$10,000 to $99,999
Substantial	$100,000 or more

a. **Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the rulemaking:**

In FY 2017 prior to the implementation of the duplicate special license plate fee, the Department received requests for over 45,000 special license plates. The Department anticipates incurring minimal costs to implement this rulemaking. The average cost for the Department to manufacture a duplicate special license plate varies with different designs, but costs $3.50 on average. ADOT benefits from this rulemaking because the agency will be able to recoup the manufacturing costs for a duplicate special license plate and a portion of administrative and other costs. ADOT will receive additional revenue from this fee, which will be deposited in the Highway User Revenue Fund, which is used to fund transportation infrastructure projects that benefit Arizona residents and other travelers in the state.

ADOT will incur some minimal one-time programming costs to implement systems programming necessary to charge the duplicate special license plate fee. The Department delayed this rulemaking in order to minimize the programming costs involved. The programming costs would have been substantially greater to implement this provision earlier while extensive motor vehicle systems changes are ongoing. Minimal costs were incurred by the Department for this rulemaking. This rulemaking will not impose additional costs on any other state agency. The Department will not need to hire any new full-time employees to implement the rules. The Department believes that the benefits of the rules exceed the costs.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking:

These rules will not impose any additional costs on political subdivisions.

c. Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:

These rules will not impact the revenue and payroll of businesses affected by the rulemaking.

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

The rules will not have any economic impact on private or public employment.

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

a. Identification of the small businesses subject to the rulemaking:

Those small businesses, as defined in A.R.S. § 41-1001, that have light duty vehicles with commercial registration that are used for commercial purposes 1,000 or more hours per registration year, cannot

obtain a special license plate, and would not be impacted under these rules. If a vehicle is registered in the name of a commercial enterprise, the vehicle must be registered commercially unless the applicant certifies that the vehicle is not used for commercial purposes. Subject to these requirements, some small businesses with light-duty vehicles that are not registered commercially, but are used commercially less than 1,000 hours per registration cycle, could choose a special license plate, and would be required to pay the duplicate special license plate fee and mailing costs.

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

The rules will not impose any additional costs on small businesses unless the business chooses a special license plate and pays the $10 fee for a duplicate special license plate in addition to postage costs.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

A.R.S. § 28-3153(A) does not allow the Department to charge a small business owner a lower fee for a duplicate special license plate. All motor vehicles registered in the state are required to have an appropriate Arizona license plate. Certain small businesses may choose to obtain a standard license plate for their vehicle, which is available at no cost.

d. Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

A person who has a motor vehicle, motorcycle, trailer or semitrailer is required to display a license plate on the rear of the owner's vehicle. A vehicle owner may choose to purchase a special license plate for the owner's car, which must be located on the rear of the vehicle. A vehicle owner generally pays $25 for the initial special license plate, and $25 per year to renew the special license plate, with some statutory exceptions for certain special license plates. This rule does not impact or change the initial or renewal fees for the first special license plate, but only deals with a motor vehicle owner who opts to receive a duplicate special license plate for the front of the owner's vehicle or for other display. The rule limits the owner's cost to a one-time fee of $10 to obtain a duplicate special license plate. Existing statute also allows the Department to charge for mailing costs, which adds $5.53 to the total cost of a full-size special license plate or $4.80 for a smaller license plate for a motorcycle or a small trailer.

A vehicle owner who has permanent physical disabilities may request disabled special license plates. For those vehicles that have a wheelchair carrier or wheelchair lift with a wheelchair attached to the vehicle, the vehicle owner is required by law to have a license plate on the rear of the vehicle and a license plate on the wheelchair carrier or lift to ensure the license plate is visible. Vehicle owners who attach a wheelchair carrier or lift to their vehicles after the rule's effective date will be subject to the duplicate special plate fee.

6. Statement of the probable effect on state revenues:

Revenue generated from duplicate special license plates is deposited in the Highway User Revenue Fund (HURF), which can only be used for state transportation infrastructure purposes. The Department does not

have an estimate of the number of duplicate special license plates that will be requested after the fee is implemented. The rule has no impact on the state general fund.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

   See 5(c)

   ADOT routinely chooses the rulemaking option that is the least costly and burdensome to the business sector.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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:

None

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Articles 1, 2, and 3

Section D

Rule Text

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

Authority: A.R.S. §§ 28-366 and 28-5204

Supp. 22-3

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Editor's Note: Sections R17-4-606, R17-4-607 and its Appendix A and Appendices A and B were repealed under a Notice of Proposed Summary Rulemaking in Supp. 96-1. R17-4-612 was amended under the same Notice of Proposed Summary Rulemaking at 2 A.A.R. 1486. The Office did not receive a Notice of Final Summary Rulemaking on these Sections (Editor's Note added Supp. 10-2).

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ARTICLE 1. GENERAL PROVISIONS

R17-4-101. Definitions

In addition to the definitions prescribed under A.R.S. § 28-101, A.R.S. § 28-3001, and 6 CFR 37.3, the following terms apply to this Chapter, unless otherwise specified:

"Non-operating identification license" means a credential issued by the Department for identification purposes only, as prescribed under A.R.S. § 28-3165, which does not grant authority to operate a motor vehicle and is not intended to be accepted by federal agencies for an official purpose defined under 6 CFR 37.3.

"Travel-compliant driver license" has the same meaning as the term REAL ID Driver's License defined under 6 CFR 37.3, which is a driver license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials intended to be accepted by federal agencies for official purposes.

"Travel-compliant identification license" has the same meaning as the term REAL ID Identification Card as defined under 6 CFR 37.3, which is a non-operating identification license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials acceptable by federal agencies for official purposes.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

ARTICLE 2. VEHICLE TITLE

R17-4-201. Definitions

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

"Authorized ELT Participant" means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

"Date of lien" means the date identified by the lienholder as the date the loan was issued to the borrower.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Encumbrance" means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

"ELT" means Electronic Lien and Title.

"EPA standards" means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

"FMVSS" means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

"Joint tenancy with right of survivorship" means vehicle ownership by two or more persons and the deceased joint owner's interest in the vehicle is transferred to the surviving owners.

"Lienholder" means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

"Lienholder Number" means the computer-generated record number assigned by the Division to a lienholder.

"Low-speed vehicle" has the same meaning as prescribed under 49 CFR 571.3.

"MPV" means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

"MVD" means the Arizona Department of Transportation's Motor Vehicle Division.

"NHTSA" means National Highway Traffic Safety Administration of the United States Department of Transportation.

"Operation of law lien" means a lien resulting from the application of a state or federal statute.

"Primary lien" means the first of any multiple liens recorded on a vehicle or mobile home record.

"Registered importer" means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

"Tenancy in common" means vehicle ownership by two or more people without the right of survivorship.

"Valid titling document" means one of the following documents showing a vehicle's compliance with FMVSS and EPA standards:

A NHTSA Declaration,

A manufacturer's letter, or

A U.S. federal compliance label printed in English.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-202. Certificate of Title Form

A. The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.

B. MVD shall provide space on the Certificate of Title form for the following information:

1. Title information:
   a. Title number;
   b. Issue date;
   c. Previous title number; and
   d. State and date of previous title.
2. Vehicle information:
   a. Vehicle identification number (VIN);
   b. Vehicle make, model, year, and body style;
   c. Fuel type;
   d. Odometer information; and
   e. Vehicle mechanical or structural condition.
3. Lienholder information:
   a. Lienholder name and address;
   b. Lienholder customer or federal identification number; and
   c. Lien amount and lien date.
4. Vehicle owner's or owner's legal designee information:
   a. Name; and
   b. Mailing address.
5. Ownership change information:
   a. Sale date;

b. Purchaser's name and address;
c. Odometer mileage disclosure statement;
d. Seller's signature; and
e. Seller's signature certification.
6. Dealer reassignment information.
7. Other information as required by the Division for internal processing and recordkeeping.

Historical Note
New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-203. Certificate of Title and Registration Application

A. In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
a. Tab number;
b. Initial registration month and year;
c. Vehicle make, model, year, and body style;
d. Mechanical or structural status indicating whether the vehicle is:
i. Dismantled,
ii. Reconstructed,
iii. Salvaged, or
iv. Specially constructed;
e. Gross vehicle weight;
f. Fuel type;
g. Odometer information;
h. Current title number and titling state.
2. An owner's or lessee's legal ownership status.
3. Lienholder information:
a. Lienholder names and addresses, and
b. Lien amount and date incurred.
4. If a mobile home, the physical site.
5. Co-ownership information:
a. A statement of whether any survivorship rights in the vehicle exist; and
b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
6. Owner certification information verifying:
a. Ownership,
b. Inclusion of all liens and encumbrances, and
c. Seller-verified odometer reading.
7. Applicant signatures.
8. An acknowledgement that:
a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
b. The applicant has read a printed explanation of odometer reading codes.
9. Other information required by the Division for internal processing and recordkeeping.

B. An applicant may voluntarily provide the following information on the form:
1. Applicant's birth date;
2. Applicant's driver license number; and
3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

Historical Note
New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-204. Seller's Signature Acknowledgement

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

Historical Note
Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-205. Co-ownership and Vehicle Title

A. A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
a. The name of each co-owner separated by "or"; and
b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."

B. Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehicle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

C. After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
1. A certified probate court order, or
2. A successor's affidavit under A.R.S. § 14-3971(B).

Historical Note
Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"

A. Titling standards.
1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
a. A valid titling document,

b. A completed MVD title and registration application as prescribed under R17-4-203,
c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
e. A certificate that the vehicle was converted to meet:
i. EPA standards, and
ii. FMVSS.

2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
4. Titling standards for vehicles manufactured according to Canadian specifications.
a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
i. Is not for resale;
ii. Has a GVWR of less than 10,000 pounds; and
iii. Is a passenger vehicle, motorcycle, or MPV.
b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:
i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).

B. The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
1. Is not exempt under subsections (A)(2) or (A)(3), or
2. Does not qualify under subsection (A)(4).

Historical Note
Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-207. Lien Filing

A. Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.

B. Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.

C. Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

Historical Note
Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-208. Lien Clearance

A. Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
1. The transmission of an electronic lien release from an ELT Participant,
2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),

4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).

B. Lienholder satisfaction of lien requirements.

1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.

C. Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.

D. Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-209. Recodified

Historical Note

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-210. Repealed

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

Appendix A. Repealed

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

R17-4-211. Reserved

R17-4-212. Reserved

R17-4-213. Reserved

R17-4-214. Reserved

R17-4-215. Reserved

R17-4-216. Recodified

Historical Note

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-217. Recodified

Historical Note

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-218. Recodified

Historical Note

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-219. Recodified

Historical Note

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-220. Repealed

Historical Note

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44

renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-221. Repealed

Historical Note
Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-222. Recodified

Historical Note
Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-223. Repealed

Historical Note
Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

R17-4-224. Recodified

Historical Note
Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-225. Reserved

R17-4-226. Recodified

Historical Note
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Repealed

Historical Note
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

R17-4-226.01. Recodified

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-227. Recodified

Historical Note
Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-228. Reserved

R17-4-229. Reserved

R17-4-230. Recodified

Historical Note
Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-231. Recodified

Historical Note
Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-232. Reserved

R17-4-233. Reserved

R17-4-234. Reserved

R17-4-235. Reserved

R17-4-236. Reserved

R17-4-237. Repealed

Historical Note
Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-238. Repealed

Historical Note
Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-239. Repealed

Historical Note
Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-240. Recodified

Historical Note
Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-241. Recodified

Historical Note
Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-242. Repealed

Historical Note
Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

R17-4-243. Repealed

Historical Note
Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-244. Reserved

R17-4-245. Recodified

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-246. Recodified

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-247. Reserved

R17-4-248. Reserved

R17-4-249. Reserved

R17-4-250. Repealed

Historical Note
Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-251. Repealed

Historical Note
Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-252. Recodified

Historical Note
Former Rule, General Order 82. Former Section R17-4-34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-253. Reserved

R17-4-254. Reserved

R17-4-255. Reserved

R17-4-256. Reserved

R17-4-257. Reserved

R17-4-258. Reserved

R17-4-259. Reserved

R17-4-260. Recodified

Historical Note
Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-261. Reserved

R17-4-262. Reserved

R17-4-263. Reserved

R17-4-264. Reserved

R17-4-265. Repealed

Historical Note
Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

ARTICLE 3. VEHICLE REGISTRATION

R17-4-301. Definitions

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

"Apportioned commercial vehicle" means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

"Biennial" means once every two years.

"Business day" means a day other than a Sunday or holiday.

"Calendar quarter" means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

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

"Disabled person" means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Division Director" means the Assistant Director for the Arizona Department of Transportation's Motor Vehicle Division or the Assistant Director's designee.

"Drop box" means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

"Effective date of registration" means the date the vehicle first becomes subject to registration fees in Arizona.

"Electronic delivery" means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

"Emergency Vehicle Permit" means a document issued by the Division's Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

"Expiration date" means the day, month, and year in which a vehicle registration expires.

"Fire Engine" means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

"IM147 Test" means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Included vehicle" means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

"Initial registration" means the first registration of an included vehicle in Arizona.

"OBD" means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Off-highway vehicle" has the same meaning as prescribed under A.R.S. § 28-1171.

"Operator Requirements" means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

"Private fire department" means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

"Private Fire Emergency Vehicle" means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

"Registration" means the authorization, issued by the Division that allows a vehicle to use state highways.

"Registration fees" means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

"Registration period" means the time-frame during which a vehicle registration is valid.

"Renewal registration" means the second and subsequent registration of an included vehicle.

Historical Note

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-302. Staggered Registration for Apportioned Commercial Vehicles

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
   a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
   b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
   c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
   d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
   a. Ensure that all vehicles within a fleet have the same registration period.
   b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
   c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

Historical Note

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-303. Biennial Registration

A. Biennial registration.
1. The Division may register any vehicle biennially, unless excluded.
2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.

B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
2. A vehicle that requires an annual emissions test.
3. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202, or
   d. Interstate registration under A.R.S. § 28-2052.
4. A vehicle with an undersized mobile home plate registration.
5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty mil-

itary member, a widow, widower, or disabled person other than a 100% disabled veteran.

Historical Note

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-304. Staggered Registration for Included Vehicles

A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
   a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
   a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.

B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
1. A vehicle exempt from registration;
2. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202,
   d. Interstate registration under A.R.S. § 28-2052, or
   e. Seasonal agricultural registration under A.R.S. § 28-5436;
3. A vehicle subject to a one-time registration fee;
4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
6. A moped;
7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.

C. Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.

D. Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
2. Biennial registration: Expires 24 months from the expiration of the previous registration period.

E. Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:
   a. The application for registration or registration card, and
   b. Payment of registration fees.
2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
   a. Required registration information, and
   b. Credit card information.

F. Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.

G. Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.

H. Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.

I. Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

Historical Note
Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-305. Temporary Registration Plate "TRP" Procedure

A. Definitions.
1. "Charitable Event TRP" means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
2. "Deal Unwound" means the vehicle was returned to the dealership and the sale was not completed.
3. "Voided TRP" means a TRP that the issuer records as voided after issuing the TRP.

B. Issuing.
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
2. The TRP expiration date shall be 45 days from the issue date.
3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
4. An issuer shall not issue more than one TRP per vehicle sale.
5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.

C. Voiding. An issuer shall void a TRP when:
1. The TRP is lost,
2. The TRP is damaged,
3. The dealer reports a deal unwound,
4. The issuer enters the wrong vehicle identification number, or
5. The issuer enters the wrong customer identification number.

Historical Note
Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

R17-4-306. Nonresident Daily Commuter Fee

A nonresident daily commuter shall pay a fee of $8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

Historical Note
Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee

A. Under A.R.S. § 28-4151(A), the Division shall assess a $50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.

B. Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

Historical Note
Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

R17-4-308. Official Vehicle License Plates

A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).

B. A license plate issued under A.R.S. § 28-2511 has no expiration date.

C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.

D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
2. Display each license plate as prescribed by A.R.S. § 28-2354; and
3. Maintain a record of each license plate transfer that includes:
   a. The date of the transfer;
   b. The year, make, and model of the vehicle, and
   c. The vehicle identification number (VIN) for each car involved in the transfer.

Historical Note
Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

R17-4-309. Private Fire Emergency Vehicle Permit

A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
3. The Private Fire Emergency Vehicle Permit is not transferable.
4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.

B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and

2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
   a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;
   b. Is written for a combined single-limit coverage of at least $5 million;
   c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
   d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

C. Operational requirements.
1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

D. Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.

E. Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.
1. The emergency vehicle permit is immediately revoked upon a determination that:
   a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
   b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
2. The revocation shall be preceded by a notice of intent to revoke.
   a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
   b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

F. Administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

Appendix A. Repealed

Historical Note

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

R17-4-310. Personalized License Plates

A. Definitions.
1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.
1. An applicant shall provide the following information on the form:
   a. Name of the vehicle's owner or lessee;
   b. Vehicle owner's or lessee's mailing address;
   c. Vehicle's make and year;
   d. Vehicle identification number;
   e. Vehicle's current plate number;
   f. Date the vehicle's current registration expires;
   g. Plate number to appear on the personalized plate;
   h. Meaning or message of the personalized plate; and
   i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

C. The Division shall reject the application if the requested plate number:
1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

D. Rejection of application.
1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.

2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:
   Motor Vehicle Division
   Special Plates Unit, Mail Drop 801Z
   PO Box 2100
   Phoenix, Arizona 85001-2100.

E. Revocation of personalized plates; appeal.
1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).
2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
   a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
   b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

Historical Note
Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

R17-4-311. Special Organization Plate List
As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:
1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

Historical Note
Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

R17-4-312. Off-highway Vehicle User Indicia
A. For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

B. The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
2. Primarily off-highway, occasionally on-highway; or
3. Primarily on-highway, occasionally off-highway.

C. The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is $25.

D. The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.

E. The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

Historical Note
Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4). New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-313. Expired

Historical Note
Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2). Section repealed; new Section made by exempt rulemaking at 25 A.A.R. 2261, with an effective date of August 19, 2019 (Supp. 19-3). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 2061 (August 19, 2022), with an immediate effective date of August 2, 2022 (Supp. 22-3).

R17-4-314. Transferred

Historical Note
Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

R17-4-315. Transferred

Historical Note
Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

R17-4-316. Transferred

Historical Note
Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

R17-4-317. Transferred

Historical Note
Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

R17-4-318. Transferred

Historical Note
Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

R17-4-319. Transferred

Historical Note
Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

R17-4-320. Transferred

Historical Note
Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

R17-4-321. Transferred

Historical Note
Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

R17-4-322. Transferred

Historical Note
Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

R17-4-323. Transferred

Historical Note
Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

R17-4-324. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-325. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-326. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-327. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-328. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-329. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-330. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

R17-4-331. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

R17-4-332. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

R17-4-333. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

R17-4-334. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

R17-4-335. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

R17-4-336. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

R17-4-337. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

R17-4-338. Transferred

Historical Note
Transferred to R17-1-338 (Supp. 92-4).

R17-4-339. Transferred

Historical Note
Transferred to R17-1-339 (Supp. 92-4).

R17-4-340. Transferred

Historical Note
Transferred to R17-1-340 (Supp. 92-4).

R17-4-341. Transferred

Historical Note
Transferred to R17-1-341 (Supp. 92-4).

R17-4-342. Transferred

Historical Note
Transferred to R17-1-342 (Supp. 92-4).

R17-4-343. Transferred

Historical Note
Transferred to R17-1-343 (Supp. 92-4).

R17-4-344. Transferred

Historical Note
Transferred to R17-1-344 (Supp. 92-4).

R17-4-345. Transferred

Historical Note
Transferred to R17-1-345 (Supp. 92-4).

R17-4-346. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

R17-4-347. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

R17-4-348. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

R17-4-349. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

R17-4-350. Rental Vehicle Surcharge Reimbursement

A. Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

"Person" means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

"Previous year" means the prior calendar year, January 1 through December 31.

"Rental revenue" means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

"Surcharge" means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

"Vehicle License Tax" means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

B. Reports. Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:

1. Address where business records are secured;
2. Name, title, phone number, and signature of the person authorized to sign the form;
3. Business name;
4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
5. Name, title, phone number, mailing address, and e-mail address of the contact person;
6. Federal Employer Identification Number (FEIN);
7. Mailing address (if different from principal business address);
8. Principal business address;
9. Rental vehicle revenue collected, by county;
10. Total Arizona Vehicle License Tax paid on rental vehicles;
11. Total rental vehicle revenue collected;
12. Total surcharge collected;
13. Total surcharge due to the Department; and
14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.

C. Records. A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
   a. The Vehicle Identification Number,
   b. The Arizona vehicle license plate number,
   c. A copy of the Arizona registration,
   d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
   e. The date on which the Vehicle License Tax was paid, and
   f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
   a. The rental contract for each rental vehicle,
   b. The amount of surcharge collected,
   c. Chart of accounts,
   d. General ledger,
   e. Financial statements,
   f. Federal tax returns, and
   g. Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
   a. All applicable rental contracts; and
   b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.

D. Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at http://www.gao.gov/yellowbook or can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

R17-4-351. Special License Plate; Definition

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

R17-4-352. Duplicate Special License Plate; Fee

A. The Department shall charge and collect from a motor vehicle owner a one-time fee of $10 for each duplicate special license plate requested.

B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

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Section E

Statutory Authority, Definitions, and Other Applicable Rules

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

Article 1. General Provisions; Article 2. Vehicle Title; and Article 3. Vehicle Registration

A.R.S. § 28-363. Duties of the director; administration.

A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.
2. Appoint assistant directors for each of the divisions.
3. Provide for the assembly and distribution of information to the public concerning department activities.
4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.
5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.
6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.
7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.
8. Assist regional transportation planning agencies, councils of government, tribal governments, counties, cities and towns in the development of their regional and local transportation plans to ensure that the streets, highways and other regionally significant modes of transportation within each county form an integrated and efficient regional system.
9. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.
10. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.
11. 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.
12. Develop a plan to increase use of bypass routes by vehicles on days of poor visibility in the Phoenix metropolitan area.

B. The assistant directors appointed pursuant to subsection A of this section are subject to title 41, chapter 4, article 4.

C. The director shall not spend any monies, adopt any rules or implement any policies or programs to convert signs to the metric system or to require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for any highway project before the conversion or use is required by federal law, except that the director may:

1. Spend monies and require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for a highway project that is awarded before October 1, 1997 and that is exclusively metric from its inception.
2. Prepare for conversion to and use of the metric system not more than six months before the conversion or use is required by federal law.

A.R.S. § 28-366. Director; rules.

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-7045. Director; state highway and route use; rules.

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

Specific Implementing Authority

A.R.S. § 14-3971. Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property

A. At any time after the death of a decedent, any employer owing wages, salary or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in excess of five thousand dollars, on being presented an affidavit made by or on behalf of the spouse stating that the affiant is the surviving spouse of the decedent, or is authorized to act on behalf of the spouse, and that no application or petition for the appointment of a personal representative is pending or has been granted in this state or, if granted, the personal representative has been discharged or more than one year has elapsed since a closing statement has been filed.

B. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor and stating that all of the following are true:

1. Thirty days have elapsed since the death of the decedent.
2. Either:
   (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed seventy-five thousand dollars as valued as of the date of death.
   (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed seventy-five thousand dollars as valued as of the date of the affidavit.
3. The claiming successor is entitled to payment or delivery of the property.

C. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors on presentation of an affidavit pursuant to subsection B of this section.

D. The motor vehicle division shall transfer title of a motor vehicle from the decedent to the successor or successors on presentation of an affidavit as provided in subsection B of this section and on payment of the necessary fees.

E. No sooner than six months after the death of a decedent, a person or persons claiming as successor or successors to the decedent's interest in real property, including any debt secured by a lien on real property, may file in the court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit

describing the real property and the interest of the decedent in that property and stating that all of the following are true and material and acknowledging that any false statement in the affidavit may subject the person or persons to penalties relating to perjury and subornation of perjury:

1. Either:
   (a) An application or petition for the appointment of a personal representative is not pending and a personal representative has not been appointed in any jurisdiction and the value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property, does not exceed one hundred thousand dollars as valued at the date of death. The value of the decedent's interest in that real property shall be determined from the full cash value of the property as shown on the assessment rolls for the year in which the decedent died, except that in the case of a debt secured by a lien on real property the value shall be determined by the unpaid principal balance due on the debt as of the date of death.
   (b) The personal representative has been discharged or more than one year has elapsed since a closing statement has been filed and the value of all real property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars as valued as of the date of the affidavit. The value of the decedent's interest in that real property is determined from the full cash value of the property as shown on the assessment rolls for the year in which the affidavit is given, except that if a debt is secured by a lien on real property, the value is determined by the unpaid principal balance due on the debt as of the date of the affidavit.
2. Six months have elapsed since the death of the decedent as shown in a certified copy of the decedent's death certificate attached to the affidavit.
3. Funeral expenses, expenses of last illness and all unsecured debts of the decedent have been paid.
4. The person or persons signing the affidavit are entitled to the real property by reason of the allowance in lieu of homestead, exempt property or family allowance, by intestate succession as the sole heir or heirs, or by devise under a valid last will of the decedent, the original of which is attached to the affidavit or has been probated.
5. No other person has a right to the interest of the decedent in the described property.
6. No federal estate tax is due on the decedent's estate.

F. The normal filing fee shall be charged for the filing of an affidavit under subsection E of this section unless waived by the court as provided by section 12-301 or 12-302. On receipt of the affidavit and after determining that the affidavit is complete, the registrar shall issue a certified copy of the affidavit without attachments, and the copy shall be recorded in the office of the recorder in the county where the real property is located.

G. This section does not limit the rights of heirs and devisees under section 14-3901.

A.R.S. § 28-369. Law enforcement powers; ports of entry; violation; classification.

A. The director and officers, agents and employees of the department or local or state law enforcement agencies the director designates are peace officers. The director may designate:

1. Regular peace officers with like authority of other peace officers of this state or cities and towns of this state.
2. Specialty peace officers whose powers are limited to the enforcement of motor vehicle laws and rules.

B. The director and designated officers, agents and employees may exercise the powers prescribed in subsection A of this section throughout this state.

C. A regular peace officer designated pursuant to subsection A, paragraph 1 of this section:

1. Shall meet the minimum qualifications established for peace officers pursuant to section 41-1822.
2. Except as provided in title 38, chapter 5, article 4, is not eligible to participate in the public safety personnel retirement system.

D. This section does not preempt the authority and jurisdiction of established agencies and political subdivisions of this state.

E. A peace officer as defined in section 41-1701 or a peace officer designated in subsection A of this section may require a vehicle that is subject to the fee in section 28-5433 or the requirements of sections 28-2321 through 28-2324 to stop at a port of entry in this state for the purpose of enforcing a motor vehicle law prescribed in this title. A person who fails to stop as required by this subsection is guilty of a class 1 misdemeanor.

A.R.S. § 28-624. Authorized emergency vehicles

A. If an authorized emergency vehicle is driven in response to an emergency call, in pursuit of an actual or suspected violator of law or in response to but not on return from a fire alarm, the driver may exercise the privileges provided in this section subject to the conditions stated in this section.

B. If the driver of an authorized emergency vehicle is operating at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, the driver may:

1. Notwithstanding this chapter, park or stand.
2. Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation.
3. Exceed the prima facie speed limits if the driver does not endanger life or property.
4. Disregard laws or rules governing the direction of movement or turning in specified directions.

C. The exemptions authorized by this section for an authorized emergency vehicle apply only if the driver of the vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary and if the vehicle is equipped with at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red or red and blue light or lens visible from in front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of the driver's reckless disregard for the safety of others.

A.R.S. § 28-1177. Off-highway vehicle user fee; indicia; registration; state trust land recreational permit; exception

A. A person shall not operate an all-terrain vehicle or an off-highway vehicle in this state without an off-highway vehicle user indicia issued by the department if the all-terrain vehicle or off-highway vehicle meets both of the following criteria:
   1. Is designed by the manufacturer primarily for travel over unimproved terrain.
   2. Has an unladen weight of eighteen hundred pounds or less.

B. A person shall apply to the department of transportation for the off-highway vehicle user indicia by submitting an application prescribed by the department of transportation and a user fee for the indicia in an amount to be determined by the director of the department of transportation in cooperation with the director of the Arizona game and fish department and the Arizona state parks board. The user indicia is valid for one year from the date of issuance and may be renewed. The department shall prescribe by rule the design and placement of the indicia.

C. When a person pays for an off-highway vehicle user indicia pursuant to this section, the person may request a motor vehicle registration if the vehicle meets all equipment requirements to be operated on a highway pursuant to article 16 of this chapter. If a person submits a signed affidavit to the department affirming that the vehicle meets all of the equipment requirements for highway use and that the vehicle will be operated primarily off of highways, the department shall register the vehicle for highway use and the vehicle owner is not required to pay the registration fee prescribed in section 28-2003. This subsection does not apply to vehicles that as produced by the manufacturer meet the equipment requirements to be operated on a highway pursuant to article 16 of this chapter.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, seventy per cent of the user fees collected pursuant to this section in the off-highway vehicle recreation fund established by section 28-1176 and thirty per cent of the user fees collected pursuant to this section in the Arizona highway user revenue fund.

E. An occupant of an off-highway vehicle with a user indicia issued pursuant to this section who crosses state trust lands must comply with all of the rules and requirements under a state trust land recreational permit. All occupants of an off-highway vehicle with a user indicia shall obtain a state trust land recreational permit from the state land department for all other authorized recreational activities on state trust land.

F. This section does not apply to off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles that are used off-highway exclusively for agricultural, ranching, construction, mining or building trade purposes.

A.R.S. § 28-2051. Application for certificate of title; vision screening test

A. A person shall apply to the department on a form prescribed or authorized by the department for a certificate of title to a motor vehicle, trailer or semitrailer. The person shall make the application within fifteen days after the purchase or transfer of the vehicle, trailer or semitrailer except that a licensed motor vehicle dealer shall make

the application within thirty days after the purchase or transfer. All transferees shall sign the application, except that one transferee may sign the application if both of the following apply:

1. The application is for the purposes of converting an out-of-state certificate of title to a certificate of title issued pursuant to this article.
2. The ownership or legal status of the motor vehicle, trailer or semitrailer does not change.

B. The application shall contain:

1. The transferee's full name and either the driver license number of the transferee or a number assigned by the department.
2. The transferee's complete residence address.
3. A brief description of the vehicle to be issued a certificate of title.
4. The name of the manufacturer of the vehicle.
5. The serial number of the vehicle.
6. The last license plate number if applicable and if known and the state in which the license plate number was issued.
7. If the application is for a certificate of title to a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.
8. If the application is in the name of a lessor:
   (a) The lessor shown on the application as the owner or transferee.
   (b) At the option of the lessor, the lessee shown on the application as the registrant.
   (c) The address of either the lessor or lessee.
   (d) The signature of the lessor.
9. If the application is for a certificate of title to a specially constructed, reconstructed or foreign vehicle, a statement of that fact. For the purposes of this paragraph, "specially constructed vehicle" means a vehicle not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles.
10. If an applicant rents or intends to rent the vehicle without a driver, a statement of that fact.
11. Other information required by the department.

C. Unless subsection B, paragraph 8 of this section applies, on request of an applicant, the department shall allow the applicant to provide on the certificate of title of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant.

D. A person shall submit the following information with an application for a certificate of title:

1. To a vehicle previously registered:
   (a) The odometer mileage disclosure statement prescribed by section 28-2058.
   (b) If the applicant is applying for a certificate of title pursuant to section 28-2060, the applicant's statement of the odometer reading as of the date of application.
2. To a new vehicle:
   (a) Either of the following:

(i) A manufacturer's certificate of origin showing the date of sale to the dealer or person first receiving the vehicle from the manufacturer. Before the department issues a certificate of title to a new vehicle, a manufacturer's certificate of origin shall be surrendered to the department.

(ii) A factory invoice, a form that is provided by the department or other documentation that shows the date of sale to the dealer or the person who first received the vehicle from the manufacturer.

(b) The name of the dealer or person.

(c) A description sufficient to identify the vehicle.

(d) A statement certifying that the vehicle was new when sold.

(e) If sold through a dealer, a statement by the dealer certifying that the vehicle was new when sold to the applicant.

E. The department may request that an applicant who appears in person for a certificate of title of a motor vehicle, trailer or semitrailer satisfactorily complete the vision screening test prescribed by the department.

A.R.S. § 28-2052. Title and registration of foreign vehicles

A. Except as provided in subsection E of this section, the owner of a foreign vehicle that has been registered in another state or country and for which an application for a certificate of title is made shall surrender to the department the license plates assigned to the vehicle, the registration card, the certificate of ownership or other evidence of foreign registration and satisfactory evidence of ownership showing that the applicant is the lawful owner or possessor of the vehicle.

B. If in the course of interstate operation of a vehicle registered in another state or country it is desirable to retain registration of the vehicle in the other state or country, the applicant need not follow the requirements of subsection A of this section but shall submit evidence of the foreign registration and ownership for inspection. The department shall register the vehicle on a proper showing of evidence of registration but shall not issue a certificate of title for the vehicle.

C. The department may inspect a foreign vehicle before issuing a certificate of title or before registration, including examination and inspection to establish compliance with section 28-955, under conditions and standards as required by the director of environmental quality. The department may establish procedures to accept vehicle inspections completed in another state.

D. Before the department issues a certificate of title to a vehicle imported into this country, the owner shall obtain a certificate of compliance that states that the vehicle meets all federal vehicle equipment and emissions equipment requirements. This subsection does not apply to a golf cart manufactured or modified before June 17, 1998 or neighborhood electric vehicle manufactured or modified before June 17, 1998.

E. The department may establish procedures to accept evidence that the certificate of title or certificate of ownership has been voided or destroyed by another state.

A.R.S. § 28-2055. Certificate of title; content requirements; transfer on death provision

A. The department or an authorized third party shall do both of the following:

1. Create the certificate of title with space for notation of liens and encumbrances on the vehicle at the time of transfer.
2. Provide forms for assignment of title or interest and warranty by the owner that include the odometer mileage disclosure statement pursuant to section 28-2058.

B. At the request of the owner, the certificate of title may contain, by attachment, a transfer on death provision where the owner may designate a beneficiary of the vehicle.

C. If a motor vehicle, trailer or semitrailer has been registered in any other state or country, the department shall retain in its records the name of the state or country in which the prior registration took place.

A.R.S. § 28-2058. Transfer of title; odometer mileage disclosure statement; education

A. When the owner of a registered or unregistered vehicle transfers or assigns the owner's title or interest to the vehicle:

1. If the vehicle is registered:
   (a) The owner shall endorse on the certificate of title or title transfer form an assignment with the warranty of title.
   (b) Except as provided in section 28-2094, the owner shall deliver the certificate of title or title transfer form to the purchaser or transferee at the time of delivery of the vehicle to the purchaser or transferee.
   (c) The registration of the vehicle expires and the owner shall transfer the license plates, surrender the license plates to the department or an authorized third party or submit an affidavit of license plate destruction within thirty days after the owner transfers or assigns the owner's title or interest in the vehicle.
   (d) Except as provided in section 28-2091, the acquiring owner shall apply for registration or a certificate of title, or both, within fifteen days after the relinquishing owner transfers or assigns the relinquishing owner's certificate of title or interest in the vehicle. The director may prorate the registration period as the director deems necessary to coincide with emissions inspection requirements.
   (e) Except if the acquiring owner is an insurer who acquires the vehicle pursuant to a claim settlement, the acquiring owner shall display on the vehicle a temporary registration plate, another permit or a valid license plate as prescribed by the department until ownership of the vehicle is transferred in the department's records.
2. Regardless of whether or not the vehicle is registered:
   (a) Except as provided in subsection B of this section, the owner shall deliver to the purchaser or transferee an odometer mileage disclosure statement in a form prescribed by the director.
   (b) Except as provided in sections 28-2051, 28-2060 and 28-2091, the purchaser or transferee shall present the certificate of title or title transfer form to the department with the required fee within fifteen days after the transfer and:
      (i) The department shall issue a new certificate of title.

(ii) If required, the purchaser or transferee shall apply for and obtain registration, and the department shall issue new license plates to the purchaser or transferee.

B. The odometer disclosure requirement of subsection A of this section does not apply to:
   1. A motor vehicle that is ten model years of age if the model year is 2010 or older.
   2. A motor vehicle that is twenty model years of age if the model year is 2011 or newer.
   3. A motor vehicle that has a gross vehicle weight rating of sixteen thousand pounds or more.
   4. A vehicle that is not self-propelled.
   5. A motor vehicle that is sold directly by the manufacturer to an agency of the United States in conformity with contractual specifications.
   6. A new motor vehicle that is purchased for resale and not for use by the purchaser.

C. In the department's information and education materials, the department shall include information relating to the process by which an individual may notify the department when the title to or an interest in a vehicle is transferred or assigned.

A.R.S. § 28-2063. Mobile home certificate of title; exceptions; fee

A. The department shall issue a certificate of title for a mobile home that is customarily kept in this state and the fee required under section 28-2003 shall be paid except for:
   1. A mobile home that is owned and held by a dealer solely for purposes of sale.
   2. A mobile home that is owned and operated exclusively in the public service by the United States, by this state or by any political subdivision of this state, except that it shall have a certificate of title.
   3. A mobile home that is permanently affixed, as defined in section 42-15201, and for which an affidavit of affixture has been recorded pursuant to section 33-1501. The owner shall surrender the original certificates of title or manufacturer's statements of origin to permanently affixed mobile homes to the department in the manner prescribed by the department. The department shall issue a receipt for the documents surrendered pursuant to this paragraph.

B. The issuance of a certificate of title for a mobile home shall be as provided by law for the issuance of a certificate of title for motor vehicles, except that in the case of a mobile home that consists of two or more separate sections, each section shall have a separate certificate of title.

C. A mobile home is subject to all applicable provisions of this title, except those relating to registration.

D. If a certificate of title is applied for on a mobile home entering this state for sale or installation, a certificate of compliance or waiver issued by the Arizona department of housing is required and shall be submitted with the certificate of title application.

A.R.S. § 28-2064. Electronic certificates of title system; applicability; rules

A. The director may establish a system to require recording of certificate of title information for newly issued, transferred and corrected certificates of title, including perfection and release of security interests, through electronic media in a cost-effective manner in lieu of the submission and maintenance of paper documents as

provided in this chapter. The director may contract with an association of new motor vehicle dealers to manage a lien recording system on behalf of the department at no cost to this state.

B. In the process of establishing the system, the director shall:
   1. Establish procedures for issuing and maintaining an electronic certificate of title system that is applicable to all certificate of title transactions performed in this state.
   2. Develop methods to electronically share information related to applications for certificates of title with law enforcement agencies and entities licensed under this title.

C. Section 28-444, subsection B applies to certificates of title under the system established pursuant to this section.

D. This section does not apply to certificates of title for mobile homes.

E. The director may adopt rules as necessary to implement this section, including the criteria for when the department may issue a paper certificate of title.

A.R.S. § 28-2065. Electronic and digital signatures; documents

A. The director, in cooperation with a statewide association of franchised new motor vehicle dealers, shall establish a program to accept and use electronic or digital signatures.

B. In the process of developing the program, the director shall research and develop methods to allow the department, authorized third parties, licensed financial institutions, licensed insurers or any other business or individual as determined by the director to accept, exchange and use electronic or digital signatures for any document or for any transaction prescribed in this chapter and sections 28-370, 28-444, 28-453 and 28-5111.

C. The participants shall ensure that adequate security measures are in place to prevent any illegal use of the signatures or other information exchanged pursuant to this section.

D. The director may determine and require reimbursement from program participants for costs related to computer programming, hardware, development and personnel. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received pursuant to this section in a separate account of the state highway fund established by section 28-6991. Monies in the separate account are continuously appropriated. The director may transfer monies deposited pursuant to this subsection from the separate account to the operating budget of the department's motor vehicle division for the purpose of reimbursing the department's operating budget for expenditures made by the division pursuant to this section.

E. This section does not limit the use of electronic and digital signatures used by state agencies, boards or commissions pursuant to section 18-106.

F. The director may adopt rules necessary to implement this section.

A.R.S. § 28-2132. Indication of lien or encumbrance

A. The department shall provide on the application for a certificate of title and the application for registration only a section that provides for the indication of a lien or encumbrance on the vehicle.

B. The applicant's signature on the application for a certificate of title or the application for registration only is consent for the lien or encumbrance to be indicated by the department on its official certificate of title record for the vehicle.

C. Except as provided in subsection D of this section and on receipt of the application as provided in this section, the department shall endorse on the application the date and hour it was received at the registering office of the department.

D. The department shall not issue a new certificate of title if the outstanding certificate of title indicates an existing lien or encumbrance unless the lien or encumbrance has been satisfied or the lienor or encumbrancer has consented in writing or electronically to the transfer of title.

A.R.S. § 28-2134. Satisfaction of lien or encumbrance; assignment of obligation by lienholder; civil penalty

A. When a holder of a lien or encumbrance receives payment in full satisfying a lien or encumbrance recorded under this article, the holder of the lien or encumbrance shall release the lien or encumbrance and notify the owner of the vehicle at the address shown on the certificate of title or, if the holder of the lien or encumbrance has been previously notified of sale or transfer of the vehicle, the person who is legally entitled to possession that the department has issued a certificate of title to the person for the vehicle.

B. If a holder of a lien or encumbrance assigns the obligation and the holder lawfully has possession of the certificate of title, the holder shall deliver the certificate of title at the time of assignment to the holder's assignee. If a holder of a lien or encumbrance is not entitled to possession of the certificate of title when the holder assigns the obligation, the holder shall immediately deliver the certificate of title to the assignee when the holder becomes lawfully entitled to and obtains lawful possession of the certificate of title. The holder's assignee is entitled to hold the certificate of title until the obligation is satisfied. When the obligation is satisfied, the assignee shall deliver the certificate of title to the next holder of a lien or encumbrance entitled to possession of the certificate of title or, if there is not another holder of a lien or encumbrance entitled to possession of the certificate of title, to the owner of the vehicle as prescribed in subsection A of this section.

C. If a holder of a lien or encumbrance who possesses a certificate of title as provided in this article refuses or fails to surrender the certificate of title to the person who is legally entitled to possession of the certificate of title on that person's request and within fifteen business days after the holder receives payment in full satisfaction of the holder's lien or encumbrance, after an opportunity for an administrative hearing, the department may impose and collect a civil penalty from the holder of the lien or encumbrance to be deposited, pursuant to sections 35-146 and 35-147, in the state highway fund established by section 28-6991 as follows:

1. Fifty dollars if the certificate of title is surrendered in accordance with this subsection within three additional business days.
2. The penalty provided for in paragraph 1 of this subsection plus fifty dollars for each additional day exceeding eighteen business days that the certificate of title is not surrendered in accordance with this subsection up to a maximum of five hundred dollars for each certificate of title.

D. The department may satisfy a lien or encumbrance on its records and on a certificate of title to a vehicle if the owner of the vehicle furnishes satisfactory proof of the payment in full of the underlying debt and an affidavit stating the following:
   1. That the owner has made a diligent search to locate the holder of the lien or encumbrance.
   2. With particularity the steps taken in the search.
   3. That after the search the holder of the lien or encumbrance could not be found.

E. The department may satisfy a lien or encumbrance against a vehicle on its records by accepting a certificate of title to the vehicle issued by another jurisdiction if all of the following conditions exist:
   1. The lien previously recorded in this state does not appear on the title presented from another jurisdiction.
   2. The certificate of title was issued by the other jurisdiction at least one year before the time it was presented to this state.
   3. The law of the other jurisdiction requires a lien or encumbrance to be recorded on that state's certificate of title.

A.R.S. § 28-2151. Registration by mail; postage fund

A. The director may establish a procedure for mailing registration applications and license plates or license tabs to applicants.

B. For purposes of paying postage incurred under this section, the director may establish a postage fund and charge the estimated costs incurred under this section for transmitting renewal notices to applicants. The director may transfer monies in the director's postage fund annually and use the monies as provided in section 28-6993, subsection C.

A.R.S. § 28-2157. Application for registration; exception

A. A person shall apply to the department for registration of a motor vehicle, trailer or semitrailer on forms prescribed or authorized by the department.

B. The application shall contain:
   1. The name and complete residence address of the owner.
   2. A description of the vehicle, including the serial number.
   3. If it is a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.
   4. If the owner of the vehicle rents or intends to rent the vehicle without a driver, a statement of that fact.
   5. Other facts required by the department.

C. The registering officer shall indicate on the face of the registration application that the registrant may be subject to vehicle emissions testing requirements pursuant to section 49-542.

D. On request of an applicant, the department shall allow the applicant to provide on the registration of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

E. The person shall include with the application the required fees and the certificate of title to the vehicle for which registration is sought. The registering officer may waive the requirement that the applicant present a certificate of title at the time of making an application for renewal if the registering officer has available complete and sufficient records to accurately compute the vehicle license tax.

F. The department may request an applicant who appears in person to register a motor vehicle, trailer or semitrailer to satisfactorily complete the vision screening test prescribed by the department.

G. A person applying for initial registration of a neighborhood electric vehicle, a neighborhood electric shuttle or a motorized quadricycle shall certify in writing that a notice of the operational restrictions applying to the vehicle as provided in section 28-966 are contained on a permanent notice attached to or painted on the vehicle in a location that is in clear view of the driver. This subsection does not apply to a fully autonomous vehicle that is incapable of operation by a human driver.

A.R.S. § 28-2159. Staggered registration

A. The director shall establish a system of staggered registration on a monthly basis to distribute the work of registering vehicles as uniformly as practicable throughout the twelve months of the calendar year.

B. All vehicle registrations provided in this chapter expire pursuant to schedules established by the director. The director may set the number of renewal periods within the month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. If adoption of the staggered system results in the expiration of any registration more than a year from its issuance, the department shall charge a prorated registration fee in addition to the annual fee.

D. In order to initiate a system of registering or reregistering vehicles during any month of the calendar year, the director may register or reregister a vehicle for more or less than a twelve month period, but not more than eighteen months, and may prorate the annual registration fee if in the director's opinion proration tends to fulfill the purpose of the monthly registration system.

E. The director may provide for a two year or five year registration period for any vehicle not subject to annual emissions testing pursuant to section 49-542. For vehicles eligible for a two year or five year registration, the director shall provide in each renewal registration packet information that clearly indicates:

1. The vehicle owner has a choice of registering the vehicle for one year, for two years or for five years.
2. The total amount due for a one year registration period.
3. The total amount due for a two year registration period.
4. The total amount due for a five year registration period.

F. The director or a registering officer may allow a person who owns three or more vehicles to register or reregister the vehicles for less than one year so that the vehicles' registrations expire on the same date. The director may not delay the registration date for a vehicle if it causes a decrease in the vehicle license tax. The director or the registering officer shall prorate the registration fee of these vehicles. This subsection does not apply to a commercial vehicle with a gross weight of more than ten thousand pounds or to a motor vehicle rental or leasing agency.

G. The director shall adopt rules necessary to accomplish the purposes of this section.

A.R.S. § 28-2162. Delinquent registration; penalty; lien; failure to apply for certificate of title; waiver

A. If a vehicle is operated on a highway without payment of the registration or certificate of title transfer fee, the fee is delinquent. If the fee is not paid before the date on which the vehicle is required to be registered for the current registration year, the department shall collect a penalty. The penalty is eight dollars for the first month of delinquency and four dollars for each additional month, not to exceed a total penalty of one hundred dollars. Registration of a vehicle in the name of the applicant for the year immediately preceding the year for which the application for registration is made is prima facie evidence that the vehicle has been operated on the highways during the year for which the application for registration is made.

B. Except as provided in section 28-5807, an applicant shall submit the total annual registration fee, the weight fee, any other required fee and the penalty prescribed in subsection A of this section with an application for registration of a vehicle that is submitted after the date the vehicle was required to be registered for the registration year in which registration of the vehicle for the next preceding year expired. If it is determined at the time of renewal, on proof satisfactory to the director, that the vehicle was not operated on the highways of this state before the filing of the application and the registration of the vehicle, the department shall refund or waive the penalty prescribed in subsection A of this section.

C. A registration fee and any penalty added to the fee are a lien on the vehicle on which they are due from the due date. The department may collect the fee and penalty by seizure of the vehicle from the person in possession of the vehicle, if any, and by sale as provided by law.

D. The director shall prescribe the method of readily identifying on the license plate the current registration date of the license plate.

E. A person who fails to apply for a certificate of title for any mobile home or other vehicle that is not registered under this title within thirty days after acquiring the mobile home or vehicle shall pay an additional fee equal to the penalty prescribed in subsection A of this section.

F. If a person who is licensed pursuant to chapter 10 of this title applies for a dismantle certificate of title for a vehicle pursuant to section 28-2094, the department shall waive any penalties that relate to the vehicle and that are imposed pursuant to this section.

A.R.S. § 28-2232. International proportional registration authority; rules; definition

A. Except as otherwise provided in this article, the registration of fleet vehicles on a proportional basis without reference to or application of section 28-2051, 28-2052, 28-2321, 28-2322, 28-2323 or 28-2324 or other statutes of this state relating to vehicle registration is authorized.

B. Sections 28-2161, 28-2162 and 28-5724 and article 16 of this chapter apply to vehicles proportionally registered pursuant to this article.

C. This article does not require a vehicle to be proportionally registered if the vehicle is otherwise registered in this state for the operation in which the vehicle is engaged under section 28-2003, 28-2324, 28-2325 or 28-5433 or any other law prescribing vehicle registration fees.

D. The department may:

1. Refuse to issue a registration, license plate or permit for a vehicle that is licensed under this chapter and that has been assigned to a commercial motor carrier if the federal motor carrier safety administration prohibits the commercial motor carrier from operating.
2. Suspend or revoke a registration, license plate or permit issued for a vehicle that is licensed under this chapter and that has been assigned to a commercial motor carrier if either of the following applies:
   (a) The federal motor carrier safety administration prohibits the commercial motor carrier from operating.
   (b) The commercial motor carrier knowingly allowed or required an employee to operate a commercial motor vehicle in violation of a federal out-of-service order.
3. Reinstate or reissue a registration, license plate or permit for a vehicle that is licensed under this chapter and that is assigned to a commercial motor carrier if the federal motor carrier safety administration allows the commercial motor carrier to resume operating.

E. The director shall adopt rules necessary to administer and enforce this article.

F. For the purposes of this section, "out-of-service order" has the same meaning prescribed in 49 Code of Federal Regulations section 390.5.

A.R.S. § 28-2261. Alternative proportional registration agreements; authority

A. In lieu of the registration required by section 28-2153, in lieu of international proportional registration pursuant to article 7 of this chapter and notwithstanding section 28-2321, the director may provide for the apportionment of registration and other fees for resident or nonresident fleets of apportionable commercial vehicles that are engaged in interstate and intrastate commerce between this state and another state or states in which fleets operate in accordance with a proportional registration agreement pursuant to this article.

B. The director may enter into proportional registration agreements with another state or states providing that residents of the other state or states who operate a commercial vehicle may allocate and apportion the registration and other fees and taxes for the commercial vehicle prescribed in sections 28-2003, 28-5433, 28-5471 and 28-5801 pursuant to a formula agreed on by the director and the other state or states.

C. The director may enter into an agreement pursuant to this article if residents of this state are granted the same allocation and apportionment privileges for commercial motor vehicles registered in the other state or states. An agreement, arrangement, declaration or amendment entered into pursuant to this article shall be in writing and is not effective until filed with the department.

A.R.S. § 28-2294. Nonresident daily commuter; identification card; fee
(L18, Ch. 260, sec. 13)

A. On application and completion of the form prescribed by section 28-2293, the department shall provide a nonresident daily commuter with an identification card that is valid for two years.

B. A motor vehicle is exempt from registration by this state if the following conditions are met:

1. The motor vehicle is operated pursuant to subsection A of this section and otherwise in accordance with this article.
2. The motor vehicle is a passenger vehicle or an unladen truck.
3. The motor vehicle is licensed in a contiguous state and is used to commute into this state to a destination within a corridor in this state that parallels the border between this state and the contiguous state and that extends not more than thirty-five air miles into this state from the border at any point.

C. The privilege accorded by subsection A of this section is revoked if the motor vehicle is operated for commuter purposes beyond the thirty-five mile corridor.

D. The department may charge a fee of not more than eight dollars for each motor vehicle exempt from registration pursuant to this section, as necessary, to recover the costs of administering this article.

A.R.S. § 28-2294. Nonresident daily commuter; identification card; fee

(L18, Ch. 260, sec. 14. Conditionally Eff.)

A. On application and completion of the form prescribed by section 28-2293, the department shall provide a nonresident daily commuter with an identification card that is valid for two years.

B. A motor vehicle is exempt from registration by this state if the following conditions are met:

1. The motor vehicle is operated pursuant to subsection A of this section and otherwise in accordance with this article.
2. The motor vehicle is a passenger vehicle or an unladen truck.
3. The motor vehicle is licensed in a contiguous state and is used to commute into this state to a destination within a corridor in this state that parallels the border between this state and the contiguous state and that extends not more than seventy air miles into this state from the border at any point.

C. The privilege accorded by subsection A of this section is revoked if the motor vehicle is operated for commuter purposes beyond the air mileage limitation provided in subsection B of this section.

D. The department may charge a fee of not more than eight dollars for each motor vehicle exempt from registration pursuant to this section, as necessary, to recover the costs of administering this article.

A.R.S. § 28-2351. License plate provided; design

A. Notwithstanding any other law, the department shall provide to every owner one license plate for each vehicle registered. At the request of the owner and on payment of a fee in an amount prescribed by the director by rule, the department shall provide one additional license plate for a vehicle for which a special plate is requested pursuant to this chapter.

B. The license plate shall display the number assigned to the vehicle and to the owner of the vehicle and the name of this state, which may be abbreviated. The director shall coat the license plate with a reflective material that is

consistent with the determination of the department regarding the color and design of license plates and special plates. The background color of the license plate shall contrast significantly with the color of the letters and numerals on the license plate and with the name of this state on the license plate. The name of this state shall appear on the license plate in capital letters in sans serif font and be three-fourths of an inch in height. The director shall design the license plate and the letters and numerals on the license plate to be of sufficient size to be plainly readable during daylight from a distance of one hundred feet. In addition to the standard license plate issued for a trailer before August 12, 2005, the director shall issue a license plate for trailers that has a design that is similar to the standard size license plate for trailers but that is the same size as the license plate for motorcycles. The trailer owner shall notify the department which size license plate the owner wants for the trailer.

C. Notwithstanding any other law, the department shall not contract with a nongovernmental entity to purchase or secure reflective material for the plates issued by the department unless the department has made a reasonable effort to secure qualified bids or proposals from as many individual responsible respondents as possible.

D. The department shall determine the color and design of the license plate subject to the requirements prescribed by subsection B of this section. All plates issued by the department, except the plates that are designed or redesigned before September 24, 2022 and that are issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through 28-2470.17, 28-2472, 28-2473, 28-2474, 28-2475, 28-2476 and 28-4533 and article 14 of this chapter, shall be the same color as and similar in design to the license plate as determined by the department.

E. A passenger motor vehicle that is rented without a driver shall receive the same type of license plate as is issued for a private passenger motor vehicle.

A.R.S. § 28-2402. Special plate fees

The following fees are required:

1. Twenty-five dollars for each original and for each annual renewal of special plates issued under this article, except special plates for hearing impaired persons issued under section 28-2408 and international symbol of access special plates issued under section 28-2409.
2. Twelve dollars for a transfer of special plates, unless exempt pursuant to section 28-2403.

A.R.S. § 28-2403. Special plates; transfers; violation; classification

A. Except as otherwise provided in this article, the department shall issue or renew special plates in lieu of the regular license plates pursuant to the following conditions and procedures and only if the requirements prescribed by this article for the requested special plates are met:

   1. Except as provided in sections 28-2416 and 28-2416.01, a person who is the registered owner of a vehicle registered with the department or who applies for an original or renewal registration of a vehicle may submit to the department a completed application form as prescribed by the department with the fee

prescribed by section 28-2402 for special plates in addition to the registration fee prescribed by section 28-2003.

2. Except for plates issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through 28-2470.17, 28-2472, 28-2473, 28-2474, 28-2475 and 28-2476 and article 14 of this chapter, the special plates shall be the same color as and similar to the design of the regular license plates that is determined by the department.
3. Except as provided in section 28-2416, the department shall issue special plates only to the owner or lessee of a vehicle that is currently registered, including any vehicle that has a declared gross weight, as defined in section 28-5431, of twenty-six thousand pounds or less.
4. Except as provided in sections 28-2416 and 28-2416.01, the department shall charge the fee prescribed by section 28-2402 for each annual renewal of special plates in addition to the registration fee prescribed by section 28-2003.

B. Except as provided in sections 28-2416 and 28-2416.01, on notification to the department and on payment of the transfer fee prescribed by section 28-2402, a person who is issued special plates may transfer the special plates to another vehicle the person owns or leases. Persons who are issued special plates for hearing impaired persons pursuant to section 28-2408 and international symbol of access special plates pursuant to section 28-2409 are exempt from the transfer fee. If a person who is issued special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed, the person shall immediately report the transfer of the plates to the department or the person shall surrender the plates to the department as prescribed by the director. It is unlawful for a person to whom the plates have been issued to knowingly allow them to be displayed on a vehicle except the vehicle authorized by the department.

C. The special plates shall be affixed to the vehicle for which registration is sought in lieu of the regular license plates.

D. A person is guilty of a class 3 misdemeanor who:
1. Violates subsection B of this section.
2. Fraudulently gives false or fictitious information in the application for or renewal of special plates or placards issued pursuant to this article.
3. Conceals a material fact or otherwise commits fraud in the application for or renewal of special plates or placards issued pursuant to this article.

A.R.S. § 28-2404. Special organization license plates

A. Special organization license plates authorized before September 30, 2009 remain valid license plates issued by this state unless the legislature enacts legislation specifically terminating those license plates.

B. The department shall issue special organization license plates authorized before September 30, 2009 to initial applicants or applicants requesting a duplicate, replacement or new license plate.

C. The director shall allow a request for a special organization license plate authorized before September 30, 2009 to be combined with a request for personalized special plates if the organization makes the request and pays the

department the monies necessary as determined by the department to cover the department's costs to implement the combination. The request shall be in a form prescribed by the director and is subject to the fees for the personalized special plates in addition to the fees required for the organization special license plate.

D. An organization that receives authorization for a special organization license plate before September 30, 2009 may redesign the special organization license plate if the new design is approved by the department and the organization pays thirty-two thousand dollars to the department to issue the redesigned special organization license plate.

E. Of the twenty-five dollar fee required by section 28-2402 for the original special plates and for renewal of special plates, eight dollars is a special plate administration fee and seventeen dollars is an annual donation.

F. The department shall deposit, pursuant to sections 35-146 and 35-147, all special plate administration fees in the state highway fund established by section 28-6991 and shall distribute all donations collected pursuant to this section as authorized in a written resolution of the entity that provides the thirty-two thousand dollars to the department pursuant to subsection D of this section. The entity must use the donations for the same purpose as originally approved.

G. The department shall issue special organization license plates authorized before September 30, 2009 to applicants who are otherwise qualified by law for the license plates and who are not members of the organization if the department receives a written resolution from the organization requesting issuance to nonmembers.

A.R.S. § 28-2406. Personalized special plates

A. A person may apply for personalized special plates for any vehicle the person owns or leases or as a gift for the owner or lessee of a vehicle by indicating on the application the letters, numbers or combination of letters and numbers requested as a registration number. The department shall determine the number of positions allowed on the personalized special plates. The personalized special plates shall not conflict with existing plates and shall not duplicate registration numbers. The department may refuse to issue or may suspend, cancel or revoke any combination of letters or numbers or any combination of letters and numbers that carries connotations that are offensive to good taste and decency, any combination that is misleading or any combination that duplicates other plates.

B. If a person who has been issued personalized special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed and relinquishes the plates to the new owner of the vehicle, the person shall release the person's priority to the letters, numbers or combination of letters and numbers that is displayed on the personalized special plates in the manner prescribed by the director. The person to whom the plates are relinquished shall apply to the department for issuance of the plates to the new applicant.

A.R.S. § 28-2511. Official vehicles; registration exemption; definitions

A. A registration fee is not required for a vehicle owned by a foreign government, by a consul or any other official representative of a foreign government, by the United States, by a state or political subdivision of a state, by an

Indian tribal government, by a provider of ambulance, fire fighting or rescue services that is used solely for the purpose of providing emergency services or by a nonprofit organization that presents to the department a form approved by the director of the division of emergency management pursuant to section 26-318. The person who has custody of these vehicles shall register them as required by this chapter and shall display official license plates that bear distinguishing marks. The department shall furnish the license plates free of charge. The department may issue regular license plates without any distinguishing marks for vehicles that are exempt from title 38, chapter 3, article 10 pursuant to section 38-538.03, subsection B.

B. The director may issue license plates for vehicles owned by and used in the line of duty by law enforcement agencies in other states and the federal government without being registered as required by this chapter.

C. The director may enter into agreements or arrangements subject to the approval of the attorney general of this state with the federal government and with motor vehicle departments in other states to provide for a reciprocal exchange of license plates for use on vehicles owned or operated by law enforcement agencies for investigating actual or suspected violations of law. License plates of other states obtained pursuant to this subsection may be used on exempt vehicles of law enforcement agencies of this state or a political subdivision of this state.

D. The director shall maintain a record of the license plates issued pursuant to subsections B and C of this section. The director shall also keep a record of the license plates received pursuant to subsection C of this section, the regular license plates issued pursuant to subsection A of this section and the vehicles to which the plates are attached. These records are not open to public inspection except on demand of the attorney general.

E. Except as otherwise provided in this subsection, any vehicle that is registered pursuant to this section and that is exclusively powered by an alternative fuel shall display an alternative fuel vehicle special plate issued pursuant to section 28-2416. Except as otherwise provided in this subsection, any vehicle that is registered pursuant to this section and that is a low emission and energy efficient vehicle as defined in section 28-601 shall display a low emission and energy efficient vehicle special plate issued pursuant to section 28-2416.01. The department may issue regular license plates without any alternative fuel or low emission and energy efficient distinguishing marks or regular alternative fuel vehicle special plates or low emission and energy efficient vehicle special plates for vehicles that are exempt from title 38, chapter 3, article 10 pursuant to section 38-538.03, subsection B. This subsection applies to all existing vehicles that are registered pursuant to this section and all newly-acquired vehicles that are registered pursuant to this section.

F. For the purposes of this section:

1. "Alternative fuel" has the same meaning prescribed in section 1-215.
2. "Ambulance" means a vehicle for which a certificate of registration has been issued pursuant to section 36-2212.

A.R.S. § 28-4151. Reinstatement fee; motor vehicle liability insurance enforcement fund

A. A person shall pay a fee of not more than fifty dollars for the reinstatement of a motor vehicle registration and license plate as prescribed by the department for the purposes prescribed in this article. Except as provided in

subsection B of this section, this fee does not apply to a person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter.

B. The fee prescribed in subsection A of this section applies to a person who is required to comply with the financial responsibility requirements prescribed in section 28-4033, subsection A, paragraph 2, subdivision (c).

C. The director shall deposit, pursuant to sections 35-146 and 35-147, the fees collected under this section in the motor vehicle liability insurance enforcement fund established by subsection D of this section.

D. A motor vehicle liability insurance enforcement fund is established consisting of monies received pursuant to this article. The department of transportation shall administer the fund, subject to legislative appropriation.

A.R.S. § 28-4546. Temporary registration plates

A. The director may issue to new motor vehicle dealers and used motor vehicle dealers temporary registration plates that dealers may issue subject to the limitations and conditions prescribed in sections 28-4547 through 28-4554.

B. The director shall establish a system to require the recording of temporary registration plate information through electronic media on the department's vehicle title and registration database. The temporary registration plate information shall be made available to law enforcement officers. The director shall implement the recording of temporary registration plate information through electronic media when the director determines the system is operational, but no later than July 1, 2003.

Definitions

A.R.S. § 28-101. Definitions.

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
   (a) The number of grams of alcohol per one hundred milliliters of blood.
   (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
   (a) A motor vehicle that satisfies all of the following:
      (i) Is designed primarily for recreational nonhighway all-terrain travel.
      (ii) Is fifty or fewer inches in width.
      (iii) Has an unladen weight of one thousand two hundred pounds or less.
      (iv) Travels on three or more nonhighway tires.
      (v) Is operated on a public highway.
   (b) A recreational off-highway vehicle that satisfies all of the following:
      (i) Is designed primarily for recreational nonhighway all-terrain travel.
      (ii) Is eighty or fewer inches in width.
      (iii) Has an unladen weight of two thousand five hundred pounds or less.
      (iv) Travels on four or more nonhighway tires.
      (v) Has a steering wheel for steering control.
      (vi) Has a rollover protective structure.
      (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
   (a) A fire department vehicle.
   (b) A police vehicle.
   (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
   (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

7. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
8. "Autonomous vehicle" means a motor vehicle that is equipped with an automated driving system.
9. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
10. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
    (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
    (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
11. "Board" means the transportation board.
12. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
13. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
14. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
15. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
16. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
17. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
18. "Conviction" means:
    (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
    (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
    (c) A plea of guilty or no contest accepted by the court.
    (d) The payment of a fine or court costs.
19. "County highway" means a public road that is constructed and maintained by a county.
20. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

21. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
22. "Digital network or software application" has the same meaning prescribed in section 28-9551.
23. "Director" means the director of the department of transportation.
24. "Drive" means to operate or be in actual physical control of a motor vehicle.
25. "Driver" means a person who drives or is in actual physical control of a vehicle.
26. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
27. "Dynamic driving task":
    (a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.
    (b) Includes:
        (i) Lateral vehicle motion control by steering.
        (ii) Longitudinal motion control by acceleration and deceleration.
        (iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.
        (iv) Object and event response execution.
        (v) Maneuver planning.
        (vi) Enhancing conspicuity by lighting, signaling and gesturing.
    (c) Does not include strategic functions such as trip scheduling and selecting destinations and waypoints.
28. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
    (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
    (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
    (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
29. "Electric miniature scooter" means a device that:
    (a) Weighs less than thirty pounds.
    (b) Has two or three wheels.
    (c) Has handlebars.
    (d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. "Electric standup scooter":

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

32. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

33. "Farm" means any lands primarily used for agriculture production.

34. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

35. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

36. "Fully autonomous vehicle" means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

(a) Solely by use of the automated driving system.

(b) By a human driver when the automated driving system is not engaged.

37. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

38. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.
39. "Human driver" means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or who achieves a minimal risk condition for the vehicle.
40. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
    (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
    (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
41. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.
42. "Livery vehicle" means a motor vehicle that:
    (a) Has a seating capacity not exceeding fifteen passengers including the driver.
    (b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.
    (c) Is available for hire on an exclusive or shared ride basis.
    (d) May do any of the following:
        (i) Operate on a regular route or between specified places.
        (ii) Offer prearranged ground transportation service as defined in section 28-141.
        (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.
43. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
44. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.
45. "Minimal risk condition":

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

49. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

50. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

51. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. "Neighborhood electric shuttle":

(a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:

(i) The vehicle is emission free.

(ii) The vehicle has at least four wheels in contact with the ground.

(iii) The vehicle is capable of transporting at least eight passengers, including the driver.

(iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.

(vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

(b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.

53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles, unless excepted or exempted under federal law, set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

54. "Neighborhood occupantless electric vehicle" means a neighborhood electric vehicle that is not designed, intended or marketed for human occupancy.

55. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

56. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor

vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

57. "Operational design domain":
    (a) Means operating conditions under which a given automated driving system is specifically designed to function.
    (b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.
58. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
59. "Owner" means:
    (a) A person who holds the legal title of a vehicle.
    (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
    (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
60. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
61. "Personal delivery device":
    (a) Means a device that is both of the following:
        (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
        (ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.
    (b) Does not include a personal mobile cargo carrying device.
62. "Personal mobile cargo carrying device" means an electronically powered device that:
    (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
    (b) Weighs less than eighty pounds, excluding cargo.
    (c) Operates at a maximum speed of twelve miles per hour.
    (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
    (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
63. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces,

including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

64. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
65. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
66. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
67. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
68. "SAE J3016" means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.
69. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:
    (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
    (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
70. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.
71. "Scrap vehicle" has the same meaning prescribed in section 44-1641.
72. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
73. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn

motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

74. "State" means a state of the United States and the District of Columbia.
75. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
76. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
77. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
78. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
    (a) Does not primarily operate on a regular route or between specified places.
    (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.
79. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
80. "Traffic survival school" means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.
81. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
82. "Transportation network company" has the same meaning prescribed in section 28-9551.
83. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.
84. "Transportation network service" has the same meaning prescribed in section 28-9551.
85. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
86. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
87. "Vehicle":
    (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
    (b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

88. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-2001. Definitions.

A. "Resident", for the purpose of registration and operation of motor vehicles:

1. Except as provided by paragraph 2, means the following:

(a) A person who, regardless of domicile, remains in this state for an aggregate period of seven months or more during a calendar year.

(b) A person who engages in a trade, profession or occupation in this state or who accepts employment in other than either:

(i) Seasonal agricultural work.

(ii) Temporary seasonal work for a period of not more than three months if the state in which the temporary seasonal worker is permanently domiciled has a similar exception.

(c) A person who places children in a public school without payment of nonresident tuition.

(d) A person who declares that the person is a resident of this state for the purpose of obtaining at resident rates a state license or tuition fees at an educational institution maintained by public monies.

(e) An individual, partnership, company, firm, corporation or association that maintains a main office, a branch office or warehouse facilities in this state and that bases and operates motor vehicles in this state.

(f) An individual, partnership, company, firm, corporation or association that operates motor vehicles in intrastate transportation, for other than seasonal agricultural work.

(g) A person who is registered to vote in this state.

2. Does not mean:

(a) A nonresident owner of a foreign vehicle that is registered and licensed in a state adjoining this state and that is used in this state for other than the transportation of passengers or property for compensation, if the nonresident owner and vehicle are domiciled in an adjoining state but within twenty-five miles of the border of this state and if the state in which the owner resides and in which the vehicle is registered exempts from payment of registration and weight fees like vehicles from this state,

regardless of whether the nonresident owner engages in a trade, profession or occupation in this state or accepts employment.

(b) An out-of-state student enrolled with seven or more semester hours regardless of whether the student engages in a trade, profession or occupation in this state or accepts employment in this state. For the purposes of this paragraph, "out-of-state student" means either:

(i) A person who is enrolled at an educational institution maintained by public monies and who is not classified as an in-state student under section 15-1802.

(ii) A person who is a student at a private educational institution and who would not be classified as an in-state student under section 15-1802 if the student were attending a public educational institution.

(c) A nonresident daily commuter as defined in section 28-2291.

B. In this chapter, unless the context otherwise requires:

1. "Mobile home" means a structure that is transportable in one or more sections, including the plumbing, heating, air conditioning and electrical systems that are contained in the structure, and that, when erected on site, is either of the following:

(a) More than eight body feet in width, thirty-two body feet or more in length and built on a permanent chassis.

(b) Regardless of the size, used as a single family dwelling or for commercial purposes with or without a permanent foundation.

2. "Serial number" means the number placed on the vehicle by its manufacturer or assigned pursuant to section 28-2165.

A.R.S. § 28-370. Oaths and acknowledgments; power of attorney; definition

A. The director and officers, agents and employees of the department the director designates may administer oaths and acknowledge signatures, without a fee, in any matter connected with the administration of a law the enforcement of which is vested in the director.

B. Notwithstanding title 14, chapter 5, article 5:

1. The director or an officer, agent or employee of the department designated by the director may witness a power of attorney to be used solely in the performance of vehicle title and registration activities.

2. For the purposes of executing a power of attorney in the performance of vehicle title and registration activities, the power of attorney is not required to be:

(a) Notarized if it is witnessed by the director or an officer, agent or employee of the department designated by the director.

(b) Notarized if it is involving a total loss vehicle settlement and an insurance company that is licensed pursuant to title 20 submits it electronically to the department in a manner approved by the director.

(c) Witnessed if it is notarized.

C. For the purposes of this section, "agent" includes a motor vehicle dealer or a third party authorized pursuant to this title.

A.R.S. § 28-1171. Definitions

In this article, unless the context otherwise requires:

1. "Access road" means a multiple use corridor that meets all of the following criteria:
   (a) Is maintained for travel by two-wheel vehicles.
   (b) Allows entry to staging areas, recreational facilities, trail heads and parking.
   (c) Is determined to be an access road by the appropriate land managing authority.
2. "Closed course" means a maintained facility that uses department approved dust abatement and fire abatement measures.
3. "Highway" means the entire width between the boundary lines of every way publicly maintained by the federal government, the department, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of conventional two-wheel drive vehicular travel. Highway does not include routes designated for off-highway vehicle use.
4. "Mitigation" means the rectification or reduction of existing damage to natural resources, including flora, fauna and land or cultural resources, including prehistoric or historic archaeological sites, if the damage is caused by off-highway vehicles.
5. "Off-highway recreation facility" includes off-highway vehicle use areas and trails designated for use by off-highway vehicles.
6. "Off-highway vehicle":
   (a) Means a motorized vehicle when operated primarily off of highways on land, water, snow, ice or other natural terrain or on a combination of land, water, snow, ice or other natural terrain.
   (b) Includes a two-wheel, three-wheel or four-wheel vehicle, motorcycle, four-wheel drive vehicle, dune buggy, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.
   (c) Does not include a vehicle that is either:
      (i) Designed primarily for travel on, over or in the water.
      (ii) Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service or used in the exploration or mining of minerals or aggregates as defined in title 27.
7. "Off-highway vehicle special event" means an event that is endorsed, authorized, permitted or sponsored by a federal, state, county or municipal agency and in which the event participants operate off-highway vehicles on specific routes or areas designated by a local authority pursuant to section 28-627.
8. "Off-highway vehicle trail" means a multiple use corridor that is both of the following:
   (a) Open to recreational travel by an off-highway vehicle.

(b) Designated or managed by or for the managing authority of the property that the trail traverses for off-highway vehicle use.

9. "Off-highway vehicle use area" means the entire area of a parcel of land, except for approved buffer areas, that is managed or designated for off-highway vehicle use.

A.R.S. § 28-2003. Fees; vehicle title and registration; identification plate; definition

A. The following fees are required:

1. For each certificate of title, salvage certificate of title, restored salvage certificate of title or nonrepairable vehicle certificate of title, four dollars.
2. For each certificate of title for a mobile home, seven dollars. The director shall deposit three dollars of each fee imposed by this paragraph in the state highway fund established by section 28-6991.
3. Except as provided in section 28-1177, for the registration of a motor vehicle, eight dollars, except that the fee for motorcycles is nine dollars.
4. For a duplicate registration card or any duplicate permit, four dollars.
5. For each special ninety day nonresident registration issued under section 28-2154, fifteen dollars.
6. For the registration of a trailer or semitrailer that is not a travel trailer and that is ten thousand pounds or less gross vehicle weight and that is used in the furtherance of a commercial enterprise, eight dollars.
7. For the registration of a trailer or semitrailer that is not a travel trailer and that exceeds ten thousand pounds gross vehicle weight:
   (a) On initial registration, a one-time fee of two hundred forty-five dollars.
   (b) On renewal of registration or if previously registered in another state, a one-time fee of:
      (i) If the trailer's or semitrailer's model year is less than six years old, one hundred forty-five dollars.
      (ii) If the trailer's or semitrailer's model year is at least six years old, ninety-five dollars.
8. For the registration of a noncommercial trailer that is not a travel trailer and that is ten thousand pounds or less gross vehicle weight:
   (a) On initial registration, a one-time fee of twenty dollars.
   (b) On renewal of registration, a one-time fee of five dollars.
9. For a transfer of a noncommercial trailer that is not a travel trailer and that is ten thousand pounds or less gross vehicle weight, twelve dollars.
10. For each special ninety day resident registration issued under section 28-2154, fifteen dollars.
11. For each one trip registration permit issued under section 28-2155, one dollar.
12. For each temporary general use registration issued under section 28-2156, fifteen dollars.
13. For each identification plate bearing a serial or identification number to be affixed to any vehicle, five dollars.

B. For the purposes of this section, "travel trailer" means a trailer that is:

1. Mounted on wheels.
2. Designed to provide temporary living quarters for recreational, camping or travel use.

3. Less than eight feet in width and less than forty feet in length.

A.R.S. § 28-2231. Definitions

In this article, unless the context otherwise requires:

1. "Commercial vehicle" means:
   (a) For vehicles base licensed in this state, a bus, truck or truck tractor, trailer or semitrailer.
   (b) For vehicles based in another state, a bus, truck or truck tractor that has a gross weight of six thousand pounds or more and that is operated in more than one jurisdiction.
2. "Fleet" means one or more commercial vehicles.
3. "Jurisdiction" means a state, district, province, political subdivision, territory or possession of the United States or a foreign country.
4. "Preceding year" means a period of twelve consecutive months fixed by the director. The director shall fix the period within the eighteen months immediately preceding the beginning of the registration or license year for which proportional registration is sought. In fixing the period, the director shall make it conform to the terms, conditions and requirements of an applicable agreement or arrangement for the proportional registration of vehicles.

A.R.S. § 28-2401. Definitions

In this article, unless the context otherwise requires:

1. "Immediate family member" means a spouse or a parent, child, brother or sister whether by adoption or blood.
2. "Special plates" means plates issued pursuant to this article.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.
2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.
3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
   (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
   (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
   (c) A bus.

(d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
   (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.
   (b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.
   (c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.
5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. "Judgment" means a final judgment and any of the following:
   (a) The finding by a court that an individual is responsible for a civil traffic violation.
   (b) An individual's admission of responsibility for a civil traffic violation.
   (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
   (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. "Original applicant" means any of the following:
   (a) An applicant who has never been licensed or cannot provide evidence of licensing.

(b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.

(c) An applicant who has a license from a foreign country.

14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.
16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 28-5100. Definitions

In this article, unless the context otherwise requires:

1. "Authorized third party" means an entity that has executed a written agreement and is authorized by the department to perform limited or specific functions but is not authorized by the department to function as an authorized third party electronic service provider.
2. "Authorized third party electronic service partner" means an entity that has been awarded a written agreement with the department pursuant to a competitive bid process to provide electronic transmission services and that may be authorized by the director to develop and implement information technology and other automated systems and to provide any necessary ongoing support for these systems.
3. "Authorized third party electronic service provider" means an entity that has executed a written agreement with the department and is authorized by the department to provide electronic transmission services between the department, private citizens, other government agencies and public and private entities in this state or in any other state, territory or country.

A.R.S. § 28-5810. Rental vehicle surcharge; reimbursement; definition

A. A person engaged in the business of renting motor vehicles without drivers shall collect, at the time the rental vehicle is rented, a five percent surcharge on each rental contract that is for a period of one hundred eighty days or less. A motor vehicle that is owned by a governmental entity is exempt from the surcharge prescribed by this subsection.

B. The surcharge:

1. Shall be computed on the total amount stated in the rental contract, less any taxes and fees imposed by title 42, chapter 5, article 1 and title 48, chapter 26, article 2.
2. Is not subject to the taxes imposed by title 42, chapter 5, article 1 and title 48, chapter 26, article 2.

3. Shall be noted on the rental contract and collected pursuant to the contract.
4. Shall be retained by the vehicle owner or person engaged in the business of renting rental vehicles.
5. Shall be used only for reimbursement of the amount of vehicle license tax imposed on the rental vehicle pursuant to section 28-5801, whether rented in this state or in another state or jurisdiction, and paid by the rental vehicle owner or person engaged in the business of renting rental vehicles at the time of vehicle registration.

C. On February 15 of each year, a person who is engaged in the business of renting rental vehicles and who collects a surcharge pursuant to this section shall file a report with the director stating:
1. The total amount of vehicle license tax paid the previous year.
2. The total amount of vehicle rental revenues for the previous year.
3. The amount by which the surcharge exceeds the amount of vehicle license tax.

D. Surcharges collected in excess of the amount of vehicle license tax paid shall be remitted, deposited and distributed pursuant to section 28-5808.

E. The report to the director required by this section shall be a sworn statement subject to penalty of perjury for misrepresenting the amount of vehicle license tax paid or the amount of surcharge collected.

F. The director shall adopt rules prescribing auditing procedures, records maintenance and other requirements necessary to administer this section.

G. To assist with administering this article, each year at the request of the director of the department of transportation, the department of revenue shall provide a report to the director of the department of transportation that includes, to the extent available, the following:
1. The names of all of the persons who are engaged in the business of renting rental vehicles and who hold a transaction privilege tax license pursuant to section 42-5071.
2. The address of the business.
3. The effective date of the license.

H. For the purposes of this section, "rental vehicle" means both of the following:
1. A passenger vehicle that is designed to transport fifteen or fewer passengers and that is rented without a driver.
2. A truck, trailer or semitrailer that has a gross vehicle weight of less than twenty-six thousand one pounds, that is rented without a driver and that is used in the transportation of personal property.

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

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

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but

used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of the state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle-related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle-related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

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

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

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

collectible vehicle and the retail purchaser obtains collectible vehicle or classic automobile insurance coverage as prescribed in subsection Z of this section before delivery or the vehicle is otherwise exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of $.25. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

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

1. For the purpose of determining compliance with minimum emissions standards in area B:
   (a) A motor vehicle manufactured in or before the 1980 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test. A diesel powered vehicle is subject to only a loaded test. The conditioning mode, at the option of the vehicle owner or owner's agent, shall be administered only after the vehicle has failed the curb idle test. On completion of such conditioning mode, a vehicle that has failed the curb idle test may be retested in the curb idle test. If the vehicle passes such retest, it is deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection pursuant to subsection G of this section.
   (b) A motor vehicle manufactured in or after the 1981 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test and the loaded test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.
2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A:

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

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

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

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

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

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

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The exemption from inspection of:

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

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

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

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

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

(f) Golf carts.

(g) Electrically-powered vehicles.

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

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

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

(k) Collectible vehicles.

(l) Motorcycles.

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

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

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

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

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

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

1. In area A the cost shall not exceed:

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

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

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

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

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

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

2. In area B the cost shall not exceed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that

reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

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

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

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

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

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

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

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

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

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

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

1. Either:
   (a) Bears a model year date of original manufacture that is at least fifteen years old.
   (b) Is of unique or rare design, of limited production and an object of curiosity.
2. Meets both of the following criteria:
   (a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.
   (b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

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

(L21, Ch. 27, sec. 3 & Ch. 116, sec. 1. Conditionally Eff.)

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

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

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

considered as compliance with the registration requirement pursuant to subsection D of this section only on conditions prescribed by the director.

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

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of $.25. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

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

1. For the purpose of determining compliance with minimum emissions standards in area B for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

   (a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a steady state loaded test and curb idle test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a curb idle test.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

(a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a transient loaded test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a transient loaded test.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

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

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

3. For the purpose of determining compliance with minimum emissions standards in area A or area B for diesel powered motor vehicles:

(a) A diesel powered motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or an opacity test as approved by the director.

(b) A diesel powered motor vehicle, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass an emissions test as follows:

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

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

4. A constant four-wheel drive vehicle shall be required to take and pass a curb idle test or an onboard diagnostic test.

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

(a) A motor vehicle with a model year of 1980 or earlier shall take and pass a curb idle test.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle that is equipped with an onboard diagnostic system that is required by section 202(m) of the clean air act, shall take and pass a curb idle test and a twenty-five hundred revolutions per minute unloaded test.

6. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A, other than vehicles equipped with an onboard diagnostic system required by section 202(m) of the clean air act, shall be required to take and pass the curb idle test and the loaded test.
7. A diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

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

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director. This subsection does not apply to any diesel powered vehicle.

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

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of the provisions of this article including:
1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.
2. The exemption from inspection of:
(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.
(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.
(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.
(d) New vehicles before the sixth registration year after initial purchase or lease.
(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.
(f) Golf carts.
(g) Electrically-powered vehicles.

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

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

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

(k) Collectible vehicles.

(l) Motorcycles.

(m) Cranes and oversize vehicles that require permits pursuant to section 28-1100, 28-1103 or 28-1144.

(n) Vehicles that are not in use and that are owned by residents of this state while on active military duty outside of this state.

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

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

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

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

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

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

1. In area A the cost shall not exceed:

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

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

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

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

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

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

2. In area B the cost shall not exceed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Either:
   (a) Bears a model year date of original manufacture that is at least fifteen years old.
   (b) Is of unique or rare design, of limited production and an object of curiosity.
2. Meets both of the following criteria:
   (a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.
   (b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

Other Applicable Rules

Motor vehicles and motor vehicle engines imported into the United States are subject to conformance with the Environmental Protection Agency standards provided under 40 CFR 85.1501 through 85.1515 with some exclusions and exemptions provided under 40 CFR 85.1701 through 85.1716.

40 CFR 85.	Importation of Motor Vehicles and Motor Vehicle Engines
40 CFR 86.	Control of Emissions from New and In-use Highway Vehicles and Engines
49 CFR 567.	Certification (Label Requirements for Manufacturers and Registered Importers)
49 CFR 571.	Federal Motor Vehicle Safety Standards
49 CFR 580.	Odometer Disclosure Requirements
49 U.S.C. 32701 through 32711.	Odometers

Incorporations by Reference

R17-4-301. Definitions

"Operator Requirements" means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

ARIZONA DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 7, Article 1-7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 16, 2023

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 7

Summary

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) relates to twenty-one (21) rules in Title 17, Chapter 7, Articles 1-4, 6, and 7 related to Third-Party Programs. Specifically, under A.R.S. Title 28, Chapter 13, the Department has authority to allow third-parties to provide certain motor vehicle-related services to the public at privately-owned locations on behalf of the Department, and to certify employees and contractors of those authorized third-parties. For example, authorized third-party services are available to provide driver license examinations, instruction permits, driver and identification licenses, CDLEs, dealer licenses, motor carrier permits, motor vehicle record processing, tax report processing, title and registration, and vehicle verification at both rural and urban locations in the state.

In the prior 5YRR for these rules, which was approved by the Council in December 2018, the Department proposed to amend fifteen (15) rules to improve their clarity, conciseness, and understandability. The Department indicated it would submit a rulemaking to the Council to address these issues by July 2020. However, the Department indicates it did not complete the prior proposed course of action. Specifically, the Department states, due to further Department discussions a decision was made to no longer pursue this rulemaking as the Department continued to work on process improvements and stakeholder relations. The Department states,

after recent legislation to expand third party services to include more CDL transactions, the Department began the rulemaking process to update Chapter 7, which included a re-evaluation of the items discussed in the previous report. A detailed breakdown of the Department's re-evaluation of the proposed rule changes from the prior report is found in Section 10 of the Department's current report.

Proposed Action

In the current report, the Department is proposing to amend fifteen (15) rules it has identified as not clear, concise, and understandable or not enforced as written. The Department indicates it plans to amend the rules through expedited rulemaking. The Department states it plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039, upon approval of this report and intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of April 2024. Additionally, the Department anticipates receiving the results of a Sunset Audit conducted by the Office of the Auditor General this year. The Department indicates any recommendations made by the Office of the Auditor General may result in further rulemaking to this Chapter.

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 economic impact comparison states that the rules regarding authorized third party services are available to provide driver license examinations, instruction permits, driver and identification licenses, commercial driver license examinations, dealer licenses, motor carrier permits, motor vehicle record processing, tax report processing, title and registration, and vehicle verification at both rural and urban locations in the state. The Department states that since the original 2018 EIS there have been an increased number of providers, certified individuals, number of services performed, number of transactions and examinations conducted, and revenue generated. Currently, there are 172 authorized third party locations, 20 of which are closed to the public and service business or governmental entity customers. One of the biggest increases was in the number of locations that offer title and registration and driver licenses services, which went from 25 in 2018 to 68. In the last fiscal year, the Department certified a combined 372 title and registration processors and driver license processors, and 173 commercial driver license examiners.

Stakeholders include the Department, the authorized third party providers, certified personnel, and public consumers of the third party services.

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

The Department states that the costs and benefits of the rules have not changed since the 2018 Economic Impact Statement with the benefits of the rules continuing to exceed the costs.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department 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 Department indicates the rules are generally clear, concise, and understandable, except for the following rules:

- **R17-7-101**
  - "Concentration Banking System:" Revise the meaning to be a "depository eligible to be a servicing bank for the State of Arizona" so that the definition is consistent with the Department's authorization agreement with the third parties.
  - "Convenience fee:" Revise the definition to state, "means the reasonable and commensurate fee that an ATP collects and retains for its services pursuant to A.R.S. § 28-5101" so that it is consistent with A.R.S. § 28-5101(E).
  - "Driver license processor:" Add the verbiage, "including commercial driver license," after "driver license" to help clarify and strengthen the inclusion of the CDL transactions due to Laws 2021, Chapter 99.
  - "Good standing:" Revise the definition by extending the time-frame from three years to five years of the application date of having a similar business license or certification suspended, revoked, canceled or denied and by adding the committing of a serious violation, as defined in A.R.S. § 28-5108, to the list of items that a former employee may have not been dismissed or resigned from a position for cause in order to ensure support of the requirements of the criminal records check (A.R.S. § 28-5105) and the status of the former employee.
  - "Log:" Clarify the definition so that this applies to either accountable inventories or activities, or both.
  - "SAAM:" Add a definition of "SAAM" to mean the State of Arizona Accounting Manual.
- **R17-7-201**
  - Subsection (A) introductory sentence: Add verbiage to clarify that an applicant must be at least 18 years of age.
  - Subsections (A)(1) and (A)(4): Replace the listed items with the verbiage, "identifying information" in an effort to streamline this rule while still providing context to the type of information required on the form.
  - Subsection (A)(2): Add verbiage to indicate that if the applicant is exempt, a surety bond exemption form must be submitted annually unless the requirement

has been waived by the Department to ensure the proper bond requirement has been met.
    - Subsection (A)(8): Replace the listed subset items with the verbiage, "all applicable principles" in an effort to streamline this rule with the usage of the defined term instead of individually listing them.
    - Subsection (A)(11): Clarify the language to indicate it can be a map, or drawing, and a narrative description.
    - Subsection (A)(12): Restructure this subsection by relocating the age requirement to subsection (A) for better clarity of the requirement of all applicants; removing verbiage regarding the responsibility of the fee, which is detailed in A.R.S. § 28-5105; removing the unnecessary verbiage regarding the fingerprint card at the end, which may be digital; removing the verbiage, "pursuant to A.R.S. § 28-5105"; and clarifying that the full set of fingerprints from a criminal records check is in accordance with A.R.S. § 28-5105.
    - Subsection (B): Restructure this subsection by replacing "a statement" with the name of the form that is provided by the Department with the clarification that it is properly signed, and remove sub items 1-4 and replace with verbiage indicating the form includes identifying information and notification of any history of fraud, felony, or a business license withdrawal action in an effort to streamline the rule, and remove the requirement of needing to be witnessed by notary public or Department agent in order to decrease the burden to the applicant.
- **R17-7-202(A)**
    - Remove the verbiage indicating the notification will be sent by regular mail to the mailing address provided on the application in order to lessen any limitations created by stipulating how the written and dated notification will be sent thus allowing for mail, email, or any other delivery format.
- **R17-7-203(B)**
    - Provide that the authorization agreement may include exhibits, not an addendum.
- **R17-7-204**
    - Subsection (B): Require any principal or certified individual to remain in good standing with the Department.
    - Subsection (E): Change the location that the certificates are maintained from the location where the certified individual works to the principal place of business in effort to simplify by centralizing and keeping all the third parties' certificates in the administrative headquarters.
    - Subsection (F): Revise to clarify the contents of the certified individual's personnel file and add language that the personnel file for a certified individual shall include all relevant Department correspondence.
    - Subsection (K): Change the time-frame from five business days to two due improved electronic communication capabilities.
    - Subsection (M): Remove this subsection to rely more on statute, A.R.S. § 28-5105(G), which provides a time-frame for notification for certain ownership changes.

- Subsection (P)(4): Clarify that notification is through a form provided by the Department instead of just a written notice in order to ensure consistency in the process and to assist the third parties.
- Subsection (P)(6): Clarify that an authorized third party must maintain minimum required surety bond and insurance coverages.
- Subsection (Q): Prohibit an authorized third party from soliciting an individual or another business on Department property unless approved by the Department.

- **R17-7-301**
  - Subsection (A)(1): Replace the listed items with the verbiage, "identifying information and contact information" in an effort to streamline this rule while still providing context to the type of information required on the form.
  - Subsection (A)(3): Replace the sentence with, "Information related to any previous employment with the Department" in an effort to streamline and clarify the language.
  - Subsections (A)(4)-(A)(7): Remove these four subsections and replace with the statement, "Information related to any previous certification of the applicant by the Department" in an effort to streamline the rule by grouping those four subsections into a statement that still provides context to the type of information that is required on the form.
  - Subsection (A)(10): Replace the verbiage, "on a fingerprint card supplied by the Department and completed by a law enforcement agency for a criminal records check" with the verbiage, "from a criminal records check in accordance with A.R.S. § 28-5105" due to fingerprints may be digital and for better clarity by indicating the statute.
  - Subsection (A)(11): Clarify that the driving record is for the past 39 months; add language for a CDL record, which is different from a standard driving record, for an applicant who holds a CDL; and revise to require the driving record to be dated within 7 days of the application date.
  - Subsection (B): Remove this subsection since it is unnecessary and A.R.S. § 28-5105 stipulates payment of a fee to the Department of Public Safety.
  - Subsection (C): Replace a "statement" with the name of the form that is provided by the Department with a clarification that it is properly signed in order to be consistent with the proposed change to R17-7-202(B) and for clarification.
  - Subsection (D): Merge Subsection (E) into this subsection for clarification and so that they are factors for eligibility for certification.
- **R17-7-302(A)**
  - Restructure this subsection by removing Subsections (A)(1) - (A)(3) and replacing with language indicating that the notification will be sent to the address provided on the application in accordance with A.R.S. § 28-5107 in an effort to streamline the rule and not be specific to the delivery method which could change and is currently to the email address provided on the application.
- **R17-7-303(B)(2)**
  - Amend language disallowing a certified individual to solicit on Department property unless the Department approves.
- **R17-7-401(B)**

    - Update the reference to "Section II-D of the Arizona Accounting Manual" to "SAAM 5055, Travel Claims" to be consistent with the manual's updated format.
- **R17-7-601**
    - Delete definition of "monthly reconciliation report" since the Department no longer uses this report R17-7-603 In the introductory sentence, add the verbiage, "as a CDLE provider" after "authorization" for better consistency and clarification.
- **R17-7-604**
    - Subsection (A): Strike "requirement," insert "requirements."
    - Subsection (A)(3): Remove the requirement of a minimum of three years of driving experience pertaining to the operation of a commercial vehicle representative of the type and class for which the applicant is seeking certification to decrease a burden for the CDLE providers.
- **R17-6-605**
    - Paragraph 1(a): Clarify that this refers to a "commercial" driver license.
    - Paragraph 5: Remove the monthly reconciliation report since the Department no longer uses it and replace it with the requirement to submit a list of all voided score sheets or an indication if none of the score sheets have been voided and remove (a) - (c) to improve the process.
    - Paragraph 6: Add the requirement of the CDL applicant to have successfully completed the entry-level driver training from a certified organization on the national registry of entry-level driver training providers as prescribed in subpart F of 49 CFR 380 in order to meet the requirement under 49 CFR 383.73(b)(11) & (e)(9).
- **R17-7-606(A)(5)**
    - Increase the validity period of the score sheet from 30 calendar days to one year in order to improve the process and help alleviate a burden.
- **R17-7-702**
    - In the introductory sentence: Clarify that applicant for third party authorization is as a driver license training provider.
- **R17-7-703**
    - In Paragraph 3, remove "Arizona" so that it may be a driver license from any state in an effort to reduce a hiring burden.
- **R17-7-704**
    - Replace Paragraph (1) with the statement, "the authorized third party driver license training provider shall comply with the Department's approved curriculum" in an effort to clarify the requirement.
- **R17-7-705(C)**
    - Remove the requirement that a driver license trainer certificate is nontransferable in an effort to reduce a burden for the driver license trainers. Add the requirement that if a certified driver license trainer is not employed by an authorized driver license training provider for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

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 generally enforced as written except for the following rules:

- **R17-7-302(A)**
  - The Department is notifying applicants by email and not by regular mail.
- **R17-7-401(B)**
  - The Arizona Department of Administration General Accounting Office updated the Arizona Accounting Manual, which included its format and numbering, so the reference in the rule is incorrect.
- **R17-7-601 and R17-7-605, Monthly Reconciliation Report**
  - The Department no longer uses the monthly reconciliation report and is changing the process to be where the authorized third party shall submit a list of all voided score sheets or an indication if none of the score sheets have been voided.

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

The Department indicates that federal regulations 49 CFR 383.73, State procedures; 49 CFR 383.75, Third party testing; and 49 CFR 384.228, Examiner training and record checks, are applicable to the rules. The Department states the rules are not more stringent than these 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?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates, pursuant to A.R.S. § 28-5101, it is authorizing third parties to perform specific functions. The Department states these authorizations fall under the definition of general permits since the activities and practices authorized are substantially similar in nature for all third parties authorized to perform that specified activity or function. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to twenty-one (21) rules in Title 17, Chapter 7, Articles 1-4, 6, and 7 related to Third-Party Programs. Specifically, under A.R.S. Title 28, Chapter 13, the Department has authority to allow third-parties to provide certain motor vehicle-related services to the public at privately-owned locations on behalf of the Department, and to certify employees and contractors of those authorized third-parties. The Department indicates the rules are consistent and effective, but proposes to amend fifteen (15) rules it has identified as not clear, concise, and understandable or not enforced as written. The Department indicates it plans to amend the rules through expedited rulemaking and intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of April 2024. Additionally, the Department anticipates receiving the results of a Sunset Audit conducted by the Office of the Auditor General this year. The Department indicates any recommendations made by the Office of the Auditor General may result in further rulemaking to this Chapter.

Council staff recommends approval of this report.

July 31, 2023

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Transportation, 17 A.A.C. Chapter 7, Five-Year Review Report

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 7, which is due on July 31, 2023. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Senior Rules Analyst, at (480) 267-6610 or at COlson2@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure: ADOT Five-year Review Report

ADOT

Government Relations and Rules

A.A.C. Title 17 – Transportation
Chapter 7
Department of Transportation
Third-Party Programs

Article 1 – Definitions
Article 2 – Authorization
Article 3 – Certification
Article 4 – Audits and Inspection
Article 6 – Commercial Driver License Examination Program
Article 7 – Driver License Training Provider Program

Five-Year Review Report

Submitted to the Governor's Regulatory Review Council

July 2023

Arizona Department of Transportation

Five-Year Review Report

17 A.A.C. Chapter 7, Articles 1 to 4 and 6 to 7

July 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. §§ A.R.S. §§ 28-5100, 28-5101, 28-5101.01, 28-5101.02, 28-5101.03, 28-5102, 28-5103, 28-5104, 28-5105, 28-5106, 28-5107, 28-5108, 28-5109, 28-5110, and 28-5111

2. The objective of each rule:

Rule	Objective
Article 1	
R17-7-101	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Chapter.
Article 2	
R17-7-201	This rule prescribes the requirements that an applicant for third party authorization must meet and the documents that an applicant must provide to the Department.
R17-7-202	This rule indicates the Department's process for notifying an applicant for third party authorization and an applicant's right to request a hearing if an authorization application is denied.
R17-7-203	This rule informs a third party authorization applicant that the applicant must sign an authorization agreement, which may include an addendum that will contain the specific requirements unique to each third party activity.
R17-7-204	This rule prescribes requirements that an authorized third party must satisfy to comply with the Department's third party program.
R17-7-205	This rule informs a third party about the financial procedures to remit monies collected to the Department.
Article 3	
R17-7-301	This rule prescribes the requirements for an applicant for third party certification.
R17-7-302	This rule details the notification procedure for an applicant for third party certification and the applicant's right to request a hearing if the certification is denied.
R17-7-303	This rule prescribes the requirements and notifications of a certified individual employed by an authorized third party.
Article 4	
R17-7-401	This rule specifies the audit activities that the Department or other agencies may perform during audits or inspections.
Article 6	
R17-7-601	This rule provides industry representatives and the public with a clearer understanding of the Department's intended meaning for various terms used in this Article.

R17-7-602	This rule identifies the specific commercial driver license examination (CDLE) program activities the Department may authorize a third party or certified individual to conduct on behalf of the Department.
R17-7-603	This rule contains the additional authorization application requirements for the CDLE program.
R17-7-604	This rule provides additional application requirements for an applicant for certification as a commercial driver license (CDL) examiner.
R17-7-605	This rule prescribes the requirements for the CDLE program.
R17-7-606	This rule prescribes the requirements for certified CDL examiners.
Article 7	
R17-7-701	This rule provides industry representatives and the public with a clearer understanding of the Department's intended meaning for terms used in this Article.
R17-7-702	This rule provides additional application requirements for an applicant for a driver license training provider.
R17-7-703	This rule provides additional application requirements for an applicant for certification as a driver license trainer.
R17-7-704	This rule prescribes the requirements for an authorized driver license training provider program.
R17-7-705	This rule prescribes the certification requirements for a certified driver license trainer and the process for obtaining a duplicate certification.

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 ___** **No _X_**

Rule	Explanation
R17-7-302(A)	The Department is notifying applicants by email and not by regular mail.
R17-7-401(B)	The Arizona Department of Administration General Accounting Office updated the Arizona Accounting Manual, which included its format and numbering, so the reference in the rule is incorrect.
R17-7-601 and R17-7-605, monthly reconciliation report	The Department no longer uses the monthly reconciliation report and is changing the process to be where the authorized third party shall submit a list of all voided score sheets or an indication if none of the score sheets have been voided.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

While the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following updates and changes would improve consistency and clarity and be current with the Program processes:

Rule	Explanation
Article 1	
R17-7-101	a. "Concentration Banking System:" Revise the meaning to be a "depository eligible to be a servicing bank for the State of Arizona" so that the definition is consistent with the Department's authorization agreement with the third parties. b. "Convenience fee:" Revise the definition to state, "means the reasonable and commensurate fee that an ATP collects and retains for its services pursuant to A.R.S. § 28-5101" so that it is consistent with A.R.S. § 28-5101(E). c. "Driver license processor:" Add the verbiage, "including commercial driver license," after "driver license" to help clarify and strengthen the inclusion of the CDL transactions due to Laws 2021, Chapter 99. d. "Good standing:" Revise the definition by extending the time-frame from three years to five years of the application date of having a similar business license or certification suspended, revoked, canceled or denied and by adding the committing of a serious violation, as defined in A.R.S. § 28-5108, to the list of items that a former employee may have not been dismissed or resigned from a position for cause in order to ensure support of the requirements of the criminal records check (A.R.S. § 28-5105) and the status of the former employee. e. "Log:" Clarify the definition so that this applies to either accountable inventories or activities, or both. f. "SAAM:" Add a definition of "SAAM" to mean the State of Arizona Accounting Manual.
Article 2	
R17-7-201	a. Subsection (A) introductory sentence: Add verbiage to clarify that an applicant must be at least 18 years of age. b. Subsections (A)(1) and (A)(4): Replace the listed items with the verbiage, "identifying information" in an effort to streamline this rule while still providing context to the type of information required on the form. c. Subsection (A)(2): Add verbiage to indicate that if the applicant is exempt, a surety bond exemption form must be submitted annually unless the requirement has been waived by the Department to ensure the proper bond requirement has been met. d. Subsection (A)(8): Replace the listed subset items with the verbiage, "all applicable principles" in an effort to streamline this rule with the usage of the defined term instead of individually listing them. e. Subsection (A)(11): Clarify the language to indicate it can be a map, or drawing, and a narrative description. f. Subsection (A)(12): Restructure this subsection by relocating the age requirement to subsection (A) for better clarity of the requirement of all applicants; removing verbiage

	regarding the responsibility of the fee, which is detailed in A.R.S. § 28-5105; removing the unnecessary verbiage regarding the fingerprint card at the end, which may be digital; removing the verbiage, "pursuant to A.R.S. § 28-5105"; and clarifying that the full set of fingerprints from a criminal records check is in accordance with A.R.S. § 28-5105. g. Subsection (B): Restructure this subsection by replacing "a statement" with the name of the form that is provided by the Department with the clarification that it is properly signed, and remove sub items 1-4 and replace with verbiage indicating the form includes identifying information and notification of any history of fraud, felony, or a business license withdrawal action in an effort to streamline the rule, and remove the requirement of needing to be witnessed by notary public or Department agent in order to decrease the burden to the applicant.
R17-7-202(A)	Remove the verbiage indicating the notification will be sent by regular mail to the mailing address provided on the application in order to lessen any limitations created by stipulating how the written and dated notification will be sent thus allowing for mail, email, or any other delivery format.
R17-7-203(B)	Provide that the authorization agreement may include exhibits, not an addendum.
R17-7-204	a. Subsection (B): Require any principal or certified individual to remain in good standing with the Department. b. Subsection (E): Change the location that the certificates are maintained from the location where the certified individual works to the principal place of business in effort to simplify by centralizing and keeping all the third parties' certificates in the administrative headquarters. c. Subsection (F): Revise to clarify the contents of the certified individual's personnel file and add language that the personnel file for a certified individual shall include all relevant Department correspondence. d. Subsection (K): Change the time-frame from five business days to two due improved electronic communication capabilities. e. Subsection (M): Remove this subsection to rely more on statute, A.R.S. § 28-5105(G), which provides a time-frame for notification for certain ownership changes. f. Subsection (P)(4): Clarify that notification is through a form provided by the Department instead of just a written notice in order to ensure consistency in the process and to assist the third parties. g. Subsection (P)(6): Clarify that an authorized third party must maintain minimum required surety bond and insurance coverages. h. Subsection (Q): Prohibit an authorized third party from soliciting an individual or another business on Department property unless approved by the Department.
Article 3	
R17-7-301	a. Subsection (A)(1): Replace the listed items with the verbiage, "identifying information and contact information" in an effort to streamline this rule while still providing context to the type of information required on the form. b. Subsection (A)(3): Replace the sentence with, "Information related to any previous employment with the Department" in an effort to streamline and clarify the language.

	c. Subsections (A)(4)-(A)(7): Remove these four subsections and replace with the statement, "Information related to any previous certification of the applicant by the Department" in an effort to streamline the rule by grouping those four subsections into a statement that still provides context to the type of information that is required on the form. d. Subsection (A)(10): Replace the verbiage, "on a fingerprint card supplied by the Department and completed by a law enforcement agency for a criminal records check" with the verbiage, "from a criminal records check in accordance with A.R.S. § 28-5105" due to fingerprints may be digital and for better clarity by indicating the statute. e. Subsection (A)(11): Clarify that the driving record is for the past 39 months; add language for a CDL record, which is different from a standard driving record, for an applicant who holds a CDL; and revise to require the driving record to be dated within 7 days of the application date. f. Subsection (B): Remove this subsection since it is unnecessary and A.R.S. § 28-5105 stipulates payment of a fee to the Department of Public Safety. g. Subsection (C): Replace a "statement" with the name of the form that is provided by the Department with a clarification that it is properly signed in order to be consistent with the proposed change to R17-7-202(B) and for clarification. h. Subsection (D): Merge Subsection (E) into this subsection for clarification and so that they are factors for eligibility for certification.
R17-7-302(A)	Restructure this subsection by removing Subsections (A)(1) - (A)(3) and replacing with language indicating that the notification will be sent to the address provided on the application in accordance with A.R.S. § 28-5107 in an effort to streamline the rule and not be specific to the delivery method which could change and is currently to the email address provided on the application.
R17-7-303(B)(2)	Amend language disallowing a certified individual to solicit on Department property unless the Department approves.
Article 4	
R17-7-401(B)	Update the reference to "Section II-D of the Arizona Accounting Manual" to "SAAM 5055, Travel Claims" to be consistent with the manual's updated format.
Article 6	
R17-7-601	Delete definition of "monthly reconciliation report" since the Department no longer uses this report
R17-7-603	In the introductory sentence, add the verbiage, "as a CDLE provider" after "authorization" for better consistency and clarification.
R17-7-604	a. Subsection (A): Strike "requirement," insert "requirements." b. Subsection (A)(3): Remove the requirement of a minimum of three years of driving experience pertaining to the operation of a commercial vehicle representative of the type and class for which the applicant is seeking certification to decrease a burden for the CDLE providers.
R17-6-605	a. Paragraph 1(a): Clarify that this refers to a "commercial" driver license. b. Paragraph 5: Remove the monthly reconciliation report since the Department no longer uses it and replace it with the requirement to submit a list of all voided score sheets or an indication if none of the score sheets have been voided and remove (a) - (c) to improve the process. c. Paragraph 6: Add the requirement of the CDL applicant to have successfully completed the

	entry-level driver training from a certified organization on the national registry of entry-level driver training providers as prescribed in subpart F of 49 CFR 380 in order to meet the requirement under 49 CFR 383.73(b)(11) & (e)(9).
R17-7-606(A)(5)	Increase the validity period of the score sheet from 30 calendar days to one year in order to improve the process and help alleviate a burden.
Article 7	
R17-7-702	In the introductory sentence: Clarify that applicant for third party authorization is as a driver license training provider.
R17-7-703	In Paragraph 3, remove "Arizona" so that it may be a driver license from any state in an effort to reduce a hiring burden.
R17-7-704	Replace Paragraph (1) with the statement, "the authorized third party driver license training provider shall comply with the Department's approved curriculum" in an effort to clarify the requirement.
R17-7-705(C)	Remove the requirement that a driver license trainer certificate is nontransferable in an effort to reduce a burden for the driver license trainers. Add the requirement that if a certified driver license trainer is not employed by an authorized driver license training provider for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

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 authorized third party program continues to be a great benefit to the Department, the authorized third party providers, certified personnel, and public consumers of the third party services. Authorized third party services are available to provide driver license examinations, instruction permits, driver and identification licenses, CDLEs, dealer licenses, motor carrier permits, motor vehicle record processing, tax report processing, title and registration, and vehicle verification at both rural and urban locations in the state.

Since the last economic, small business, and consumer impact completed for the 2018 five-year review report, the program has continued to grow with increased numbers of providers, certified individuals, the number of services performed, the number of transactions and examinations conducted, and the revenue generated. Currently, there are 172 authorized third party locations, of which, 20 of the authorized third party offices are closed to the public and service business or governmental entity customers. One of the biggest increases was to the number of locations that offer title and registration and driver licenses services, which went from 25 in 2018 to 68. In the last fiscal year, the Department certified a combined 372 title and registration processors and driver license processors, and 173 CDL examiners. Recent legislation has even expanded the services provided to include the issuance and renewal of CDLs.

The costs and benefits of these rules have remained essentially the same as indicated in the 2018 economic, small business and consumer impact statement. At that time the Department anticipated costs to be substantial for the Department, which include costs to certify and train authorized third party personnel, to perform continuous quality assurance, perform audits, and to oversee and provide technical support to authorized third parties. Since then, the Department continues to incur

substantial costs to continue its third party program. In addition, the Department incurred substantial costs to complete the overhaul of some of the Department's computer systems, which included the databases, the computer programming, the ways the personnel performed transactions, and the ways and types of data the Department is able to retrieve. These changes were not a result of any rulemaking, but due to a need of the Department to further modernize its systems and provide for better capabilities.

In 2018, it was anticipated that authorized third parties or certified third party individuals incur moderate to substantial costs to rent or own, and maintain their facilities with specific requirements, provide security and signage, equipment, including computer hardware and software, and employ certified personnel. Pursuant to A.R.S. § 28-5104, a bond may be required of the third party, and pursuant to A.R.S. § 28-5105, a criminal records check may be required with payment of a fee prescribed by the Arizona Department of Public Safety. The authorized third parties and certified individuals continue to incur these costs. The cost for the criminal records check has decreased to $30.25. Some of these costs may be offset from the reimbursement by the Department through statutorily prescribed retention fees and payment for credit and debit card processing, as well as for electronic funds transfers. In addition, the authorized third party has the option under A.R.S. § 28-5101 to charge a consumer a convenience fee for each service they receive.

The Department has determined that the benefits of providing these services exceed the costs. Services provided by third parties at locations around the state provide an alternative to receiving motor vehicle-related services at Motor Vehicle Division offices or online services. The Department would incur substantially higher costs in terms of rent, land purchase, administrative and operating costs, personnel, employee-related costs, and computer and other equipment costs to operate additional Motor Vehicle Division offices in the state. The third party program allows for more business owners and for an increase in private sector employment and economic growth. Consumers benefit from the availability of additional service providers in urban and rural areas of the state to obtain more types of motor vehicle-related services. Although consumers have options other than using authorized third party office services, use of third party services continues to be a popular option.

In the last fiscal year, the authorized third parties generated $662,586,797.81 in Department revenue for 5,662,663 transactions. In addition, the Department paid a total of $22,992,809.55 in retention fees in the last fiscal year for all authorized third party transactions.

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 last five-year review report, the Department planned to request permission from the Governor's Office for an exemption from the rulemaking moratorium to amend the third party program rules after approval of the report and to submit a final rulemaking to the Governor's Regulatory Review Council by July 2020. Due to further Department discussions a decision was made to no longer pursue this rulemaking as the Department continued to work on process improvements and stakeholder relations. After recent legislation to expand third party services to include more CDL transactions, the Department began the rulemaking process to update Chapter 7, which included a re-evaluation of the items discussed in the last report.

Rule	Explanation
R17-7-101	The Department believed the following amendments should be made to make the rules clear, concise, and understandable: a. Delete definition of "vehicle permit processor," which is not used in the rules. b. Add a definition of "authorization agreement" for usage in the rules. c. Clarify the definition of "concentration banking system." d. Clarify the definition of "convenience fee." e. Revise the definition of "good standing." f. Clarify in the definition of "log" that this applies to either accountable inventories or activities, or both. g. Clarify in the definition of "office personnel member" that an office personnel member is approved, not certified. h. Add a definition of "SAAM" (State of Arizona Accounting Manual). i. Insert a definition of "serious violation" to update with statute. *(Due to further consideration, the Department is no longer making the changes indicated for items a, b, and g. Item a is used with the definition of "certified individual." Item b appears to be unnecessary. Office personnel members under item g are certified. Item i was re-evaluated as something to be added to the definition of "good standing." The other items will be included in the proposed expedited rulemaking.)*
R17-7-201	a. Subsections (A)(1) and (A)(4): Add a mailing address as an authorization application requirement. b. Subsection (A)(2): If the applicant is exempt, require yearly submission of a surety bond exemption form. c. Subsection (A)(12): Add that an applicant who owns 20% or more of the entity, each partner or stockholder owning 20% or more, and each employee of an authorized third party must obtain a full set of fingerprints. d. Subsection (A)(12): Allow an applicant to get a full set of fingerprints from a professional fingerprinting technician. e. Subsection (B)(2): Require each principal to submit a mailing and e-mail address. f. Subsection (B)(3): Require reporting of actions against business licenses for past 10 years immediately preceding application date. g. Subsection (B)(4): Delete the witnessing by a notary public or Department agent. h. Subsection (C): Delete the deadline for receiving the authorization application. Clarify that an applicant must be at least 18 years of age on the application date. *(Due to further consideration, the Department is no longer making the changes indicated for items a, c, d, e, f, and h. In an effort to streamline and create a less cumbersome rule, the Department is planning on restructuring by removing detailed lists with a categorized language for items a, e, and f. Items c and d are no longer necessary since the Department is streamlining the language to rely more on the requirement to supply the fingerprints in accordance with the law. The Department has decided to continue to maintain the time-frame and the age requirement has been*

	relocated to subsection (A). Items b and g will be included in the proposed expedited rulemaking.)
R17-7-202(A)	Allow the notification to be sent to the e-mail address on the application. *(Due to further consideration, the Department has decided to take a less burdensome approach by removing any indication of how the notification will be delivered and keep the focus on the indication that the Department will send a written and dated notification in accordance with statute.)*
R17-7-203	Subsection (B): Provide that the authorization agreement may include exhibits, not an addendum. *(This will be included in the proposed expedited rulemaking.)*
R17-7-204	a. Subsection (B): Require any principal or certified individual to remain in good standing with the Department. b. Subsection (C)(3): Clarify that an authorized third party must retain paper and electronic records relating to a third party activity at that location. c. Subsection (E): Clarify that an authorized third party shall maintain a copy of the certificate for each type of authorized activity performed at an established place of business and shall make it readily accessible to authorized representatives of the Department, by a law enforcement agency, or the public during normal business hours. d. Subsection (F): Revise to clarify the contents of the personnel file, add language that the personnel file for a certified individual shall include all Department correspondence relating to the certified individual. e. Subsection (G): Correct reference from R17-7-401 to A.A.C. R17-7-401. f. Subsection (P)(4): Require written notice using the prescribed form. g. Subsection (P)(6): Clarify that an authorized third party must maintain minimum required surety bond and insurance coverages. h. Subsection (Q): Prohibit an authorized third party from soliciting an individual or another business on Department property unless authorized by the Department. *(Due to further consideration, the Department is no longer making the changes indicated for items b and e. The Department decided it was best to continue to require the records at either the established or principal place of business in item b and that it was not necessary to make the correction in item e. The Department decided to modify item c to indicate the certificate location to be at the principal place of business and that it was unnecessary for the additional language. The Department decided to still clarify item f with the change to the prescribed form but is removing the word, "written". The other items will be included in the proposed expedited rulemaking.)*
R17-7-301	a. Subsection (A)(1): Require the applicant to provide an e-mail address. b. Subsection (A)(3): Clarify to refer to the dates when the applicant was employed by the Department. c. Subsection (A)(6): Clarify that the reference to certification refers to previous certification. d. Subsection (A)(10): Allow an applicant for certification to provide fingerprints from a professional fingerprinting technician. e. Subsection (A)(11): Revise to require the driving record to be dated within 7 days of the application date.

	f. Subsection (D): Clarify that an applicant may be eligible for certification if the applicant is employed or under contract with an employer that is authorized or is applying for authorization and strike similar language from Subsection (E). g. Subsection (D): Provide that applicants for driver license examiners, driver license trainers, or driver license processors who have any driver license suspensions, revocations, or cancellations within 39 months of the application date are not eligible for certification and strike Subsection (E). *(Due to further consideration, the Department is no longer making the changes indicated for items a - d. In an effort to streamline and create a less cumbersome rule, the Department is planning on restructuring by removing detailed lists with a categorized language for items a - c. Item d is no longer necessary since the Department is streamlining the language to rely more on the requirement to supply the fingerprints in accordance with the law and not detail who is collecting the fingerprints. The Department decided it was best to relocate the corrective action details to Subsection D as detailed in item g, but not with the language stipulating for driver license examiners, driver license trainers, or driver license processors. Items e and f will be included in the proposed expedited rulemaking.)*
R17-7-302	a. Subsections (A)(1): Allow for e-mail notification. b. Subsection (A)(2): Allow notifications to be sent to the e-mail address. c. Subsection (B): Add the time period of 30 days for an applicant whose certification is denied to request a hearing. *(Due to further consideration, the Department has decided to take a less burdensome approach by removing any indication of how the notification will be delivered and keep the focus on the indication that the Department will send a written and dated notification to the address provided on the application in accordance with statute. The Department is no longer adding item c and believes the statute referenced, which contains the 30 days, is sufficient.)*
R17-7-303(B)(2)	Amend language disallowing a certified individual to solicit on Department property unless the Department approves. *(This will be included in the proposed expedited rulemaking.)*
R17-7-401	Subsection (B): Delete reference to "Section II-D of the Arizona Accounting Manual", insert "SAAM 5055." *(This will be included in the proposed expedited rulemaking with a slight modification to include the policy's title, "Travel Claims" in the reference.)*
R17-7-601	Delete definition of "monthly reconciliation report." *(This will be included in the proposed expedited rulemaking.)*
R17-7-604	Subsection (A): Strike "requirement," insert "requirements." *(This will be included in the proposed expedited rulemaking.)*
R17-7-605	a. Paragraph 1(a): Clarify that this refers to a "commercial" driver license. b. Amend Paragraph 5 (a) through (c) by requiring submission of the voided CDLE score sheets monthly and striking the monthly reconciliation report. *(This will be included in the proposed expedited rulemaking with a modification to require a list of*

	all voided score sheets or an indication if none of the score sheets have been voided.)
R17-7-702	a. Clarify that applicant for third party authorization is as a driver license training provider. b. Paragraph (1)(a): Clarify that the course of instruction must be approved by the Director prior to its use. c. Paragraph (2): Add that the minimum professional training standards are for driver licenses. *(Due to further consideration, the Department is no longer making the changes indicated for items b and c since the Department has decided the changes are unnecessary. Item a will be included in the proposed expedited rulemaking.)*
R17-7-703	Add language that if a certified driver license trainer is not employed by a professional driver license training school for a period of at least 1 year, the trainer must reapply and satisfy all the driver license training requirements. *(Due to further consideration, the Department decided that it is more appropriate to add the requirement to R17-7-705.)*
R17-7-704	a. Paragraph (1): Add that the Director may approve the driver license training curriculum. b. Paragraph (4): Office hours must be posted in the established place of business and an authorized third party driver license provider must have office hours for a minimum of 30 hours per week. c. Paragraph (5): Driver license training provider shall provide adequate facilities at an established place of business. d. Paragraph (6): Records must be available for inspection by the Department or a law enforcement agency. e. Paragraph (6)(a) to (c), (7): Specify that records can be paper or electronic. *(Due to further consideration, the Department is no longer making the changes indicated for items b - e since the Department has decided the changes are unnecessary or may create a burden for the third parties. A modified version of item a with it stating that the authorized third party driver license training provider shall comply with the Department's approved curriculum will be included in the proposed expedited rulemaking.)*

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 the rule to the public and political subdivisions outweigh the costs of the rule. The Department routinely chooses the rulemaking option that is the least costly and burdensome to business and customers. Under the statutory requirements, ADOT determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Federal regulations: 49 CFR 383.73, State procedures; 49 CFR 383.75, Third party testing, and 49 CFR 384.228, Examiner training and record checks, are applicable to the rules. The rules are not more stringent than federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Pursuant to A.R.S. § 28-5101, the Department is authorizing third parties to perform specific functions. These authorizations do fall under the definition of general permits since the activities and practices authorized are substantially similar in nature for all third parties authorized to perform that specified activity or function.

14. Proposed course of action

The Department proposes to amend the rules as identified in item 6 through expedited rulemaking. The Department plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039, upon approval of this report. The Department intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of April 2024.

The Department anticipates receiving the results of a Sunset Audit conducted by the Office of the Auditor General this year. Any recommendations made by the Office of the Auditor General may result in further rulemaking to this Chapter.

17 A.A.C. 7 Supp. 19-2

Arizona Administrative CODE

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2019 through June 30, 2019

Title 17

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION - THIRD-PARTY PROGRAMS

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about these rules? Contact:

Department: Arizona Department of Transportation
Rules and Policy Development
Name: Katy Proctor, Rules Administrator
Address: 206 S. 17th Ave., MD 180A
Phoenix, AZ 85007
Telephone: (602) 712-7543
Website: https://azdot.gov/about/government-relations

The release of this Chapter in Supp. 19-2 replaces Supp. 14-2, 1-11 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION - THIRD-PARTY PROGRAMS

Editor's Note: 17 A.A.C. 7, consisting of Articles 1 through 4, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R17-7-101, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 2. AUTHORIZATION

Article 2, consisting of Sections R17-7-201 through R17-7-204, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 3. CERTIFICATION

Article 3, consisting of Sections R17-7-301 and R17-7-302, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 4. AUDITS AND INSPECTION

Article 4, consisting of Section R17-7-401, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 5. EXPIRED

Article 5, consisting of Sections R17-7-501 through R17-7-502, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

Article 6, consisting of Sections R17-7-601 through R17-7-609, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

Article 7, consisting of Sections R17-7-701 through R17-7-707, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 8. REPEALED

Article 8, consisting of Sections R17-7-801 through R17-7-802, repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

Article 8, consisting of Sections R17-7-801 through R17-7-802, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R17-7-101, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-101. Definitions

The following definitions apply to this Chapter unless otherwise specified:

"Accountable inventory" means an item that is reproduced by the Department in a consecutively numbered series for:

Recording the number of a completed, issued, or voided item in a log; and

Reporting the number of a completed, issued, or voided item to the Department.

"Activity" means a function or service that is provided by an authorized third party pursuant to A.R.S. Title 28, Chapter 13 and that is performed by a certified individual as defined in this Article.

"Agency head" or "political subdivision head" means the chief officer of an agency or political subdivision or another individual with authority to act for the agency head or political subdivision head.

"Application Date" means the date an application is received by the Department.

"Authorized third party" means an entity that:

Has written permission from the Department to operate a business under A.R.S. Title 28, Chapter 13; and

Employs or contracts with at least one certified individual to provide a third-party activity.

"Branch" means an authorized third party's business location that is an additional established place of business.

"Certified individual" means an individual who is certified by the Department under A.R.S. Title 28, Chapter 13 to perform specified activities for an authorized third party as an employee or contractor. The Department may certify an individual as:

A commercial driver license examiner,

A dealer license processor,

A driver license processor,

A driver license trainer,

An office personnel member,

A tax report processor,

A title and registration processor,

A vehicle inspector, or

A vehicle permit processor.

"Commercial driver license examiner" means an individual certified by the Department to administer class A, B, or C driver license skills tests.

"Concentration Banking System" means a type of state bank account, established by the Arizona State Treasurer's office, for deposit of monies collected by an authorized third party.

"Contact individual" means a principal or designated individual of an authorized third party who communicates with the Department on behalf of the authorized third party.

"Convenience fee" means the amount exceeding the statutorily prescribed fees and taxes that an authorized third party collects and retains for its services.

"Department" means the Arizona Department of Transportation.

"Dealer license processor" means an individual certified by the Department to:

Review applications for vehicle dealer licenses;

Enter information related to the applications in the Department's database; and

Issue vehicle dealer licenses under A.R.S. Title 28, Chapter 10.

"Driver license processor" means an individual certified by the Department to perform any one or a combination of driver license processing functions under A.R.S. Title 28 as specified in the authorization agreement between the Department and an authorized third party who has engaged the individual to perform those functions.

"Driver license trainer" means an individual certified by the Department to:

Educate and train persons, either practically or theoretically, or both, to operate or drive motor vehicles;

Prepare applicants for an examination given by the Department or an authorized third party driver license provider for a driver license or instruction permit; and

Charge a consideration or tuition for these services.

"Established place of business" means an authorized third party's business location that is:

Approved by the Department,

Located in Arizona,

Not used as a residence, and

Where the authorized third party performs authorized activities.

"Floor plan" means a Department-approved diagram of a building's interior, as seen from above, that shows the interior dimensions and the location of doors, windows, and equipment.

"Good standing" means an authorized third party applicant or an applicant seeking certification:

Has not had a similar business license or certification issued suspended, revoked, canceled, or denied within the previous three years of the application date;

Does not owe delinquent fees, taxes, or unpaid balances to the Department;

Has not had any substantiated derogatory information relevant to the requested authorization or certification reported to the Department about the applicant from any state agency or from any consumer protection agency contacted by the Department; or

If the applicant is a former Department employee, a former authorized third party, or a former employee of an authorized third party, has not been dismissed or resigned from a position for cause, including:

Misconduct, or

Resignation from position:

In lieu of dismissal, or

By mutual agreement following allegations of misconduct.

"Log" means a complete, chronological record of accountable inventories and activities performed and kept by the authorized third party as prescribed by the Department.

"Motor vehicle inspection" means vehicle verification as prescribed in A.R.S. § 28-2011.

"Office personnel member" means an individual who does not perform any other of the activities requiring certification under this Chapter and who is certified by the Department as an employee who performs functions that:

Have exposure to protected personal information, or

Has complete oversight and responsibility for all day-to-day operations necessary to ensure full compliance with all applicable program requirements.

"Principal" means any of the following:

If a sole proprietorship, the sole proprietor;

If a partnership, limited partnership, limited liability partnership, limited liability company, or corporation, the:

Partner;

Manager;

Member;

Officer;

Director;

Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

"Principal place of business" means an authorized third party's administrative headquarters, which shall not be used as a residence.

"Skills test" means a set of tests, authorized and approved by the Department and administered by the Department or by an authorized third party commercial driver license examiner or driver license processor to determine whether the applicant possesses the required skills for the type of license for which the applicant applies.

"Skills test route" means a public road or highway driving course, identified by an authorized third party and approved by the Department, for administering skills tests to driver license applicants.

"Tax report processor" means an individual certified by the Department to:

Process fuel tax reports and interstate user fuel tax reports from fuel suppliers, fuel vendors, and motor carriers; and

File the reports with the Department.

"Test site" means a location, identified by an authorized third party, for administering skills tests to driver license applicants that is:

Approved by the Department,

Permanently marked, and

Off the public road or highway.

"Title and registration processor" means an individual certified by the Department to:

Review applications for vehicle certificates of title or registrations under A.R.S. Title 28, Chapter 7;

Enter information related to applications for vehicle certificates of title or registrations into the Department's database; and

Issue or deny vehicle certificates of title or registrations.

"Vehicle inspector" means an individual certified by the Department to perform motor vehicle inspections.

"Vehicle permit processor" means an individual certified by the Department to:

Review applications for permits or registrations under A.R.S. Title 28, Chapter 3, Articles 18 and 19, and Chapter 7;

Enter information related to the applications in the Department's database; and

Issue or deny permits or registrations.

"Vicinity" means the area adjacent to, or in the immediate proximity of, any authorized third party's places of business.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 2. AUTHORIZATION

Article 2, consisting of Sections R17-7-201 through R17-7-204, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-201. Authorization Application Requirements

A. An applicant for third-party authorization shall provide to the Department on request:

1. The applicant's name, business name, and federal employer identification number;
2. The applicant's bond status as exempt or nonexempt under A.R.S. Title 28, Chapter 13. If exempt, the applicant must complete a bond exemption form. If nonexempt, the applicant must provide proof of a surety bond pursuant to A.R.S. Title 28, Chapter 13;
3. The name of the person who is the applicant's principal;
4. The name, title, e-mail address, and telephone number of the applicant's contact individual;
5. The activities for which the applicant seeks third-party authorization;
6. The address of the applicant's principal place of business and each established place of business;
7. A statement that the applicant is in good standing;
8. The signature of:
   a. The sole proprietor,
   b. All partners,
   c. A corporate officer,
   d. A limited liability company manager, or
   e. The political subdivision head or agency head;
9. The following documents relating to the applicant's business if the applicant is a:
   a. Corporation:

i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and
ii. Any other official documents, including copies of board meeting minutes and annual reports, that reflect the most recent change to the corporate name, structure, or officers;

b. Limited liability company:
i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;

c. Limited partnership, or a limited liability partnership:
i. A copy of a valid certificate of existence issued by the Arizona Secretary of State;
ii. A copy, stamped "Filed" by the Arizona Secretary of State, of a Certificate of Limited Partnership, Certificate of Foreign Limited Partnership, Limited Liability Partnership form, Foreign Limited Liability Partnership form, or Statement of Qualification for Conversion of Limited Partnership or Limited Liability Partnership; or
iii. A copy of a valid trade name certificate issued by the Arizona Secretary of State; or

d. Sole Proprietor:
i. A copy of a valid certificate of existence issued by the Arizona Secretary of State, or
ii. A copy of a valid trade name certificate issued by the Arizona Secretary of State;

10. A floor plan for each place of business that includes:
a. A computer-generated graphic,
b. A blueprint or other photographic reproduction of an architectural plan or technical drawing, or
c. A nontechnical drawing made by hand using a straightedge;
11. A map, drawing, or narrative description of each skills test route and a photograph or drawing of each test site; and
12. Unless exempt pursuant to A.R.S. § 28-5105, a full set of fingerprints for a criminal records check of each principal who must be at least 18 years of age. The applicant is responsible for the cost of the fingerprinting and criminal records check. Each full set of fingerprints shall be impressed on a fingerprint card:
a. Supplied by the Department, and
b. Completed by a law enforcement agency.

B. Unless exempt pursuant to A.R.S. § 28-5105, an applicant for a third-party authorization shall submit, for each principal, a statement on a form provided by the Department with the following information:
1. Name, including other names and birth dates used;
2. Residence address;
3. Any suspension, cancellation, revocation, or denial of any similar business license issued by the Department within five years before the application date; and
4. The individual's signature witnessed by a notary public or a Department agent designated under A.R.S. § 28-370(A).

C. The authorization application, as provided under subsection (A) and (B), is received within 30 days of application date.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-202. Notification of Authorization Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of approval or denial of third-party authorization application, in accordance with A.R.S. § 28-5107, by regular mail to the mailing address provided on the application.

B. Administrative Hearing. An applicant whose application for third-party authorization is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and A.A.C. R17-1-501 through R17-1-514.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-203. Authorization Agreement

A. An applicant whose third-party authorization application has been approved must sign an authorization agreement with the Department which specifies the terms and conditions of the third-party authorization before performing any third party program activities.

B. The third-party authorization agreement may include an addendum identifying the specific requirements unique to each third party program activity.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-204. Authorized Third-party Requirements

A. An authorized third party shall maintain compliance with all state and federal laws, Department rules, and authorization agreement provisions.

B. While holding a third-party authorization, any principal or certified individual of an authorized third party shall not have a:
1. Suspension, cancellation, revocation, or denial of another similar business license or agreement issued by the Department; or
2. Delinquent fees, taxes, or unpaid balance owed to the Department.

C. Until returned to the Department, an authorized third party shall retain the following records at an established place of business or at the principal place of business:
1. All logs and copies of completed, issued, or voided accountable inventory;
2. All unused accountable inventory; and
3. All other paper and electronic records, including all supporting documents, relating to the activities provided by the authorized third party.

D. On the request of the Department, an authorized third party shall produce and deliver to the Department the records listed in subsection (C).

E. An authorized third party shall maintain a copy of the certificate issued by the Department relating to each type of authorized activity that a certified individual performs at the business location where the certified individual works.

F. An authorized third party shall retain a certified individual's personnel file for a minimum of one year after the certified individual's last day of work. The personnel file shall include the certified individual's:
1. Dates of employment,
2. All computer access forms (if applicable), and
3. Computer access termination form (if applicable).

G. An authorized third party shall comply with the audit and inspection requirements of A.R.S. § 28-5102 and R17-7-401.

H. An authorized third party shall provide a safe work area adequate in size and otherwise suitable to accommodate all authorized activities.

I. An authorized third party shall:
1. Have facilities, including the vicinity and equipment, preapproved or prescribed by the Department;
2. Have one or more established places of business as approved by the Department; and
3. Conduct all authorized activities only at the approved established places of business.

J. An authorized third party shall obtain the Department's written approval before:
1. Changing the location or floor plan of each established place of business,
2. Changing a skills test route or test site,
3. Performing any additional authorized activity,
4. Conducting any other businesses at an established place of business, or
5. Using or adopting a name different from the name specified on its authorization agreement.

K. An authorized third party shall provide written notice to the Department, within five business days, of any changes, including full name and address, to the list of certified individuals or the contact individual.

L. An authorized third party that is open to the public shall post at each place of business the sign required by A.R.S. § 28-5101(J), and a sign provided by the Department that states the business:
1. Is a Department-authorized third-party provider, and
2. May charge the customer a convenience fee when applicable.

M. An authorized third party shall comply with the application requirements of R17-7-201 and provide the required information 30 days before making any ownership changes.

N. An authorized third party shall attend all ongoing Department-approved training within the time-frames established by the Department in its authorization agreement.

O. An authorized third party shall not employ, contract with, or otherwise engage a current Department employee.

P. An authorized third party shall:
1. Submit all documents and corrections, according to state laws, rules, and the terms and conditions of its authorization agreement;
2. Immediately notify the Department of any unlawful actions relating to motor vehicle transactions that become known to the authorized third party;
3. Require that a customer submit all supporting documentation prescribed by the Department relating to a transaction before updating the Department databases;
4. Provide written notice to the Department within 24 hours if a certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department, including a commercial driver license medical suspension under A.A.C. R17-4-508;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Conduct skills tests, if applicable, only on test routes approved by the Department; and
6. Maintain all minimum required insurance coverage as prescribed in the authorization agreement.

Q. An authorized third party shall not solicit an individual for any purpose on premises rented, leased, or owned by the Department or any other business authorized under this Chapter.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-205. Financial Requirements

If an authorized third party collects monies required to be remitted to the Department under A.R.S. § 28-5101, the authorized third party shall deposit those monies by the next business day following the transaction date in the designated:
1. Concentration Banking System account, or
2. Account through an electronic method preapproved by the Department.

Historical Note
New Section R17-7-205 renumbered from R17-7-705 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-206. Expired

Historical Note
New Section R17-7-206 renumbered from R17-7-706 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-207. Expired

Historical Note
New Section R17-7-207 renumbered from R17-7-609 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 3. CERTIFICATION

Article 3, consisting of Sections R17-7-301 and R17-7-302, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-301. Certification Application Requirements

A. A certification applicant shall provide to the Department the following:
1. The applicant's name, residence address, mailing address, telephone number, and date of birth;
2. The activities for which the applicant seeks certification;
3. The dates of any employment of the applicant by the Department;
4. Whether the Department previously denied an application for any certification of the applicant;

5. The activity the applicant was certified to perform for each previous certification issued to the applicant by the Department;
6. Whether the Department suspended or canceled any certification listed under subsection (A)(5);
7. If the applicant previously worked as a certified individual, the names of the last three authorized third parties and professional driving schools that employed or contracted with the applicant, and the dates of the employment or contract work;
8. The applicant's signature;
9. A statement that the applicant is in good standing;
10. A full set of fingerprints, on a fingerprint card supplied by the Department and completed by a law enforcement agency, for a criminal records check;
11. The applicant's driving record for the 39 months before the application date, which must be dated within 30 days of the application date; and
12. The official name of the authorized third party at which the applicant will be employed.

B. The applicant is responsible for the cost of the finger printing and criminal records check.

C. An applicant for a certification shall submit to the Department a statement with the information listed under R17-7-201(B).

D. An applicant may be eligible for certification if the applicant:
1. Is at least 18 years of age on the application date or 21 years of age, if the applicant requests certification as a commercial driver license examiner, driver license trainer, or a driver license processor who will be performing driver license skills tests;
2. Is in good standing;
3. Successfully completes all training courses required by the Department; and
4. Submits the certification application as provided in subsections (A) through (C) to the Department within 30 days of the application date.

E. An applicant for certification shall:
1. Be employed or under contract for an employer applying for authorization or authorized as an authorized third party.
2. Not have any driver license suspensions, revocations, or cancellations within 39 months of the application date, including convictions related to:
   a. Driving under the influence of intoxicating liquor or drugs,
   b. Reckless driving,
   c. Racing upon the highway, or
   d. Leaving the scene of an accident.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-302. Notification of Certification Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of certification approval or denial:
1. By regular mail,
2. To the mailing address provided on the application, and
3. According to A.R.S. § 28-5107.

B. Administrative Hearing. An applicant whose application to become a certified individual is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and 17 A.A.C. 1, Article 5.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-303. General Requirements of a Certified Individual

A. A certified individual shall:
1. Submit all documents and corrections, according to all state laws and rules and the authorization agreement between the Department and the authorized third party;
2. Immediately notify the authorized third party of unlawful actions relating to motor vehicle transactions;
3. Require that a customer submit all supporting documentation relating to a transaction before updating the Department databases;
4. Provide notification within 24 hours to the authorized third party if the certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Provide notification within 5 business days to the authorized third party of any changes to the certified individual's name or address; and
6. Attend ongoing Department-approved training, including, if applicable, a commercial driver license refresher training course, before each renewal of the authorization agreement.

B. A certified individual shall not:
1. Witness or notarize signatures on documents relating to a transaction unless the customer submits appropriate identification; or
2. Solicit an individual for any purpose on the premises rented, leased, or owned by the Department or any other business authorized under this Chapter.

Historical Note
New Section R17-7-303 renumbered from R17-7-704 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-304. Expired

Historical Note
New Section R17-7-304 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-305. Expired

Historical Note
New Section R17-7-305 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 4. AUDITS AND INSPECTION

Article 4, consisting of Section R17-7-401, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-401. Audits and Inspection

A. During an onsite audit or inspection, employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration may:

1. Request, review, audit, inspect, copy, or seize all paper, photographic, audio, and electronic records generated in the performance of any activities under this Chapter, whether in the possession of a current or former authorized third party or a certified individual;
2. Examine the site of any places of business or other location where any of the materials in subsection (A)(1) are kept or may be found, or where any activities under this Chapter are or have been conducted during current or previous periods of authorization or certification; and
3. Interview all or any of the authorized third party's:
   a. Current or former employees or contractors,
   b. Current or former certified individuals, and
   c. Customers during current or previous periods of authorization or certification.

B. If Department personnel or the Department's representative conducts an onsite audit outside Arizona under A.R.S. § 28-5102(B)(3), the Department shall charge, and the authorized third party shall timely pay, for the costs of the audit, as well as any fees authorized under A.R.S. § 28-5102. The audit charge and payment shall include the Arizona Department of Administration reimbursement amounts for out-of-state travel authorized by A.R.S. Title 38, Chapter 4, Article 2 and stated in Section II-D of the Arizona Accounting Manual prepared by the Arizona Department of Administration, which is available on the Arizona General Accounting Office web site at www.gao.az.gov.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 5. EXPIRED

R17-7-501. Expired

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-502. Expired

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

R17-7-601. Definitions
The following definitions apply to this Article, unless otherwise specified:

"CDL" means commercial driver license.

"CDLE" means commercial driver license examination.

"CDLE coach or transit bus" means the program activity for administering examinations for a Passenger (P) endorsement on a CDL.

"CDLE school bus" means the program activity for administering examinations for a School Bus (S) endorsement on a CDL.

"CDLE truck" means the program activity for administering examinations for a Class A, B, or C license.

"Monthly reconciliation report" means an authorized third party CDLE program's report of accountable inventory.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-602. Activities
The authorized and certified activities for the CDLE Program are:
1. CDLE coach or transit bus,
2. CDLE school bus, or
3. CDLE truck.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-603. Additional Authorization Application Requirements for CDLE Program
In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization shall:
1. Submit the following:
   a. Photographs and a floor plan of the principal place of business that shows the location of the accountable inventory storage,
   b. Photographs and a floor plan of each established place of business,
   c. A test route that complies with the specifications provided by the Department, and
   d. Photographs and a diagram with the dimensions of any proposed CDL test site. The physical dimensions of the site shall comply with the specifications provided by the Department. The test site shall provide sufficient room to perform all skill maneuvers, be obstacle free and be off the roadway.
2. Provide to the Department a copy of the current lease or other written agreement for the use of the land if the applicant does not own the land on which the place of business or test site is located.
3. Ensure that each place of business and test site:
   a. Meets all local zoning requirements, and
   b. Is not used as a residence.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-604. Additional Certification Application Requirements for Commercial Driver License Examiners

A. In addition to satisfying the requirement of R17-7-301, an applicant for certification as a commercial driver license examiner shall:
1. Possess a valid Arizona driver license of the class and endorsement representative of the examinations to be administered by the commercial driver license examiner;
2. Not have a driver license suspension, cancellation, revocation, or disqualification within 39 months of the appli-

cation date, including a CDL medical suspension under A.A.C. R17-4-508, or a conviction or finding of responsibility for any violation under A.R.S. § 28-3312 within five years of the application date; and

3. Have a minimum of three years of driving experience pertaining to the operation of a commercial vehicle representative of the type and class for which the applicant is seeking certification.

B. An authorized third party that has entered into an authorization agreement may withdraw a certification application if the examiner applicant has failed to meet certification requirements.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-605. Additional Authorized CDLE Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall:

1. Ensure all vehicles used for examination:
   a. Are representative of the class and type for which the individual is seeking a driver license;
   b. Are maintained in a safe operating condition;
   c. Comply with registration and insurance requirements set forth in A.R.S. Title 28, Chapters 7, 9, 15, and 16; and
   d. Comply with applicable Federal Motor Carrier Safety Regulations;
2. Maintain compliance with applicable federal rules and the federal rules as adopted by the Department under 17 A.A.C. Chapter 5, Article 2;
3. Allow employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration without prior notice to do any of the following:
   a. Take the tests administered by the authorized third party as if the employee or agent is a test applicant,
   b. Co-score along with the commercial driver license examiner during skills tests to compare pass or fail results,
   c. Retest a sample of drivers who were examined by the authorized third party, or
   d. Provide access to a vehicle for use under this subsection;
4. Maintain the following records at the authorized third party's principal place of business:
   a. A copy of its current authorization agreement with the Department,
   b. A copy of the current commercial driver license examiner's certificate for each examiner,
   c. A copy of each completed skills test score sheet for the current calendar year and the past two calendar years,
   d. A copy of the authorized third party's approved skills test routes and test sites, and
   e. A copy of each commercial driver license examiner's training record;
5. Submit to the Department by the fifth day of each month, a monthly reconciliation report. If the authorized third party fails to timely submit a monthly reconciliation report, the Department may:
   a. Give an oral or written warning for the first untimely report,
   b. Send a letter of concern for the second untimely report in a 12-month period, or
   c. Suspend or cancel the authorization for the third untimely report in a 12-month period; and
6. Verify each CDL applicant:
   a. Possesses a valid Arizona driver license with a photograph and a valid Department-issued commercial instruction permit for the class and endorsement of the vehicle to be used in the skills test, and
   b. Has successfully completed the CDL written tests.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-606. Certified Commercial Driver License Examiner Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified commercial driver license examiner shall:

1. Comply with all state and federal laws, rules, and the terms and conditions of the authorization agreement requirements between the Department and the authorized third party;
2. Maintain compliance with all certification requirements as prescribed in R17-7-301;
3. Not administer any examination unless the CDL applicant meets the requirements of all statutes, rules and policies relating to driver licensing;
4. Conduct skills tests only on Department-approved test routes; and
5. Complete, in the presence of the CDL applicant, the score sheet at the time of the skills test. The score sheet is valid for 30 calendar days from the day the CDL applicant completes the skills test.

B. If the commercial driver license examiner's CDL is suspended, revoked, canceled, or disqualified, the certified commercial driver license examiner shall not administer any CDLE.

C. A commercial driver license examiner shall not accompany an applicant into any office or testing location rented, leased, or owned by the Department.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-607. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-608. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-609. Renumbered

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section

R17-7-609 renumbered to R17-7-207 by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

R17-7-701. Definitions

The following definitions apply to this Article unless otherwise specified:

"Driver license training provider" means a business enterprise conducted by an individual, association, partnership, or corporation that educates and trains persons, either practically or theoretically, or both, to operate or drive motor vehicles; that prepares applicants for an examination given by the state for a driver license or instruction permit; and that charges a consideration or tuition for these services.

"Minimum professional training standards" means the Department's approved basic content of material to be presented to and understood by the student through evaluation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-702. Additional Authorization Application Requirements for Driver License Training Providers

In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization shall:

1. Submit the following:
   a. The specified course of instruction which will be offered, and
   b. Sample copies of the contracts that will be offered to prospective students or given to enrolled students.
2. Provide a certified statement that the applicant will meet the minimum professional training standards as set forth by the Department. The minimum professional training standards will be provided to the applicant and included in the authorization agreement.
3. Provide a copy of any current leases or agreements for the use of the land or buildings on which the applicant's places of business and training sites are located.
4. Ensure that all places of business and training sites:
   a. Meet all local zoning requirements, and
   b. Are not used as a residence.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-703. Additional Certification Application Requirements for Driver License Trainers

In addition to satisfying the requirements of R17-7-301, an applicant for certification as a driver license trainer shall satisfy all of the following:

1. Pass an examination given by the Department consisting of an actual demonstration or a written test, or both, covering:
   a. Traffic laws;
   b. Safe driving practices;
   c. Operation of motor vehicles;
   d. Knowledge of teaching methods, techniques, and practices; and
   e. Authorized third-party statutes and rules, business ethics, office procedures, and elementary record-keeping;
2. Have at least a high school diploma or its equivalent;
3. Hold a valid Arizona driver license;
4. Be physically and mentally able to safely operate a motor vehicle and to train others in the operation of motor vehicles. To substantiate this requirement, the Department may require a properly signed and completed certificate of medical examination conducted by a person qualified and licensed to practice medicine in this state; and
5. Provide other information the Department deems pertinent for determining the applicant's good moral character.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-704. Additional Authorized Driver License Training Provider Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall comply with the following:

1. The director shall approve, and may modify, in writing the minimum professional training standards that each authorized third party driver license training provider shall teach to its students. Those minimum professional training standards shall be included in the authorization agreement.
2. The established place of business of each authorized third party driver license training provider must be used only for activities authorized by the Department.
3. Each established place of business shall meet all requirements of state law, local ordinances, and the accessibility requirements of the Americans with Disability Act of 1990 (42 U.S.C. 12101 et seq.). The Department may require proof of compliance with local zoning ordinances.
4. An authorized third party driver license training provider must post its office hours in a conspicuous place clearly visible to the public within that location and be open to the public during the posted hours. The person left in charge of the office during the posted office hours must be fully trained to give pertinent information to the public as well as give information to any representative of the Department or to any law enforcement agency.
5. The authorized third party driver license training provider shall provide adequate facilities for any student being given instruction in other than behind-the-wheel driver training.
6. An authorized third party driver license training provider shall maintain the following records at an established place of business or at the principal place of business and make them available for audit and inspection during normal business hours:
   a. All records setting forth the name, address, contract number, and terms of payment with respect to every person receiving training of any kind, or any other service relating to the operation of a motor vehicle. These records must also contain the date, type, and duration of all training, including the name of the certified individual giving the lessons and the license plate number, make, and model of the vehicle used to conduct the training.
   b. A record of all receipts and disbursements.

c. A record of all training vehicle maintenance and repairs.

7. If an authorized third party driver license training provider enters into a written contract with any person or group of persons receiving training relating to the operation of a motor vehicle, the training provider shall give the original contract to the student or the student's agent who executes the contract and shall retain a copy of the contract in its records.
8. An authorized third party driver license training provider shall equip each motor vehicle used for driver training with:
   a. If the motor vehicle is equipped with an automatic transmission, at least a dual braking device that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency; and
   b. If the motor vehicle is equipped with a standard transmission, at least a dual clutch and braking device that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency.
9. An authorized third party driver license training provider must maintain all motor vehicles in safe operating condition at all times.
10. An authorized third party driver license training provider shall conduct training only on test routes approved by the Department.
11. An authorized third party driver license training provider shall not:
   a. Indicate or represent in any advertisement that the training provider can issue or guarantee issuance of a driver license in any jurisdiction,
   b. Imply or represent that the training provider can in any way influence the Department or an authorized third party in the issuance of a driver license, or
   c. Imply or represent that preferential or advantageous treatment from the Department or an authorized third party can be obtained.
12. An authorized third party driver license training provider or a certified trainer shall not accompany any student into any examining office or testing location rented, leased, or owned by the Department or an authorized third party for the purpose of taking a driver license examination.
13. In case of loss or mutilation, a duplicate authorization certificate may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued authorization certificate was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.
14. An authorization for a driver training provider is nontransferable.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-704 renumbered to R17-7-303; new Section R17-7-704 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-705. Certified Driver License Trainer Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified driver license trainer shall maintain compliance with all certification requirements as prescribed in R17-7-301.

B. In case of loss or mutilation, a duplicate certification may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued certification was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.

C. A driver license trainer certification is nontransferable.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-705 renumbered to R17-7-205; new Section R17-7-705 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-706. Renumbered

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-706 renumbered to R17-7-206 by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-707. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-707 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 8. REPEALED

R17-7-801. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-801 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-802. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-801 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-5100. Definitions

In this article, unless the context otherwise requires:

1. "Authorized third party" means an entity that has executed a written agreement and is authorized by the department to perform limited or specific functions but is not authorized by the department to function as an authorized third party electronic service provider.

2. "Authorized third party electronic service partner" means an entity that has been awarded a written agreement with the department pursuant to a competitive bid process to provide electronic transmission services and that may be authorized by the director to develop and implement information technology and other automated systems and to provide any necessary ongoing support for these systems.

3. "Authorized third party electronic service provider" means an entity that has executed a written agreement with the department and is authorized by the department to provide electronic transmission services between the department, private citizens, other government agencies and public and private entities in this state or in any other state, territory or country.

28-5101. Third party authorization

A. The director may authorize third parties to perform certain of the following functions:

1. Title and registration.

2. Motor carrier licensing and tax reporting.

3. Dealer licensing.

4. Driver licensing as prescribed in sections 28-5101.01, 28-5101.02 and 28-5101.03.

B. The director may authorize a person to be a third party electronic service provider or to be a third party electronic service partner. An authorized third party electronic service provider shall meet all of the requirements established by the department. The written agreement between the department and the authorized third party electronic service provider may be for a limited number of services and may limit the persons that may receive the services. An authorized third party electronic service partner shall meet the requirements established by the department and shall be selected through a competitive bid process.

C. A person shall not engage in any business pursuant to this article unless the director authorizes the person to engage in the business.

D. The director may furnish necessary documents or license plates subject to this article.

E. Except as provided in subsection F of this section, an authorized third party or an authorized third party electronic service provider shall submit to the department all statutorily prescribed fees and taxes it collects. In addition to the statutorily prescribed fees and taxes, an authorized third party or an authorized third party electronic service provider may collect and retain a reasonable and commensurate fee for its services.

F. In addition to payment pursuant to section 28-374, the department shall reimburse the authorized third party or third party electronic service provider as follows:

1. One dollar of each initial, renewal, replacement or duplicate registration fee for a vehicle or an aircraft.

2. One dollar of each initial, duplicate or transfer certificate of title fee for a vehicle or an aircraft.

3. An amount equal to two percent of each vehicle license tax payment or aircraft license tax payment the authorized third party collects and submits to the department or four dollars for each registration year or part of a registration year, whichever is more. The reimbursement amount shall not exceed the amount of vehicle license tax or aircraft license tax collected.

4. Four dollars for each initial, renewal, replacement or duplicate application that the third party processes and that relates to driver licenses, nonoperating identification licenses or permits. An authorized third party may add the cost for expedited processing of renewal, replacement or duplicate applications if requested by the applicant.

5. An amount equal to two percent of each overweight or excess size vehicle registration or permit fee the third party collects and submits to the department or one dollar for each overweight or excess size vehicle registration or permit processed, whichever is more.

6. One dollar for each motor vehicle or special motor vehicle record, excluding motor vehicle records released to commercial recipients, including insurers and their authorized agents.

7. Five dollars or one-fourth of one percent of the fuel taxes reported, whichever is greater, for each fuel tax report filed electronically. The maximum annual amount retained each year shall not exceed four hundred eighty thousand dollars.

8. One dollar for each fuel tax permit.

9. One dollar for each nonsufficient funds or dishonored check payment.

10. One dollar for each abandoned vehicle report processed, except for applications for crushed vehicles.

11. One dollar for each abandoned vehicle payment.

12. Two dollars for each initial special or personalized license plate application.

13. One dollar for each initial, renewal or replacement vehicle dealer license plate.

14. Five dollars for each application for an initial vehicle dealer license or continuation of a vehicle dealer license.

15. One dollar of each twelve dollar fee paid pursuant to section 28-2356.

16. One dollar for each traffic survival school application and one dollar for each certificate of completion processed.

17. One dollar for each replacement license plate or tab.

G. For authorized third party electronic service partners, the amount of compensation and the amount of reimbursements for transactions shall be negotiated by the department and the authorized third party electronic service partner and shall be set forth in the written agreement authorizing the third party electronic service partner. If reimbursement is made for individual transactions, the reimbursements shall not exceed the amounts specified in subsections F, H and I of this section. Other forms of compensation or reimbursements for services may be specified in the written agreement. Compensation and reimbursements provided for by the written agreement may include the development and implementation of information technology and other automated systems and any necessary support for these systems.

H. The department's authorized third party electronic service provider may retain two dollars for processing documents electronically when the statutory fee pursuant to this title is two dollars or more.

I. The director may authorize the third party electronic service provider to process electronic fund transfers to the department for payment of motor vehicle taxes and fees. The third party electronic service provider may add a two dollar processing fee for each electronic funds transfer.

J. Each authorized third party that holds itself out as providing services to the general public shall post a sign in a conspicuous location in each facility of the authorized third party that contains all of the following:

1. The amount charged for each transaction performed by the authorized third party.

2. The amount charged by the department for the same transaction.

3. How to file a complaint or concern with the department about the authorized third party.

28-5101.01. Authorized third party driver license providers; requirements

A. Except as provided in section 28-5101.03, an authorized third party driver license provider must perform both of the following:

1. Driver license skills and written testing.

2. Driver license processing.

B. A person who is a third party driver license provider authorized pursuant to this section may also be authorized pursuant to this article to perform certain title and registration functions.

C. A person who applies for authorization pursuant to this section shall submit with the application all of the following:

1. A bond in a form to be approved by the director and in an amount of at least $300,000 for an initial application for authorization pursuant to this section and an additional $100,000 for each additional location providing driver license functions prescribed in subsection A of this section, except that if the authorized third party is also authorized pursuant to this article to perform certain title and registration functions at the same location only a single $100,000 bond is required for that location. The total bond amount required by this paragraph shall not exceed $1,000,000. The bond requirements of this paragraph do not apply to government entities prescribed in section 28-5104, subsection E, paragraphs 1, 2, 3, 5 and 11.

2. Documentation that the applicant satisfies all of the following:

(a) Has been an authorized third party pursuant to this chapter for at least the immediately preceding three years.

(b) Has conducted an average of at least one thousand retention transactions per month for the previous calendar year.

(c) Is in good standing with the department.

(d) Has a facility plan for each location that shows adequate space and equipment necessary to perform the functions prescribed in subsection A of this section.

3. Documentation that the applicant has during business hours at least one certified processor qualified to perform at a minimum all of the following at each location:

(a) Fraudulent document recognition.

(b) Ignition interlock requirements.

(c) Driver license reinstatements.

D. A third party driver license provider authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

E. A third party driver license provider authorized pursuant to subsection A of this section may perform administrative and testing functions for the issuance and renewal of commercial driver licenses as authorized by the director and pursuant to federal law.

28-5101.02. Authorized third party driver license training providers; requirements; applicability

A. Beginning July 1, 2014, a person must be an authorized third party driver license training provider to perform driver license training.

B. A person who applies for authorization pursuant to this section is not required to submit a bond with the application.

C. A third party driver license training provider authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

D. This section does not apply to any professional driver training school licensed pursuant to title 32, chapter 23.

28-5101.03. Authorized third party commercial driver license examiners; requirements

A. Beginning July 1, 2014, a person must be a separately authorized third party commercial driver license examiner to perform commercial driver license skills testing.

B. A third party commercial driver license examiner authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

28-5102. Powers and duties of director

A. The director shall:

1. Supervise and regulate all persons required by this article to obtain authorization.

2. Establish minimum quality standards of service and a quality assurance program for authorized third parties to ensure that an authorized third party is complying with the minimum standards.

3. Adopt rules to administer and enforce this chapter.

B. The director may:

1. Conduct investigations the director deems necessary.

2. Conduct audits.

3. Make on-site inspections during regular business hours and at locations as the director deems appropriate to determine compliance by an authorized third party with this article. If an inspection is conducted at a place located outside this state, the director may charge a fee to the authorized third party.

4. Require that an authorized third party or employees or agents of an authorized third party be certified to perform the functions prescribed in this article.

5. Require authorized third parties and authorized third party electronic service providers to reimburse the department for mutually agreed on costs.

28-5103. Application procedure

A. A person may apply for authorization or certification, or both, pursuant to this article to the director in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and shall contain:

1. The name and residence address of the applicant, the name and residence address of each partner if the applicant is a partnership or the name and residence address of each principal officer if the applicant is a corporation.

2. The principal place of business of the applicant.

3. The established place of business at or from which the business is to be conducted.

4. Other information the director requires.

28-5104. Bond requirement

A. Except as provided in subsection F of this section and sections 28-5101.01 and 28-5101.02, a person who applies for authorization pursuant to this article shall submit with the application a bond in a form to be approved by the director and in an amount of at least $100,000 for each location.

B. A surety company authorized to transact business in this state shall execute the bond with the applicant as principal obligor on the bond and the state as obligee. The bond shall be conditioned that the applicant will faithfully comply with all of the provisions of law and that the bond is noncancellable without at least sixty days' prior notice to the director. Any future liability of the surety company terminates on the director's termination of a third party's authorization.

C. The bond inures to the benefit of any person who suffers loss because of any of the following:

1. Nonpayment by the authorized person of any fee or tax paid to the third party by that person.

2. Insolvency or discontinuance of business.

3. Failure of the authorized third party to comply with the authorized third party's duties pursuant to this article.

D. The aggregate liability of a surety company for any breach of the conditions of a bond required pursuant to this section shall not exceed the amount of the bond.

E. The bond requirement of this section does not apply to:

1. A department, an agency or a political subdivision of this state.

2. A court of this state.

3. A law enforcement agency or department of this state.

4. A financial institution or enterprise under the jurisdiction of the department of insurance and financial institutions or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department of transportation or a state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, an importer, a factory branch or a distributor licensed by the department of transportation.

8. An insurer under the jurisdiction of the department of insurance and financial institutions.

9. An owner or a registrant of a fleet of one hundred or more vehicles.

10. A public utility.

11. A tribal government.

12. An employer or association that has at least five hundred employees or members.

F. A towing company employee who conducts a level one motor vehicle inspection described in section 28-2011 and who applies for authorization pursuant to this article shall submit with the application a bond in a form to be approved by the director and in an amount of not more than $25,000. The bond issued pursuant to this subsection covers every location in which the towing company is located.

28-5105. Criminal records check; denial of application; immunity from costs

A. Except as provided by subsection B of this section, each applicant who owns twenty percent or more of an entity, each partner or stockholder who owns twenty percent or more of an entity and each person who is an employee of an authorized third party who has access to personal information as defined in section 28-440 obtained from the department or a customer of the department or monies collected on behalf of this state, and who seeks authorization or certification, or both, pursuant to this article shall provide:

1. A full set of fingerprints to the department of transportation 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.

2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.

B. Each employee of an authorized third party who conducts vehicle inspections on behalf of this state shall provide:

1. A full set of fingerprints to the department of transportation 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.

2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.

C. The director may deny an application for authorization or certification, or both, if any individual included in the application has either:

1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.

2. Been convicted of fraud or an auto-related felony in any state, territory or possession of the United States or any foreign country within the ten years immediately preceding the date the criminal records check is complete.

3. Been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date the criminal records check is complete.

4. Violated a rule or policy of the department.

5. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

D. The director may approve an application for provisional authorization or certification, or both, pending completion of the criminal records check if the applicant meets all other requirements of this article. The director may revoke a provisional authorization or certification, or both, for a violation of this title. A provisional authorization or certification, or both, is valid unless revoked by the director or until the applicant receives approval or denial of the application for authorization or certification, or both.

E. Within twenty days of completion of the criminal records check, the director shall approve or deny the application. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for denial. The department or its employees are not liable for any costs incurred by an applicant seeking authorization or certification, or both, under this article.

F. Within thirty days after receipt of the notice of denial, the applicant may petition the director in writing for a hearing on the application pursuant to section 28-5107.

G. If the authorized third party adds a partner or stockholder who owns twenty percent or more of the entity and who was not included in the criminal records check on a prior application, the authorized third party shall notify the department within thirty days of the change.

H. At the time of notification pursuant to subsection G of this section, the third party shall submit to the department of transportation an application and, if applicable, a full set of fingerprints and the fee to be paid to the department of public safety for a criminal records check. On completion of the investigation if the individual added or changed by the authorized third party is found to be ineligible pursuant to subsection C of this section, the director of the department of transportation shall advise the authorized third party and the individual in writing of the grounds for the action and that the authorization will be revoked unless the individual is removed from the position.

I. The requirement for a criminal records check does not apply to an applicant who is seeking third-party authorization and who is:

1. A department, agency or political subdivision of this state.

2. A court of this state.

3. A law enforcement agency or department of this state.

4. A financial institution or enterprise under the jurisdiction of the department of insurance and financial institutions or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department of transportation or a state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, importer, factory branch or distributor licensed by the department of transportation.

8. An insurer under the jurisdiction of the department of insurance and financial institutions.

9. An owner or registrant of a fleet of one hundred or more vehicles.

10. A public utility.

11. A tribal government.

12. An employer or association that has at least five hundred employees or members.

J. For the purposes of this section, personal information does not include information received pursuant to section 28-872.

28-5106. Records

A third party who is authorized pursuant to this article shall:

1. Maintain records in a form and manner prescribed by the director.

2. Allow access to the records during regular business hours to authorized representatives of the director or any law enforcement agency to ensure compliance with all applicable statutes and rules.

28-5107. Application denial; hearing; appeal

A. The director may deny an application for third party authorization or certification, or both, under this article and shall advise the applicant in writing within twenty days of the denial and the grounds for the denial if the director determines that any of the following applies:

1. The applicant is not eligible for third party authorization or certification, or both, under this article.

2. The application is not made in good faith.

3. The application contains a material misrepresentation or misstatement.

4. The applicant has not met the requirements of law.

B. An applicant who is aggrieved by the denial of an application may make a written request to the department for a hearing on the application within thirty days after service of the notice of denial. If the applicant does not request a hearing within thirty days, the denial is final.

C. If the applicant requests a hearing, the director shall give written notice to the applicant to appear at a hearing to show cause why the denial of the applicant's application should not be upheld. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the applicant of the director's findings and order. A timely request for a hearing stays the denial of the application.

D. If the application is denied, the applicant may appeal the decision pursuant to title 12, chapter 7, article 6.

28-5108. Cancellation or suspension of authorization or certification; hearing; appeal

A. The director may suspend or cancel an authorization or certification, or both, granted pursuant to this article if the director determines that the third party or certificate holder has done any of the following:

1. Made a material misrepresentation or misstatement in the application for authorization or certification.

2. Violated a law of this state.

3. Violated a rule or policy adopted by the department.

4. Failed to keep and maintain records required by this article.

5. Allowed an unauthorized person to engage in any business pursuant to this article.

6. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

B. The director may suspend or cancel an authorization or certification, or both, granted pursuant to this chapter if the director determines that an individual included in the application for authorization or certification:

1. Made a misrepresentation, omission or misstatement in the application to conceal a matter that may cause the application to be denied.

2. Has been convicted of fraud or an auto related felony in a state, territory or possession of the United States or a foreign country within the ten years immediately preceding the date a criminal records check is complete.

3. Has been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date a criminal records check is complete.

C. The director shall suspend or cancel an authorization of a third party granted pursuant to this article if the director determines that the third party failed to maintain the bond required pursuant to section 28-5104.

D. If the director has reasonable grounds to believe that a certificate holder or other person employed by an authorized third party has committed a serious violation, the director may order a summary suspension of the third party's authorization granted pursuant to this chapter pending formal suspension or cancellation proceedings. For the purposes of this subsection, "serious violation" means:

1. Title or registration fraud.

2. Driver license or identification license fraud.

3. Improper disclosure of personal information as defined in section 28-440.

4. Bribery.

5. Theft.

E. On determining that grounds for suspension or cancellation of an authorization or certification, or both, exist, the director shall give written notice to the third party or certificate holder to appear at a hearing before the director to show cause why the authorization or certification should not be suspended or canceled.

F. After consideration of the evidence presented at the hearing, the director shall serve notice of the director's finding and order to the third party or certificate holder.

G. If a third party authorization or a certification is suspended or canceled, the third party or certificate holder may appeal the decision pursuant to title 12, chapter 7, article 6.

28-5109. Cease and desist order

A. If the director has reasonable cause to believe that a person who is authorized as a third party pursuant to this article or who holds a certificate granted pursuant to this article is violating any provision of this title, the director shall immediately issue and serve on the person, by personal delivery or first class mail at the person's last known address, a cease and desist order.

B. On receipt of the cease and desist order, the person shall immediately cease and desist, or cease and desist as provided in the contract between the department and the authorized third party, from further engaging in any activity that is authorized pursuant to this article and that is specified in the cease and desist order.

C. On failure of the person to comply with the cease and desist order, the director may conduct a hearing pursuant to this article.

28-5110. Action to restrain violation

If the director has reasonable cause to believe that a person authorized under this article is violating any law of this state, the enforcement or administration of which is vested in the director, or has or is violating any rule or order adopted by the director pursuant to law, in addition to any remedies existing under this article, the director may bring an action in the superior court in Maricopa county in the name of and on behalf of the state and against the person to restrain or enjoin the person from continuing the violation.

28-5111. Electronic transmission and recording of title, registration and driver license; program; authorized third party

A. The director may establish a program to measure and determine the effectiveness of the following in improving customer service, operations, capital cost reductions and security of information transmitted to the department:

1. The electronic transmission and recording of vehicle certificate of title and registration information between the department and an authorized third party or an authorized third party electronic service provider for the purpose of titling and registering vehicles entering this state from another jurisdiction in a cost-effective manner in lieu of the submission and maintenance of paper documents.

2. The electronic transmission and recording of driver license applications between the department and another state through an authorized third party or authorized third party electronic service provider for the purpose of issuing driver licenses in a cost-effective manner in lieu of the submission and maintenance of paper documents as provided in this chapter.

3. The electronic transmission and recording of vehicle accident data between the department, other states and law enforcement agencies within this state or within another state through an authorized third party or authorized third party electronic service provider.

B. In the process of establishing the system, the director shall:

1. Research methods the department and authorized third parties or authorized third party electronic service providers may use to exchange and maintain information relating to driver licenses and vehicle certificates of title and registration without submitting or receiving a paper document.

2. Develop methods an authorized third party or an authorized third party electronic service provider may use to electronically submit updated information relating to the certificate of title and registration record or the driver license record.

C. The director may limit the number of other states and authorized third party electronic service providers participating in the system. If the director determines the system is successful, the director may expand the system.

D. Chapter 2, article 5 of this title applies to certificates of title and driver license information under the system established pursuant to this section.

OFFICE OF ADMINISTRATIVE HEARINGS
Title 2, Chapter 19, Articles 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **Oct 16, 2023**

SUBJECT: **OFFICE OF ADMINISTRATIVE HEARINGS**
Title 2, Chapter 19, Articles 1

Summary

This Five Year Review Report (5YRR) from the Office of Administrative Hearings (OAH) or (Office) covers twenty-two (22) rules in Title 2, Chapter 19, Article 1 related to Prehearing and Hearing Procedures. OAH "ensure[s] that the public receives fair and independent administrative hearings." Laws 2005, Ch. 34, § 3. Pursuant to A.R.S. § 41-1092.01, the Office is charged with providing administrative law judges to preside over and conduct administrative hearings of contested agency actions.

Proposed Action

These rules were all adopted by final rulemaking on February 3, 1999 and R2-19-122 was amended on September 8, 2014. OAH is currently not proposing any amendments as they have determined no course of action is needed at this time.

1. **Has the agency analyzed whether the rules are authorized by statute?**

The Office cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Office of Administrative Hearings states that the economic impact of the rules has not differed significantly from that projected in the economic impact statement submitted in December 1998, when the rules were submitted.

Stakeholders include the Office and all parties involved in cases before the Office.

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

The Office determines that the probable benefits outweigh the probable costs of the rules, and that the rules impose the least burden or cost to those regulated by the rules in order to achieve their underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Office 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 Office has determined the rules are clear, concise, and understandable.

However, during the review of the 5YRR, Council staff had questions as to whether the rules should be updated to become more modern and reflect the digital age. The Office replied that it has always understood the term "facsimile" in AAC 2-19-108 (E) to contemplate and encompass electronic filing and that they allow electronic filing through the OAH portal. Documents served through the portal are automatically served on all parties and the agency. They also stated that their enabling statutes provide that service can be accomplished by, among other things, "any other method reasonably calculated to effect actual notice on the agency and every other party . . ." A.R.S. 41-1092.04.

Council staff recommends the Council followup with the Office on the issue identified above.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Office indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Office states the rules are effective in achieving its objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Office states the rules are enforced as written.

However, during the review of the 5YRR, Council staff had questions as to whether the rules should be updated to become more modern and reflect the capacity to conduct virtual hearings. The Office replied they have been conducting virtual hearings for litigants at remote sites since 2004, however no specific information is contained in the rules. They state that the information is contained on their website and is also provided to the parties in the hearing notices for cases where virtual meetings are available. In addition, the motion portal is also on the Office's website and has been approximately since the year 2000.

Council staff recommends the Council followup with the Office on the issue identified above.

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 Office indicates that there is no corresponding federal law and therefore these rules do not apply.

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 Office stated that no rules require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Office of Administrative Hearings covers twenty-two rules in Title 2, Chapter 19, Article 1 related to Prehearing and Hearing Procedures. As indicated above, the Office has determined the rules are clear, concise, and understandable; consistent with other rules and statutes; and enforced as written.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Office of Administrative Hearings
1740 West Adams, Lower Level - Phoenix, Arizona 85007
Telephone (602)-542-9826 FAX (602)-542-9827

Katie Hobbs
Governor

Greg Hanchett
Acting Director

August 1, 2023

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15 Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin,

Please find the attached Five-Year Review Report for the Office of Administrative Hearings. This report summarizes the results of a review of the rules under which the Office of Administrative Hearings (Office) operates. Pursuant to A.R.S. § 41-1056(A), the Office certifies that it is in compliance with A.R.S. § 41-1091.

If you need any additional information, please feel free to contact me. My direct office line is (602) 542-9830. My e-mail address is greg.hanchett@azoah.com.

Sincerely,

Greg Hanchett
Acting Director

Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

Office of Administrative Hearings

Five Year Review Report

A.A.C. Title 2, Chapter 19, Article 1

AUGUST 1, 2023

Information That is Identical Within Groups of Rules

Under A.A.C. RI-6-111(B), the following information is discussed only once because it is identical for all the rules listed:

1. General Statute Authorizing the Rules:

All of the rules are generally authorized by A.R.S. § 41-1092.01(C)(4), which provides that the Office may make rules to carry out the purposes of the Uniform Administrative Hearings Procedures. Specific statutes authorizing the Rules will be addressed under each rule below.

2. Effectiveness of the Rules in Achieving Their Objectives:

The rules effectively achieve their objectives. The content of each of the rules must be maintained so the Office can efficiently and effectively perform its statutory responsibilities.

3. Consistency of the Rules with State and Federal Statutes and Rules

The rules are consistent with the Uniform Administrative Hearings Procedures in A.R.S. Title 41, Chapter 6, Article 10. The Rules are also consistent with state statutes as of the date of the Five-Year Review Report.

4. Agency Enforcement Policy

The Office follows the promulgated rules as written, and there are no problems with enforcement.

5. Clarity, Conciseness, and Understandability:

All of the rules are clear, concise, and understandable.

6. Written Criticisms:

No written criticisms regarding the rules have been received during the last five years.

7. Economic, Small Business, and Consumer Impact:

The economic impact of the rules has not differed significantly from that projected in the economic impact statement submitted in December 1998, when these rules were submitted. A copy of the 1998 EIS is attached. In this report, minimal means less than $ 1,000, moderate means $ 1,000 to $10,000 and substantial means more than $10,000.

8. Analysis Submitted Regarding Impact on This State's Business Competitiveness:

The Office has not received any submission regarding impact of these rules on this State's Competitiveness.

9. The Rules Impose the Least Burden and Costs and the Probable Benefits of the Rules Outweigh Probable Costs:

The Office determines that the probable benefits outweigh the probable costs of the rules, and that the rules impose the least burden or cost to those regulated by the rules in order to achieve their underlying regulatory objective.

10. Course of Action Proposed by the Office Regarding Each Rule:

The Office proposes that all rules be retained with their present language.

11. Determination that the Rules are not more stringent than corresponding Federal Law:

There is no corresponding Federal Law.

12. Rules that Require the Issuance of a Regulatory Permit, License or Agency Authorization:

No Rule requires the issuance of a regulatory permit, license, or agency authorization.

Analysis of Individual Rules

R2-19-101. Definitions

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule sets forth the definition or meaning of certain words or phrases that are used throughout the Office's rules. These definitions make the rules clearer and more understandable. They also clarify the words and phrases that could have more than one meaning, a specific meaning intended by the Office, or that could be considered vague.

R2-19-102. Applicability

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

The purpose of this rule is to define the type of cases to which the procedural rules will apply. In addition, it makes clear that the rules can be waived or augmented to suit the particular needs of a given case.

R2-19-103. Request for Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule lists the information that the office needs in order to create a docket, make a selection of date, time, and location for the hearing, and appoint an administrative law judge.

R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule requires the Office to respond to agency requests for hearing within 7 days with an assignment of administrative law judge, and the date, time, and location of the hearing. Agencies are then able to incorporate the information into their notices of hearing to be served on the parties informing them of the date, time, and location of the hearing.

R2-19-105. Ex Parte Communications

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule prohibits contact between administrative law judges and any party about substantive issues unless all parties are present, during scheduled proceedings where a party fails to appear after proper notice, or through written motions with copies sent to all parties.

R2-19-106. Motions

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides an underlying structure for all actions by parties to seek a ruling by an administrative law judge. The rule cites to other rules that provide the basis for certain rules. The form, time limits, responses, oral argument, and ruling are applied universally to all motions.

R2-19-107. Computing Time

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B)

2. ***Objective:***

This rule provides a universal method of calculating when parties must act.

R2-19-108. Filing Documents

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides guidance as to what must be filed with the Office and how the office will reflect the filing. It also provides guidance about form and spells out the requirement that all parties receive a copy of all filings to prevent ex parte communications.

R2-19-109. Consolidation or Severance of Matters

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides the basis for consolidation or severance of separate cases.

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides the basis for continuing or expediting a hearing, including certain factors that shall be considered by the administrative law judge.

R2-19-111. Vacating a Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides the basis for vacating a hearing from the calendar and return of the case to the original agency.

R2-19-112. Prehearing Conference

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B), and A.R.S. § 41-1092.05(F).

2. ***Objective:***

This rule provides the procedure for requesting a prehearing conference, as well as providing for the administrative law judge's own determination of the need for such a conference. In addition, the rule spells out that the prehearing conference may be telephonic and that a record may be kept of the proceeding.

R2-19-113. Subpoenas

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4), A.R.S. § 41-1092.02(B), and A.R.S. § 41-1092.07(C).

2. ***Objective:***

This rule provides the form for requesting and objecting to subpoenas, as well as the method and requirement of service.

R2-19-114. Telephonic Testimony

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides the basis for telephonic testimony. The costs of the testimony must be borne by the party seeking it.

R2-19-115. Rights and Responsibilities of Parties

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule points parties to prehearing preparation issues, such as having witnesses and exhibits ready at the time scheduled.

R2-19-116. Conduct of Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule describes the hearing procedure from opening statement through witness questioning to closing argument and post-hearing memoranda.

R2-19-117. Failure of Party to Appear for Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides for situations where a party fails to appear for the scheduled hearing.

R2-19-118. Witnesses; Exclusion from Hearing

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides for the exclusion of a witness at the discretion of the administrative law judge.

R2-19-119. Proof

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule sets forth the standard of proof, and establishes which party bears the burden of proof in establishing claims, rights, entitlements, affirmative defenses, and grounds for proposed motions.

R2-19-120. Disruptions

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

This rule provides the basis for removing disruptive persons from the hearing.

R2-19-121. Hearing Record

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4) and A.R.S. § 41-1092.02(B).

2. ***Objective:***

The rule provides for the transfer of the record to the original agency for duplication and for duplication at any party's request. The rule also provides a method for release of exhibits to the proponent or by court order.

R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

1. ***Authorization:***

The statutory authority for this rule is A.R.S. § 41-1092.01(C)(4), A.R.S. § 41-1092.02(B), and A.R.S. § 12-904.

2. ***Objective:***

This rule provides that a party filing a notice of appeal in Superior Court from a final agency decision shall file a copy of the notice of the appeal with the Office. In addition, the rule provides the procedure for securing a transcript.

TITLE 2. ADMINISTRATION

CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

ARTICLE 1. PREHEARING AND HEARING PROCEDURES

Section

ARTICLE 1. PREHEARING AND HEARING PROCEDURES

R2-19-101. Definitions

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter" means a contested case or appealable agency action.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-102. Applicability

A. These rules apply to any matter heard by the Office of Administrative Hearings.

B. An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:

1. The waiver does not conflict with law, and
2. The waiver does not cause undue prejudice to any party.

C. If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-103. Request for Hearing

A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:

1. Caption of the matter, including the names of the parties;
2. Agency matter number;
3. Identification of the matter as a contested case or appealable agency action;
4. In an appealable agency action, the date the party appealed the agency action;
5. Estimated time for the hearing;
6. Proposed hearing dates;
7. Any request to expedite or consolidate the matter; and
8. Any agreement of the parties to waive applicable time limits to set the hearing.

B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing

Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:

1. The name of the administrative law judge assigned to hear the matter;
2. The date, time, and location of the hearing; and
3. The docket number assigned by the Office.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-105. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-106. Motions

A. Purpose. A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:

1. Consolidation or severance of matters pursuant to R2-19-109;
2. Continuing or expediting a hearing pursuant to R2-19-110;
3. Vacating a hearing pursuant to R2-19-111;
4. Prehearing conference pursuant to R2-19-112;
5. Quashing a subpoena pursuant to R2-19-113;
6. Telephonic testimony pursuant to R2-19-114; and
7. Reconsideration of a previous order pursuant to R2-19-115.

B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

D. Response to Motion. A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.

E. Oral Argument. A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.

F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-107. Computing Time
In computing any time period, the Office shall exclude the day from which the designated time period begins to run. The Office shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Office shall exclude Saturdays, Sundays, and legal holidays.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-108. Filing Documents

A. Docket. The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.

B. Definition. "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.

C. Form. A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the agency's caption and the Office's docket number.

D. Signature. A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.

E. Filing and service. A copy of a document filed with the Office shall be served on all parties. Filing with the Office and service shall be completed by personal delivery; 1st-class, certified or express mail; or facsimile.

F. Date of filing and service. A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document. A copy of a document is served on a party as follows:
1. On the date it is personally served.
2. Five days after it is mailed by express or 1st class mail.
3. On the date of the return receipt if it is mailed by certified mail.
4. On the date indicated on the facsimile transmission

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-109. Consolidation or Severance of Matters

A. Standards for consolidation. An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
2. All parties are the same.

B. Determination. When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.

C. Order. The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.

D. Severance. The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing

A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
2. The position of other parties;
3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
5. The status of settlement negotiations.

B. Reconvening a hearing. The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-111. Vacating a Hearing
An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if:
1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19- 112. Prehearing Conference

A. Procedure. The administrative law judge may hold a prehearing conference. The conference may be held telephonically. The administrative law judge may issue a prehearing order outlining the issues to be discussed.

B. Record. The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-113. Subpoenas

A. Form. A party shall request a subpoena in writing from the administrative law judge and shall include:
1. The caption and docket number of the matter;
2. A list or description of any documents sought;
3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.

B. An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.

C. Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.

D. Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.

E. Quashing, modifying subpoenas. The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
2. The desired testimony or evidence may be obtained by an alternative method.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-114. Telephonic Testimony

The administrative law judge may grant a motion for telephonic testimony if:
1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-115. Rights and Responsibilities of Parties

A. Generally. A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.

B. Preparation. A party shall have all witnesses, documents and exhibits available on the date of the hearing.

C. Exhibits. A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administrative law judge, unless it was previously provided through discovery.

D. Responding to Orders. A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a prehearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-116. Conduct of Hearing

A. Public access. Unless otherwise provided by law, all hearings are open to the public.

B. Opening. The administrative law judge shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.

C. Stipulations. The administrative law judge shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.

D. Opening statements. The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.

E. Order of presentation. After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.

F. Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.

G. Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.

H. Conclusion of hearing. Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-117. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-118. Witnesses; Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19- 119. Proof

A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.

B. Burden of proof. Unless otherwise provided by law:
1. The party asserting a claim, right, or entitlement has the burden of proof;
2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
3. The proponent of a motion shall establish the grounds to support the motion.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-120. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-121. Hearing Record

A. Maintenance. The Office shall maintain the official record of a matter.

B. Transfer of record. Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.

C. Release of exhibits. Exhibits shall be released:
1. Upon the order of a court of competent jurisdiction; or
2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

R2-19-122 Notice of Judicial Appeal; Transmitting the Transcript

A. Notification to the Office. Within 10 days of filing a notice of appeal of an agency action resulting from an administrative hearing before the Office, the party shall file a copy of the notice of appeal with the Office. The Office shall then transmit the record to the Superior Court.

B. Transcript. A party requesting a transcript of an administrative hearing before the Office shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1). Section amended by final rulemaking at 20 A.A.R. 1947, effective September 8, 2014 (Supp. 14-3).

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.

41-1092.05. 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.

41-1092.07. 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.

12-904. Commencement of action; transmission of record

A. An action to review a final administrative decision shall be commenced by filing a notice of appeal within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. 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. The notice of appeal shall identify the final administrative decision sought to be reviewed and include a statement of the issues presented for review. The statement of an issue presented for review is deemed to include every subsidiary issue fairly comprised in the statement.

B. Within ten days after filing a notice of appeal pursuant to this article, the party seeking judicial review shall file a notice of the action with the office of administrative hearings or the agency that conducted the hearing, and the office of administrative hearings or the agency that conducted the hearing shall transmit the record to the superior court. The record shall consist of the following:

1. The original agency action from which review is sought.

2. Any motions, memoranda or other documents submitted by the parties to the appeal.

3. Any exhibits admitted as evidence at the administrative hearing.

4. The decision by the administrative law judge and any revisions or modifications to the decision.

5. A copy of the transcript of the administrative hearing, if the party seeking judicial review desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the office of administrative hearings or the agency that conducted the hearing within ten days after receiving notice of the notice of appeal and providing for preparation of the transcript at the party's own expense.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 20

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 16, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 20

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to eighteen (18) rules in Title 9, Chapter 20, Articles 1 and 2 regarding Court-Order Program Approvals, including DUI Services and Misdemeanor Domestic Violence Offender Treatment, respectively. Specifically, the rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers, and the policies and procedures for the approved service providers regarding assessments and education for individuals court-ordered to complete the programs.

In the prior 5YRR for these rules, which was approved by the Council in November 2018, the Department proposed to amend eleven (11) rules through expedited rulemaking, to be submitted to the Council by June 2019, to address several minor grammatical changes that would make the rules more clear and effective. The Department indicates it conducted an expedited rulemaking which was submitted to the Council on July 26, 2023 and approved by the Council at the October 3, 2023 Council Meeting.

Proposed Action

In the current report, the Department is not proposing any additional changes to the rules.

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 rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers, and the policies and procedures for the approved service providers regarding assessments and education for individuals court-ordered to complete the programs.

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.

Stakeholders for these rulemakings include the Department, DUI services providers, misdemeanor domestic violence offender treatment providers, people who have been charged with a DUI or domestic-violence-related offense and their families, and the general public. Because the behavioral health licensing rules were moved and changed, stakeholders for the rulemaking also include Arizona behavioral health inpatient facilities, health care providers (including behavioral health professionals), and social workers.

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, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department 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 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?

Not applicable. The Department indicates there is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates the rules do not require a permit, license, or agency authorization. The Department states it issues general approval for a program to be put on a list that an individual can choose from if a referring court orders a DUI or domestic violence treatment program.

11. Conclusion

This 5YRR from the Department relates to eighteen (18) rules in Title 9, Chapter 20, Articles 1 and 2 regarding Court-Order Program Approvals. Specifically, the rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers, and the policies and procedures for the approved service providers regarding assessments and education for individuals court-ordered to complete the programs.

The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Department is not proposing any additional changes to the rules.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

July 27, 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 20, 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 20 Court-Ordered Program Approvals which is due on July 31, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 20 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 20. Department of Health Services –

Court-Ordered Program Approvals

July 2023

1. Authorization of the rule by existing statutes:

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing statutes: A.R.S. §§ 13-3601.01 and 36-2006

2. The objective of each rule:

Rule	Objective
R9-20-101	The objective of the rule is to define terms used in Article 1 so requirements are clear and terms are interpreted consistently.
R9-20-102	The objective of the rule is to specify who can act on behalf of the applicant.
R9-20-103	The objective of the rule is to specify license application and renewal requirements specific to court-ordered programs.
R9-20-104	The objective of the rule is to specify the process for Department approval of an application or renewal.
R9-20-105	The objective of the rule is to specify the steps for notifying the Department of certain changes to a DUI services provider.
R9-20-106	The objective of the rule is to specify steps for the Department and an applicant if a DUI services provider's approval is rescinded.
R9-20-107	The objective of the rule is to outline requirements for administration and monitoring.
R9-20-108	The objective of the rule is to outline requirements for DUI screening.
R9-20-109	The objective of the rule is to outline requirements for DUI education.
R9-20-110	The objective of the rule is to outline requirements for DUI treatment.
R9-20-201	The objective of the rule is to define terms used in Article 2 so requirements are clear and terms are interpreted consistently.
R9-20-202	The objective of the rule is to specify who can act on behalf of the applicant.
R9-20-203	The objective of the rule is to specify license application and renewal requirements specific to misdemeanor domestic violence offender treatment.
R9-20-204	The objective of the rule is to specify the process for Department approval of an application or renewal.
R9-20-205	The objective of the rule is to specify the steps for notifying the Department of certain changes to a provider.
R9-20-206	The objective of the rule is to specify steps for the Department and an applicant if a provider's approval is rescinded.
R9-20-207	The objective of the rule is to outline requirements for administration and monitoring.
R9-20-208	The objective of the rule is to outline standards for misdemeanor domestic violence treatment.

3. **Are the rules effective in achieving their objectives?** Yes _√_ No __

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes _√__ No ___

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes _√__ No ___

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes _√_ No ___

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No _√_

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison (summary):**

Arizona Revised Statutes (A.R.S.) §§ 13-3601.01 and 36-2006 requires the Arizona Department of Health Services (Department) to establish standards for referrals of court-ordered alcohol and other drug screening and treatment programs, and domestic violence offender treatment programs. The Department has adopted rules in

Arizona Administrative Code, Title 9, Chapter 20. Prior to 2013, 9 A.A.C. 20 contained several Articles for rules related to behavioral health. Laws 2011, Ch. 96, § 1 required the Department to adopt rules regarding health care institutions that reduce monetary or regulatory costs on persons or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." A 2013 exempt rulemaking integrated behavioral health with other medical services and moved all healthcare institution rules to 9 A.A.C. 10. The 2013 rulemaking left only two Articles in 9 A.A.C. 20. DUI Services was previously promulgated in Article 9 until the Department moved DUI Services to Article 1. Misdemeanor Domestic Violence Offender Treatment was previously promulgated in Article 11 and moved to Article 2. The rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers, and the policies and procedures for the approved service providers regarding assessments and education for individuals court-ordered to complete the programs. It should be noted that DUI services providers and misdemeanor domestic violence treatment providers may still operate even if they do not submit an application or comply with the rules, the rules only serve to identify which providers the courts may refer defendants to. Stakeholders for these rulemakings include the Department, DUI services providers, misdemeanor domestic violence offender treatment providers, people who have been charged with a DUI or domestic-violence-related offense and their families, and the general public. Because the behavioral health licensing rules were moved and changed, stakeholders for the rulemaking also include Arizona behavioral health inpatient facilities, health care providers (including behavioral health professionals), and social workers.

The Department received 57 renewal applications and 7 initial applications for DUI services providers and domestic violence offender treatment providers in 2022. In 2022, the Department did not conduct any investigations or complete any rescindments.

The Department conducted an expedited rulemaking and submitted a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council on July 26, 2023. The Notice of Proposed Expedited Rulemaking can be found at 29 A.A.R. 997. The Department revised the rules to align with statutory requirements, improve the effectiveness of the rules and make them less burdensome, and make the rule consistent with other sections of the Chapter. The Department believes the rule changes, 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 conducted a rulemaking and has submitted the Notice of Final Rulemaking to the Governor's Regulatory Review Council on July 26, 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 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. 20.

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 applicable. The Department issues general approval for a program to be put on a list that an individual can choose from if a referring court orders a DUI or domestic violence treatment program.

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 Chapter 20 has determined that the rules effective. The Department has completed an expedited rulemaking, and has submitted the Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council. The Department does not plan to complete a course of action subsequent to the approval of the Notice of Final Expedited Rulemaking.

TITLE 9. HEALTH SERVICES

CHAPTER 20. DEPARTMENT OF HEALTH SERVICES COURT-ORDERED PROGRAM APPROVALS

Chapter Heading changed to Department of Health Services, Court-Ordered Program Approvals (Supp. 13-2).

The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).

New Title 9, Chapter 20 was adopted and amended by the Department of Health Services pursuant to an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Laws 1992, Ch. 301, § 61). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Former Title 9, Chapter 20 renumbered and repealed as follows: Article 1 renumbered to Title 18, Chapter 7, Article 1; Article 2, consisting of Sections R9-20-201 through R9-20-226, repealed effective September 27, 1989 (Supp. 89-3); Article 3 was reserved; Article 4 renumbered to Title 18, Chapter 9, Article 7; and Article 5 renumbered to Title 18, Chapter 4, Article 1.

ARTICLE 1. DUI SERVICES

ARTICLE 2. MISDEMEANOR DOMESTIC VIOLENCE OFFENDER TREATMENT

ARTICLE 3. REPEALED

ARTICLE 4. REPEALED

ARTICLE 5. REPEALED

ARTICLE 6. REPEALED

ARTICLE 7. REPEALED

ARTICLE 8. REPEALED

ARTICLE 9. REPEALED

Section
R9-20-901. Repealed
R9-20-902 Repealed
R9-20-903. Repealed
R9-20-904. Repealed

ARTICLE 10. REPEALED

Section
R9-20-1001. Repealed
R9-20-1002. Repealed
R9-20-1003. Repealed
R9-20-1004. Repealed
R9-20-1005. Repealed
R9-20-1006. Repealed
R9-20-1007. Repealed
R9-20-1008. Repealed
R9-20-1009. Repealed
R9-20-1010. Repealed
R9-20-1011. Repealed
R9-20-1012. Repealed
R9-20-1013. Repealed
R9-20-1014. Repealed

ARTICLE 11. REPEALED

Section
R9-20-1101. Repealed
R9-20-1102. Repealed

ARTICLE 12. REPEALED

Section
R9-20-1201. Repealed
R9-20-1202. Repealed

ARTICLE 13. REPEALED

Section
R9-20-1301. Repealed
R9-20-1302. Repealed
R9-20-1303. Repealed
R9-20-1304. Repealed
R9-20-1305. Repealed
R9-20-1306. Repealed
R9-20-1307. Repealed
R9-20-1308. Repealed
R9-20-1309. Repealed
R9-20-1310. Repealed
R9-20-1311. Repealed
R9-20-1312. Repealed
R9-20-1313. Repealed
R9-20-1314. Repealed

ARTICLE 14. REPEALED

Section
R9-20-1401. Repealed
R9-20-1402. Repealed
R9-20-1403. Repealed

ARTICLE 15. REPEALED

Section
R9-20-1501. Repealed
R9-20-1502. Repealed
R9-20-1503. Repealed
R9-20-1504. Repealed
R9-20-1505. Repealed
R9-20-1506. Repealed
R9-20-1507. Repealed
R9-20-1508. Repealed

ARTICLE 16. REPEALED

Section
R9-20-1601. Repealed
R9-20-1602. Repealed
R9-20-1603. Repealed

ARTICLE 17. REPEALED

Section
R9-20-1701. Repealed
R9-20-1702. Repealed
R9-20-1703. Repealed
R9-20-1704. Repealed
R9-20-1705. Repealed
R9-20-1706. Repealed
R9-20-1707. Repealed
R9-20-1708. Repealed
R9-20-1709. Repealed
R9-20-1710. Repealed
R9-20-1711. Repealed
R9-20-1712. Repealed
R9-20-1713. Repealed

ARTICLE 18. REPEALED

Section
R9-20-1801. Repealed
R9-20-1802. Repealed
R9-20-1803. Repealed
R9-20-1804. Repealed
Exhibit A. Repealed
R9-20-1805. Repealed
R9-20-1806. Repealed
R9-20-1807. Repealed
R9-20-1808. Repealed
R9-20-1809. Repealed
R9-20-1810. Repealed
R9-20-1811. Repealed
R9-20-1812. Repealed
R9-20-1813. Repealed
R9-20-1814. Repealed
R9-20-1815. Repealed
R9-20-1816. Repealed
R9-20-1817. Repealed
Exhibit A. Repealed

ARTICLE 19. REPEALED

Part A. Repealed

Section
R9-20-A1901. Repealed
R9-20-A1902. Repealed

Part B. Repealed

Section
R9-20-B1901. Repealed
R9-20-B1902. Repealed
R9-20-B1903. Repealed
R9-20-B1904. Repealed
R9-20-B1905. Repealed
R9-20-B1906. Repealed
R9-20-B1907. Repealed
R9-20-B1908. Repealed
R9-20-B1909. Repealed

ARTICLE 1. DUI SERVICES

R9-20-101. Definitions

The following definitions apply in this Article unless otherwise specified:

1. "Administrator" means an individual who has authority and responsibility for managing the provision of DUI services.
2. "Applicant" means an individual or business organization that has submitted an application packet to the Department.
3. "Application packet" means the forms, documents, and additional information the Department requires an applicant to submit to become a DUI services provider.
4. "Behavioral health professional" means an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to:
   a. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
   b. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101.
5. "Behavioral health service" means the medical services, nursing services, or health-related services provided to an individual to address the individual's behavioral health issue.
6. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
7. "Client" means an individual who is ordered by a court to receive DUI screening, DUI education, or DUI treatment as a result of an arrest, adjudication, or conviction for a violation of A.R.S. §§ 5-395.01, 8-343, 28-1381, 28-1382, or 28-1383.
8. "Client record" means documentation relating to the DUI services received by a client.
9. "Controlling person" means a person who, with respect to a business organization:
   a. Through ownership, has the power to vote at least 10% of the outstanding voting securities of the business organization;
   b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
   c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
   d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
10. "Day" means a day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.
11. "Department" means the Arizona Department of Health Services.
12. "Documentation" means information in written, photographic, electronic, or other permanent form.
13. "DUI education" has the same meaning as "education" in A.R.S. § 28-1301.
14. "DUI education provider" means an individual or business organization that is approved by the Department as meeting the standards in this Article related to DUI education.
15. "DUI screening" has the same meaning as "screening" in A.R.S. § 28-1301.
16. "DUI screening provider" means an individual or business organization that is approved by the Department as meeting the standards in this Article related to DUI screening.
17. "DUI services" means DUI screening, DUI education, or DUI treatment provided to a client.
18. "DUI services provider" means an individual or business organization that is approved by the Department as a DUI screening provider, DUI education provider, or DUI treatment provider.
19. "DUI treatment" has the same meaning as "treatment" in A.R.S. § 28-1301.
20. "DUI treatment provider" means an individual or business organization that is approved by the Department as meeting the standards in this Article related to DUI treatment.
21. "Employee" means an individual compensated by a DUI services provider for work on behalf of the DUI services provider.
22. "Facility" means the building or buildings used to provide DUI services.
23. "Licensed substance abuse technician" has the same meaning as in A.R.S. § 32-3321.
24. "Licensed independent substance abuse counselor" has the same meaning as in A.R.S. § 32-3321.
25. "Monitoring" means the Department's inspection of a facility to observe and check the quality of DUI services.
26. "Referring court" means a court of competent jurisdiction that orders a client to receive DUI screening, DUI education, or DUI treatment.
27. "Secure connection" means a system through which information can be exchanged without unauthorized third party interception or corruption of the signals.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors corrected to definitions 18, 47, 61-64, and 67 pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). R9-20-101(28) corrected to restore subsection label (b) (Supp. 05-1). Amended by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-102. Individuals to Act for Applicant

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

1. If the applicant or DUI services provider is an individual, the individual; or
2. If the applicant or DUI services provider is a business organization, the individual who the business organization has designated to act on the business organization's behalf and who:

a. Is a controlling person of the business organization;
b. Is a U.S. citizen or legal resident; and
c. Has an Arizona address.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-103. Application and Renewal

A. An applicant applying to become a DUI services provider shall submit to the Department an application packet that contains:
1. An application in a format provided by the Department that includes:
   a. The applicant's name;
   b. The applicant's address and telephone number;
   c. The applicant's e-mail address;
   d. The name, telephone number, and e-mail address of the individual acting on behalf of the applicant according to R9-20-102, if applicable;
   e. The name under which the applicant plans to do business, if different from the applicant's name;
   f. The address and telephone number of each facility from which DUI services will be provided;
   g. Whether the applicant is seeking approval to provide:
      i. DUI screening face-to-face,
      ii. DUI screening electronically,
      iii. DUI education in a classroom setting,
      iv. DUI education electronically, or
      v. DUI treatment; and
   h. The applicant's signature and the date signed;
2. If providing DUI screening, a copy of the:
   a. Standardized instrument for measuring alcohol dependency or substance abuse required in R9-20-108(C)(4), and
   b. Policies and procedures required in R9-20-108(A);
3. If providing DUI education, a copy of the:
   a. DUI education pre-test required in R9-20-109(E)(1),
   b. DUI education information required R9-20-109(E)(2),
   c. DUI education post-test required in R9-20-109(E)(3),
   d. Policies and procedures required in R9-20-109(A), and
   e. Policies and procedures required in R9-20-109(F);
4. If providing DUI treatment, a description of the:
   a. Group counseling programs, as required in R9-20-110(C)(2); and
   b. Policies and procedures required in R9-20-110(A);
5. The name and resume of the administrator; and
6. A copy of the applicant's:
   a. U.S. Passport, current or expired;
   b. Birth certificate;
   c. Naturalization documents; or
   d. Documentation of legal resident alien status.

B. For renewal, at least 60 days before the expiration of approval, a DUI services provider shall submit to the Department in a Department-provided format:
1. The DUI services provider's approval number;
2. The information in subsection (A)(1); and
3. The documentation in subsection (A)(2) through (4), as applicable.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-104. Application or Renewal Approval Process

A. The Department shall:
1. Review the documents submitted by the applicant or DUI services provider as required in R9-20-103,
2. Issue an approval or non-approval based on the applicant's or DUI services provider's compliance with the requirements in this Article, and
3. Notify the applicant or DUI services provider of the Department's decision within 30 days after receiving the documents specified in R9-20-103.

B. The Department shall send an applicant or DUI services provider a written notice of non-approval, with reasons for the non-approval if:
1. The applicant fails to provide the documentation required in R9-20-103, or
2. The Department determines the documentation submitted under R9-20-103 does not comply with this Article or contains false information.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-105. Notification of Change

A. A DUI services provider shall:
1. Notify the Department in writing at least 30 days before the effective date of:
   a. Termination of the provision of DUI services, or
   b. A change in the:
      i. Name under which the DUI services provider does business;

ii. Address or telephone number of a facility where DUI services are provided;
iii. Administrator; or
iv. DUI services provided, including a list of the services that the DUI services provider intends to add or delete; and

2. If the notification of change is for a change specified in subsection (A)(1)(b)(iv), submit the applicable documentation in R9-20-103(2) through (4).

B. The Department shall update the DUI services provider's approval to reflect the changes in subsections (A)(1)(b)(i) through (iii).

C. The Department shall review the notification of change for subsection (A)(1)(b)(iv) and:
1. If the information complies with the requirements in this Article, the Department shall approve the change, or
2. If the information does not comply with the requirements in this Article, the Department shall send notification to the DUI services provider with reasons for the determination of non-compliance.

D. The Department may conduct an onsite inspection as part of the notification of change process.

E. A DUI services provider shall not add DUI services specified in subsection (A)(1)(b)(iv) until the Department approves the change.

F. The DUI services provider retains the existing expiration date of the application approval.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error corrected; subsection (C) deleted, subsection (D) renumbered to subsection (C) pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section R9-20-105 and Table 1 repealed; new Section R9-20-105 made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-106. Rescinding Approval

A. The Department may rescind the approval of a DUI services provider if the Department determines that noncompliance with this Article by the DUI services provider negatively impacts the DUI screening, DUI education, or DUI treatment the client is receiving from the DUI services provider.

B. If the Department rescinds the approval of a DUI services provider, the Department shall:
1. Provide written notice of the rescindment to the DUI services provider that includes a list of the requirements with which the DUI services provider is not in compliance, and
2. Remove the DUI services provider from the list of the Department's approved DUI service providers.

C. To obtain approval after a rescindment, an applicant shall submit:
1. The application required in R9-20-103, and
2. A written recommendation for approval of the applicant from a referring court.

D. The Department shall review the application and recommendation in subsection (C) and issue an approval or notice of non-approval no sooner than 60 days, but not later than 90 days, after the Department receives the application and recommendation.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (A) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-107. Administration, Monitoring

A. A DUI services provider shall designate an administrator who meets qualifications established by the DUI services provider.

B. An applicant or DUI services provider shall allow the Department immediate access to a client, records, and all areas of a facility according to A.R.S. § 41-1009.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-108. Requirements for DUI Screening

A. An administrator shall ensure that policies and procedures are developed, documented, and implemented for:
1. Conducting DUI screening,
2. If applicable, performing DUI screening electronically including:
   a. Using a secure connection,
   b. Having direct and immediate interaction between the individual conducting the DUI screening and the individual being screened, and
   c. Verifying the identities of the individual conducting and the individual receiving the DUI screening before the DUI screening is conducted;
3. Tracking and referring a client to DUI education or DUI treatment, and
4. Communicating with and reporting information to a referring court.

B. An administrator shall ensure that:
1. A client is given the following information in writing before DUI screening is conducted:
   a. A description of the DUI screening process;
   b. The timeline for initiating and completing DUI screening;
   c. The consequences to the client for not complying with the DUI screening process and timeline; and
   d. The cost and methods of payment for DUI screening, DUI education, and DUI treatment; and

2. The client's receipt of the information is documented in the client record.

C. An administrator shall ensure that a client's DUI screening:
1. Occurs within 30 days after the date of the court order, unless otherwise required by the court;
2. Is conducted by a:
   a. Behavioral health professional; or
   b. Licensed substance abuse technician under direct supervision, as defined in A.A.C. R4-6-101, of a behavioral health professional;
3. Consists of a face-to-face interview that lasts at least 30 minutes but not more than three hours;
4. Includes administering at least one of the following for measuring alcohol dependency or substance abuse:
   a. Driver Risk Inventory II,
   b. Michigan Alcoholism Screening Test,
   c. The Minnesota Multiphasic Personality Inventory MMPI-2,
   d. Mortimer-Filkins Test,
   e. Substance Abuse Subtle Screening Inventory (SASSI),
   f. Drug Abuse Screening Test (DAST),
   g. Adolescent Chemical Dependency Inventory (ACDI),
   h. Juvenile Substance Abuse Profile (JSAP),
   i. Reinstatement Review Inventory (RRI), or
   j A substance abuse questionnaire that contains the information in one of the screening assessments in subsections (C)(4)(a) through (C)(4)(i); and
5. Is documented in the client record.

D. An administrator shall classify a client based upon the information obtained in the DUI screening in subsection (C) as follows:
1. A Level 1 DUI client is a client who:
   a. Meets at least one of the following:
      i. Has been arrested or convicted two or more times for alcohol or drug-related offenses;
      ii. Had an alcohol concentration of 0.15 or higher at the time of the arrest that led to the current referral and meets at least one of the criteria in subsections (D)(1)(b)(ii) through (xii);
      iii. Has been unable to control use of alcohol or drugs or has habitually abused alcohol or drugs;
      iv. Admits a problem controlling alcohol or drug use;
      v. Has been diagnosed with substance abuse or organic brain disease resulting from substance abuse;
      vi. Has experienced symptoms of withdrawal from alcohol or drug use that included visual, auditory, or tactile hallucinations; convulsive seizures; or delirium tremens; or
      vii. Has been diagnosed with alcoholic liver disease, alcoholic pancreatitis, or alcoholic cardiomyopathy by a medical practitioner; or
   b. Meets at least three of the following:
      i. Had an alcohol concentration of 0.08 or higher at the time of the arrest that led to the current referral;
      ii. Had previously been arrested or convicted one time for an alcohol-related or drug-related offense;
      iii. Has experienced a decrease in attendance or productivity at work or school as a result of alcohol or drug use;
      iv. Has experienced family, peer, or social problems associated with alcohol or drug use;
      v. During DUI screening, provided responses on the standardized instrument in subsection (C)(4) that indicated substance abuse;
      vi. Has previously participated in substance abuse education or treatment for problems associated with alcohol or drug use;
      vii. Has experienced blackouts as a result of alcohol or drug use;
      viii. Has passed out as a result of alcohol or drug use;
      ix. Has experienced symptoms of withdrawal from alcohol or drug use including shakes or malaise relieved by resumed alcohol or drug use; irritability; nausea; or anxiety;
      x. Exhibits a psychological dependence on drugs or alcohol;
      xi. Has experienced an increase in consumption, a change in tolerance, or a change in the pattern of alcohol or drug use; or
      xii. Has experienced personality changes associated with alcohol or drug use; and
2. A Level 2 DUI client is a client who:
   a. Does not meet any of the criteria in subsection (D)(1)(a), and
   b. Meets no more than two of the criteria in subsection (D)(1)(b).

E. An administrator shall ensure that after a client completes DUI screening:
1. The results of the DUI screening are documented in the client record and include:
   a. The client's alcohol concentration at the time of the arrest that led to the current referral, if available;
   b. The client's history of alcohol and drug use;
   c. The client's history of treatment associated with alcohol or drug use; and
   d. The client's history of impairments in physical, educational, occupational, or social functioning as a result of alcohol or drug use;
2. Referrals are made as specified in subsection (F); and
3. The following information is reported to the referring court within seven days after the client's completion of DUI screening:
   a. The date that the client completed DUI screening;
   b. The results of a client's DUI screening;
   c. Recommendations for DUI education or DUI treatment, based on the:
      i. Results of the DUI screening, and
      ii. Recommended of the behavioral health professional conducting the DUI screening; and
   d. The name of the DUI services provider selected by the client to provide DUI education or DUI treatment to the client.

F. Except as provided in subsection (H), an administrator shall ensure that:
1. A Level 1 DUI client is referred to both:
   a. A DUI education provider that provides at least 16 hours of DUI education, and
   b. A DUI treatment provider that provides at least 20 hours of DUI treatment;
2. A Level 2 DUI client is referred to a DUI education provider that provides at least 16 hours of DUI education;
3. The referral of a client includes:
   a. Providing the client with the names, addresses, and telephone numbers of three DUI education providers

or DUI treatment providers, as applicable, in the geographic area requested by the client, at least two of which are not owned by, operated by, or affiliated with the DUI screening provider; and

b. Instructing the client to:

i. Select a DUI education provider or DUI treatment provider, as applicable;

ii. Schedule an appointment or enroll in DUI education or DUI treatment, as applicable, within seven days after the date of completion of the DUI screening; and

iii. Notify the DUI screening provider of the name of the DUI education provider or DUI treatment provider, as applicable, selected by the client;

4. A client's written authorization to release information to the selected DUI services provider is obtained; and
5. The DUI education provider or DUI treatment provider, as applicable, selected by the client is provided with:
   a. A copy of the completed standardized instrument or results of the client's DUI screening, and
   b. Recommendations for DUI education or DUI treatment, as applicable, from the behavioral health professional who conducted the DUI screening.

G. A DUI screening provider may refer a Level 1 or Level 2 DUI client to a self-help or peer-support program that assists individuals in achieving and maintaining freedom from alcohol or drugs, such as Alcoholics Anonymous or Narcotics Anonymous. Participation in a self-help group or peer support program is not DUI education or DUI treatment and does not count toward required hours in DUI education or DUI treatment.

H. If a court's requirements conflict with the requirements in subsection (F), a DUI screening provider shall:
1. Comply with the court's requirements,
2. Document in the client record that the court's requirements conflict with requirements in subsection (F), and
3. Maintain at the facility a document identifying the court's requirements.

I. An administrator shall ensure that a referring court is notified in writing within seven days, unless otherwise specified by the court, after:
1. A client fails to:
   a. Obtain or complete DUI screening, or
   b. Pay the cost of DUI screening; or
2. The DUI screening provider learns that a client has:
   a. Completed DUI education or DUI treatment; or
   b. Failed to:
      i. Comply with DUI education or DUI treatment procedures, or
      ii. Complete DUI education or DUI treatment.

J. An administrator shall ensure that a record is maintained for each client that contains:
1. The citation number or complaint number from the arrest that led to the current referral, if available;
2. A copy of the documents referring the client to DUI screening, if available;
3. Documentation that the client received the information required in subsection (B);
4. Documentation of the results of the client's DUI screening required in subsection (E)(1), including the completed standardized instrument required in subsection (C)(4);
5. Documentation of the:
   a. Referrals for DUI education or DUI treatment, as applicable, required in subsection (E)(2); and
   b. Recommendations for DUI education or DUI treatment, as applicable, required in subsection (E)(3)(c);
6. The DUI client's signed and dated authorization for release of information required in subsection (F)(4); and
7. A copy of the information provided to the:
   a. DUI education provider or DUI treatment provider, as applicable, selected by the client, as required in subsection (F)(5); and
   b. Referring court as required in subsection (E)(3).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-109. Requirements for DUI Education

A. An administrator shall ensure that policies and procedures are developed, documented, and implemented for:
1. Providing DUI education;
2. If applicable, providing DUI education electronically including:
   a. Using a secure connection, and
   b. Verifying the identity of the individual receiving the DUI education; and
3. Communicating with and reporting information to an individual's DUI screening provider and, if applicable, the referring court.

B. An administrator shall ensure that:
1. A client is given the following information in writing before DUI education is conducted:
   a. The procedures for conducting DUI education,
   b. The timeline for initiating and completing DUI education,
   c. The consequences to the client for not complying with the procedures and timeline,
   d. The information about the client that will be reported to the client's DUI screening provider or the referring court, and
   e. The cost and methods of payment for DUI education; and
2. The client's receipt of the information is documented in the client record.

C. An administrator shall ensure that:
1. DUI education is provided in a classroom setting or electronically;
2. A current written schedule of DUI education classes is maintained at the facility;
3. DUI education consists of:
   a. At least 16 hours in the classroom setting, or
   b. Modules provided electronically that are equivalent to the content of the material covered during at least 16 hours of classroom instruction;
4. DUI education is scheduled to be completed within eight weeks after the date of the first class; and
5. The number of clients enrolled in a class for DUI education in a classroom setting does not exceed 30.

D. Participation in a self-help group or peer support program, such as Alcoholics Anonymous or Narcotics Anonymous, is

not DUI education and does not count toward required hours of DUI education.

E. An administrator shall ensure that:
1. A written pre-test is administered to a client before the client receives DUI education to measure the client's knowledge of the subject areas listed in subsection (E)(2);
2. DUI education includes information on:
   a. The physiological effects of alcohol and drug use;
   b. How alcohol use and drug use affect an individual's ability to operate a vehicle, including how an individual's alcohol concentration is measured and how alcohol concentration impacts an individual's ability to operate a vehicle;
   c. Alternatives to operating a motor vehicle while impaired by alcohol or drug use;
   d. The psychological and sociological effects of alcohol and drug use;
   e. The stages of substance abuse;
   f. Self-assessment of alcohol or drug use;
   g. Criminal penalties and statutory requirements for sentencing DUI clients;
   h. Alternatives to alcohol or drug use;
   i. Identification of different approaches to the treatment of substance abuse;
   j. Resources, programs, and interventions available in the community for treatment of substance abuse; and
   k. Orientation to the process and benefits of group counseling and self-help groups such as Alcoholics Anonymous and Narcotics Anonymous; and
3. A written post-test is administered to a client after receiving DUI education to measure the client's knowledge of the subject areas listed in subsection (E)(2).

F. An administrator shall ensure that a policy and procedure is developed, documented, and implemented that covers the use of results from the pre-tests and post-tests required in subsection (E).

G. An administrator shall ensure that a client who completes DUI education receives documentation that indicates completion of DUI education and includes:
1. The name of the DUI education provider,
2. The number of hours of DUI education completed,
3. The date of completion, and
4. The name of the client.

H. An administrator shall ensure that the DUI screening provider and, if applicable, the referring court is:
1. Notified in writing within seven days, unless otherwise specified by the court, after:
   a. An individual fails to enroll in DUI education by the deadline established by the individual's DUI screening provider or the referring court;
   b. A client fails to comply with the requirements for DUI education, including failure to attend DUI education or failure to pay required costs; or
   c. A client completes DUI education; and
2. Provided with a written report for each client, within 30 days after ending the provision of DUI education to the client, that includes:
   a. The client's date of enrollment;
   b. Whether the client complied with the requirements for DUI education;
   c. Whether the client completed DUI education and, if so, the date of completion; and
   d. Any recommendation for additional DUI education or for DUI treatment.

I. If an administrator determines that a client's DUI education needs cannot be met by the DUI education provider selected by the client, the administrator may refer a client back to the client's DUI screening provider by submitting to the DUI screening provider:
1. Documentation of the reason that the DUI education provider is unable to meet the client's DUI education needs, including whether the client:
   a. Requires behavioral health services that the DUI education provider is not authorized or able to provide,
   b. Has a physical or other disability that the DUI education provider is unable to accommodate, or
   c. Requires education to be provided in a language in which instruction is not provided by the DUI education provider, and
2. A recommendation for additional or alternative DUI education that would meet the client's DUI education needs.

J. An administrator shall ensure that a record is maintained for each client that contains:
1. Documents received from the client's DUI screening provider or referring court regarding the client;
2. Documentation that the client received the information required in subsection (B);
3. The pre-test and post-test required in subsection (E) completed by the client;
4. The dates and time periods during which the client received DUI education;
5. Documentation of DUI education provided in a classroom setting that the client failed to attend;
6. A copy of the documentation indicating the client's satisfactory completion of DUI education required in subsection (G), if applicable;
7. A copy of the documentation provided to the client's DUI screening provider or referring court as required in subsection (H)(1);
8. A copy of the written report provided to the client's DUI screening provider or referring court as required in subsection (H)(2);
9. Documentation supporting a referral of the client back to the client's DUI screening provider, if applicable; and
10. Any other written information from or documentation of verbal contact with any of the following regarding the client:
    a. The client's DUI screening provider,
    b. The referring court,
    c. The Department of Motor Vehicles, or
    d. Another DUI education provider or a DUI treatment provider.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-110. Requirements for DUI Treatment

A. An administrator shall ensure that policies and procedures are developed, documented, and implemented that:
1. Cover the education, skill, and experience for individuals providing DUI treatment;
2. Cover the provision of DUI treatment;

3. Cover communicating with and reporting information to an individual's DUI screening provider and, if applicable, the referring court; and
4. Establish criteria the DUI treatment provider considers when determining whether to extend the time for a client's completion of DUI treatment.

B. An administrator shall ensure that:
1. The DUI treatment provider receives:
   a. A copy of the documentation of the client's completion of DUI education, required in R9-20-109(G), from the client; or
   b. Documentation of the client's completion of DUI education from the client's DUI screening provider;
2. A client is given the following information in writing before DUI treatment is conducted:
   a. The procedures for conducting DUI treatment,
   b. The timeline for initiating and completing DUI treatment,
   c. The criteria the DUI treatment provider considers when determining whether to extend the time for completion of the DUI treatment,
   d. The consequences to the client for not complying with the procedures and timeline,
   e. The information about the client that will be reported to the client's DUI screening provider or the referring court, and
   f. The cost and methods of payment for DUI treatment; and
3. The client's receipt of the information is documented in the client record.

C. An administrator shall ensure that DUI treatment:
1. Is based upon the information and results of the client's DUI screening obtained from the DUI screening provider, as required in R9-20-108(F)(5), or referring court;
2. Includes at least 20 hours of group counseling that:
   a. Is provided by a behavioral health professional or a licensed substance abuse technician under the direct supervision, as defined in A.A.C. R4-6-101, of a behavioral health professional;
   b. Is provided according to the recommendations of the behavioral health professional who conducted the client's DUI screening;
   c. Includes no more than 15 clients or, if family members participate in group counseling, no more than 20 individuals; and
   d. Is documented in a client record according to subsection (I); and
3. Is scheduled to be completed within 16 weeks after the date the client enrolled in DUI treatment, unless the DUI treatment provider extends the time for completion of DUI treatment, as provided in subsection (E).

D. Participation in a self-help group or peer support program, such as Alcoholics Anonymous or Narcotics Anonymous, is not DUI treatment and does not count toward required hours in DUI treatment.

E. A DUI treatment provider may extend the time for a client's completion of DUI treatment if an event, such as one of the following, occurs during the 16 weeks after the date the client was enrolled in DUI treatment:
1. The client is serving time in jail;
2. The client or a family member of the client is ill or injured and requires medical services, as defined in A.R.S. § 36-401; or
3. A family member of the client dies.

F. An administrator shall ensure that the DUI screening provider and, if applicable, the referring court is:
1. Notified in writing within seven days, unless otherwise specified by the court, after:
   a. An individual fails to enroll in DUI treatment by the deadline established by the individual's DUI screening provider or the referring court;
   b. A client fails to comply with the requirements for DUI treatment, including failure to attend DUI treatment or failure to pay required costs; or
   c. A client completes DUI treatment; and
2. Provided with a written report for each client, according to the timeline established by the DUI screening provider, that includes:
   a. The client's date of enrollment;
   b. Whether the client complied with the requirements for DUI treatment;
   c. Whether the client completed DUI treatment and, if so, the date of completion; and
   d. Any recommendation for additional DUI treatment.

G. An administrator shall ensure that a client who completes DUI treatment receives:
1. Documentation that indicates completion of DUI treatment and includes:
   a. The name of the DUI treatment provider,
   b. The number of hours of DUI treatment completed,
   c. The date of completion, and
   d. The name of the client; and
2. An exit interview from an employee that includes a review of the information contained in the report required in subsection (F)(2).

H. If an administrator determines that a client's DUI treatment needs cannot be met by the DUI treatment provider selected by the client, the administrator may refer a client back to the client's DUI screening provider by submitting to the DUI screening provider:
1. Documentation of the reason that the DUI treatment provider is unable to meet the client's DUI treatment needs, including whether the client:
   a. Requires behavioral health services that the DUI treatment provider is not authorized or able to provide,
   b. Has a physical or other disability that the DUI treatment provider is unable to reasonably accommodate, or
   c. Requires treatment to be provided in a language in which DUI treatment is not provided by the DUI treatment provider; and
2. A recommendation for additional or alternative DUI treatment that would meet the client's DUI treatment needs.

I. An administrator shall ensure that a record is maintained for each client that contains:
1. Information and documents received from the client's DUI screening provider or the referring court regarding the client;
2. Documentation that the client received the information required in subsection (B)(2);
3. Documentation of each group counseling session in which the client participated, including:
   a. The date of the group counseling session,
   b. The topics discussed, and
   c. The client's progress in meeting treatment goals;
4. Documentation of the client's failure to participate in a group counseling session, if applicable;
5. Documentation related to an extension of the time for a client's completion of DUI treatment, if applicable;

6. A copy of the documentation indicating the client's satisfactory completion of DUI treatment required in subsection (G), if applicable;
7. Documentation of the client's exit interview required in subsection (G)(2);
8. A copy of the written report provided to the client's DUI screening provider or referring court as required in subsection (F)(2);
9. Documentation supporting a referral of the client back to the client's DUI screening provider, if applicable; and
10. Any other written information from or documentation of verbal contact with any of the following regarding the client:
    a. The client's DUI screening provider,
    b. The referring court, or
    c. Another DUI treatment provider or a DUI education provider.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-111. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-112. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-113. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-114. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 2. MISDEMEANOR DOMESTIC VIOLENCE OFFENDER TREATMENT

R9-20-201. Definitions

The following definitions apply in this Article unless otherwise specified:

1. "Administrator" means an individual who has authority and responsibility for managing the provision of treatment.
2. "Applicant" means an individual or business organization that has submitted an application packet to the Department.
3. "Application packet" means the forms, documents, and additional information the Department requires an applicant to submit to become a provider.
4. "Behavioral health professional" means an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to:
    a. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
    b. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101.
5. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
6. "Client" means an individual who is ordered by a referring court to complete a domestic violence offender treatment program as a result of a conviction for a misdemeanor domestic violence offense according to A.R.S. § 13-3601.01.
7. "Client record" means documentation relating to the treatment received by a client.
8. "Controlling person" means a person who, with respect to a business organization:
    a. Through ownership, has the power to vote at least 10% of the outstanding voting securities of the business organization;
    b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
    c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
    d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
9. "Day" means a calendar day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.
10. "Department" means the Arizona Department of Health Services.
11. "Documentation" means information in written, photographic, electronic, or other permanent form.
12. "Domestic violence offense" has the same meaning as in A.R.S. § 13-3601.01.
13. "Employee" means an individual compensated by a provider for work on behalf of the provider.

14. "Facility" means the building or buildings used to provide treatment.
15. "Monitoring" means the Department's inspection of a facility to determine compliance with this Article.
16. "Provider" means an individual or business organization that meets the standards in this Article, as determined by the Department, and is approved by the Department to provide treatment.
17. "Treatment" means a program of activities for misdemeanor domestic violence offenders according to A.R.S. § 13-3601.01.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-202. Individuals to Act for Applicant
When an applicant or provider is required by this Article to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or provider:

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

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-203. Application and Renewal
A. An applicant applying to become a provider shall submit to the Department an application packet that contains:

1. An application in a format provided by the Department that includes:
   a. The applicant's name;
   b. The applicant's mailing address and telephone number;
   c. The applicant's e-mail address;
   d. The name, telephone number, and e-mail address of the individual acting on behalf of the applicant according to R9-20-202, if applicable;
   e. The name under which the applicant plans to do business, if different from the applicant's name;
   f. The name of each referring court;
   g. The address and telephone number of the for each facility where treatment is provided; and
   h. The applicant's signature and the date signed;
2. A copy of the:
   a. Program description required in R9-20-208(A)(1),
   b. Policies and procedures required in R9-20-208(B), and
   c. Policies and procedures required in R9-20-208(D);
3. The name and qualifications of the administrator; and
4. A copy of the applicant's:
   a. U.S. Passport, current or expired;
   b. Birth certificate;
   c. Naturalization documents; or
   d. Documentation of legal resident alien status.

B. For renewal, at least 60 days before the expiration of approval, a provider shall submit to the Department in a Department-provided format:

1. The provider's approval number,
2. The information in subsection (A)(1), and
3. The documentation in subsection (A)(2).

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-204. Application or Renewal Approval Process
A. The Department shall:

1. Review the documents submitted by the applicant or provider as required in R9-20-203,
2. Issue an approval or non-approval based on the applicant's or provider's compliance with the requirements in this Article, and
3. Notify the applicant or provider of the Department's decision within 30 days after receiving the documents specified in R9-20-203.

B. The Department shall send an applicant or provider a written notice of non-approval, with reasons for the non-approval, if:

1. The applicant fails to provide the documentation required in R9-20-203, or
2. The Department determines the documentation submitted under R9-20-203 does not comply with this Article or contains false information.

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-205. Notification of Change
A. A provider shall notify the Department in writing at least 30 days before the effective date of:

1. A termination of treatment provision; or
2. A change in the:
   a. Name under which the provider does business,
   b. Address or telephone number of a facility where treatment is provided, or
   c. Administrator.

B. The Department shall update the provider's approval to reflect the changes in subsection (A), but retain the existing expiration date of the application approval.

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended

by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-206. Rescinding Approval

A. The Department may rescind the approval of a provider if the Department determines that noncompliance with this Article by the provider negatively impacts the treatment a client is receiving from the provider.

B. If the Department rescinds the approval of a provider, the Department shall:
1. Provide written notice of the rescindment to the provider that includes a list of the requirements with which the provider is not in compliance,
2. Remove the provider from the Department's list of approved treatment providers, and
3. Provide written notice of the rescindment to any referring courts identified by the provider.

C. To obtain approval after a rescindment, a provider shall submit:
1. The application required in R9-20-203, and
2. A written recommendation for approval of the provider from a referring court notified in subsection (B)(3).

D. The Department shall review the application and recommendation in subsection (C) and issue an approval or notice of non-approval no sooner than 60 days, but not later than 90 days, after the Department receives the application and recommendation.

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-207. Administration, Monitoring

A. A provider shall designate an administrator who meets qualifications established by the provider.

B. A provider shall allow the Department immediate access to all areas of a facility, a client, or records, according to A.R.S. § 41-1009.

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-208. Misdemeanor Domestic Violence Offender Treatment Standards

A. An administrator shall ensure that:
1. A program description is developed that includes a method for providing treatment;
2. Treatment:
   a. Is based on methodologies developed by behavioral health professionals and supported by published research results;
   b. Does not disproportionately or exclusively include one or more of the following:
      i. Anger or stress management,
      ii. Conflict resolution,
      iii. Family or couples counseling, or
      iv. Education or information about domestic violence;
   c. Emphasizes personal responsibility;
   d. Identifies domestic violence as a means of asserting power and control over another individual;
   e. Does not require the participation of a victim of domestic violence;
   f. Is not provided at a location where a victim of domestic violence is sheltered;
   g. Includes individual counseling, group counseling, or a combination of individual counseling and group counseling that:
      i. Is conducted by a behavioral health professional; and
      ii. Requires each counseling session to be documented in the client record;
   h. Does not include more than 15 clients in group counseling; and
3. Treatment is provided to a client according to subsection (C).

B. An administrator shall ensure that policies and procedures are developed, documented, and implemented that:
1. Unless the period of time for a client to complete treatment is extended, require a client to complete treatment in not less than three months and no more than 12 months after the date the client begins treatment; and
2. Establish criteria for determining whether to extend the time for a client's completion of treatment, such as:
   a. Receiving a recommendation from a behavioral health professional, or
   b. An occurrence of one of the following during the 12 months after the date the client is admitted for treatment:
      i. The client serving jail time,
      ii. Illness of the client or a client's family member, or
      iii. Death of a client's family member, or
   c. The court requiring the client to complete more than 52 sessions of treatment.

C. An administrator shall ensure that:
1. Except as provided in a court order, treatment includes, at a minimum, the following number of sessions, to be completed after the applicable offense for which the client was required to complete treatment:
   a. For a first offense, 26 sessions;
   b. For a second offense, 36 sessions; and
   c. For a third offense or any subsequent offense, 52 sessions;
2. The duration of a session in subsection (C)(1) is:
   a. For an individual session, not less than 50 minutes; and
   b. For a group session, not less than 90 minutes and not longer than 180 minutes; and
3. Except if extended according to subsection (B)(2), treatment for a client is scheduled to be completed in not less than three months and no more than 12 months after the client is admitted into treatment.

D. An administrator shall ensure that policies and procedures are developed, documented, and implemented for providing treatment that:
1. Establish:
   a. The process for a client to begin and complete treatment;
   b. The timeline for a client to begin treatment;
   c. The timeline for a client to complete treatment, which shall not exceed 12 months, except as provided in subsection (B)(2); and

d. Criteria for a client's successful completion treatment, including attendance, conduct, and participation requirements;

2. Require notification to a client at the time of admission of the consequences to the client if the client fails to successfully complete treatment;
3. Require notification, in writing, to the entity that referred the client to the provider on behalf of the court, within a timeline established by the referring court or the entity that referred the client to the provider on behalf of the court, when any of the following occurs:
   a. A client referred by the court has not reported for admission to treatment,
   b. A client referred by the court is ineligible or inappropriate for treatment,
   c. A client is admitted for treatment,
   d. A client is voluntarily or involuntarily discharged from treatment,
   e. A client fails to comply with treatment, or
   f. A client completes treatment;
4. Are reviewed and revised as necessary by the provider at least once every 12 months; and
5. Are maintained at the facility.

E. An administrator shall ensure that:
1. Treatment is provided by a behavioral health professional who:
   a. Has at least six months of full-time work experience with domestic violence offenders or other criminal offenders, or
   b. Is visually observed and directed by a behavioral health professional with at least six months of full-time work experience with domestic violence offenders or other criminal offenders; and
2. Policies and procedures are developed, documented, and implement that establish education and training requirements for a behavioral health professional providing treatment that demonstrate that the behavioral health professional is qualified to provide treatment.

F. An administrator shall ensure that:
1. All employees are provided orientation specific to the duties of the employee,
2. An employee completes orientation before the employee provides treatment,
3. Annual training requirements are established for an employee, and
4. Orientation and training required in this subsection are documented.

G. An administrator shall ensure that:
1. A behavioral health professional completes an assessment of each client;
2. The assessment includes a client's:
   a. Substance abuse history,
   b. Legal history,
   c. Family history,
   d. History of trauma or abuse,
   e. Behavioral health treatment history, and
   f. Potential for self-harm or to harm another individual;
3. The following information is requested:
   a. The case number or identification number assigned to the client by the referring court;
   b. Whether the client has any past or current orders for protection or no-contact orders issued by a court;
   c. The client's history of domestic violence or family disturbances, including incidents that did not result in arrest; and
   d. The details of the misdemeanor domestic violence offense that led to the client's referral for treatment; and
4. The assessment and information in subsection (G)(3) are documented in the client record.

H. For a client who has completed treatment, an administrator shall:
1. Issue a certificate of completion that includes:
   a. The case number or identification number assigned to the client by the referring court or, if the provider has made three documented attempts to obtain the case number or identification number without success, the client's date of birth;
   b. The client's name;
   c. The date of completion of treatment;
   d. The name, address, and telephone number of the provider; and
   e. The signature of an individual authorized to sign on behalf of the provider;
2. Provide the original of the client's certificate of completion to the client;
3. Provide a copy of the client's certificate of completion to the referring court according to the timeline established in the provider's policies and procedures; and
4. Maintain a copy of the client's certificate of completion in the client record.

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-209. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-210. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-211. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-212. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt

rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-213. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-214. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-215. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-216. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 3. REPEALED

R9-20-301. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors in subsections (F) and (I) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-302. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-303. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-304. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-305. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-306. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-307. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-308. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-309. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-310. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors in subsections (F) and (G) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-311. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 4. REPEALED

R9-20-401. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-402. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-403. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-404. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-405. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-406. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (A)(8)(a) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by

exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-407. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-408. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (B) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-409. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-410. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-411. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (F)(6) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-412. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-413. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 5. REPEALED

R9-20-501. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2).Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-502. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (J)(1) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended

by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2).

R9-20-503. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-504. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-505. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-506. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 6. REPEALED

R9-20-601. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-602. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by exempt rulemaking at 18 A.A.R. 1725, effective June 30, 2012 (Supp. 12-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-603. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-604. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-605. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 7. REPEALED

R9-20-701. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993

(Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 4095, effective October 7, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-702. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 8. REPEALED

R9-20-801. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-802. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-803. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 9. REPEALED

R9-20-901. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-902. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-903. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency punctuation error corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-904. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 10. REPEALED

R9-20-1001. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency punctuation error corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt

rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1002. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1003. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1004. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1005. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1006. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1007. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1008. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1009. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1010. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1011. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1012. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1013. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1014. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 11. REPEALED

R9-20-1101. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1102. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (K) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 12. REPEALED

R9-20-1201. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1202. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 13. REPEALED

R9-20-1301. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1302. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors in subsections (B)(8) and (9) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1303. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1304. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1305. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (C) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1306. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1307. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1308. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by

exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1309. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (A) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1310. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1311. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1312. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1313. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1314. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 14. REPEALED

R9-20-1401. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (B) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1402. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1403. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 15. REPEALED

R9-20-1501. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Repealed under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1502. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1503. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1504. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended

by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1505. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1506. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1507. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3214, effective June 30, 2003 (Supp. 03-2). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

R9-20-1508. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3). Section repealed by exempt rulemaking at 19 A.A.R. 2367, effective October 1, 2013 (Supp. 13-2).

ARTICLE 16. REPEALED

R9-20-1601. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1602. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1603. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 23, 1992; received in the Office of the Secretary of State November 9, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 17. REPEALED

R9-20-1701. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1702. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1703. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1704. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1705. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1706. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1707. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1708. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1709. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors in subsection (B)(9) and (10) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1710. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1711. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1712. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in paragraph (6) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1713. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 18. REPEALED

R9-20-1801. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1802. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1803. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1804. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1805. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1806. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency errors in subsections (D)(1)(d) and (D)(2) corrected pursuant to letter received in the Office of the Secretary of State October 8, 1993 (Supp. 93-4). Agency errors in subsections (D)(1)(d), (D)(2), (E)(2) and (J) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1807. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Punctuation error corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1808. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1809. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1810. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1811. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Agency error in subsection (C)(5) corrected pursuant to letter received in the Office of the Secretary of State October 19, 1993 (Supp. 93-4). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1812. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1813. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1814. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1815. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1816. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-1817. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

Exhibit A. Repealed

Historical Note
Exhibit repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

ARTICLE 19. REPEALED

Part A. Repealed

R9-20-A1901. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-A1902. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

Part B. Repealed

R9-20-B1901. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1902. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1903. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1904. Repealed

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by

exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1905. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1906. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1907. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1908. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

R9-20-B1909. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 275, § 12, effective March 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 7 A.A.R. 4439, effective October 3, 2001 (Supp. 01-3).

13-3601.01. Domestic violence; treatment; definition

A. The judge shall order a person who is convicted of a misdemeanor domestic violence offense to complete a domestic violence offender treatment program that is provided by a facility approved by the court pursuant to rules adopted by the supreme court, the department of health services, the United States department of veterans affairs or a probation department. If a person has previously been ordered to complete a domestic violence offender treatment program pursuant to this section, the judge shall order the person to complete a domestic violence offender treatment program unless the judge deems that alternative sanctions are more appropriate. The department of health services shall adopt and enforce guidelines that establish standards for domestic violence offender treatment program approval.

B. On conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has previously been convicted of a violation of a domestic violence offense or is convicted of a misdemeanor domestic violence offense and has previously been convicted of an act in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation. If the court orders supervised probation, the court may conduct an intake assessment when the person begins the term of probation and may conduct a discharge summary when the person is released from probation. If the person is incarcerated and the court receives confirmation that the person is employed or is a student, the court, on pronouncement of any jail sentence, may provide in the sentence that the person, if the person is employed or is a student and can continue the person's employment or studies, may continue the employment or studies for not more than twelve hours a day nor more than five days a week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.

C. A person who is ordered to complete a domestic violence offender treatment program shall pay the cost of the program.

D. If a person is ordered to attend a domestic violence offender treatment program pursuant to this section, the program shall report to the court whether the person has attended the program and has successfully completed the program.

E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply to convictions for offenses that were committed on or after January 1, 1999.

F. For the purposes of this section, "domestic violence offense" means an offense involving domestic violence as defined in section 13-3601.

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.

36-2006. Department of health services monitoring of screening, education and treatment programs

A. The department of health services shall monitor the alcohol and other drug screening, education or treatment programs and facilities that are used pursuant to sections 5-395.01, 8-249, 28-1381, 28-1382 and 28-1383.

B. The department of health services shall:

1. Adopt rules establishing the standards for approval of alcohol and other drug screening, education and treatment facilities.

2. Approve alcohol and other drug screening, education and treatment facilities.

3. Adopt rules establishing the standards for referrals to alcohol and other drug screening, education and treatment facilities.

4. Establish a standardized screening assessment.

5. Establish reporting and record keeping requirements for alcohol and other drug screening, education and treatment facilities.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 3, Articles 7-11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **Oct 5, 2023**

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 3, Articles 7-11

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Agriculture (Department) covers thirty-eight (38) rules and one Appendix in Title 3, Chapter 3, Articles 7-11 related to the Environmental Services Division. The purpose of the Arizona Department of Agriculture is to "provide for a uniform and coordinated agricultural program and policy in this state." Laws 2011, Ch. 12, § 3. Specifically, Article 7 relates to Pesticides, Article 8 relates to Fertilizer Materials, Article 9 relates to Commercial Feed, Article 10 relates to Agriculture Safety, and Article 11 relates to Arizona Native Plants.

Proposed Action

The Department did not complete its prior proposed course of action stated in its 2013 report due to a lack of priority based on the size of the changes and lack of public concern regarding the language of the rules. Similarly, the Department did not complete the prior proposed course of action stated in the 2018 report, but is in the process of completing it now. The Department indicated that it intends to complete its proposed course of action for Articles 7-10 by March of 2024 as a Notice of Proposed Rulemaking was issued on June 2, 2023 in the Registrar. The Department intends to complete its proposed course of action for Article 11 by September 2024 as a Notice of Docket Opening was published in the Registrar for Article 11 on September 15, 2023. The Department indicates that the reason for a longer proposed course of

action for Article 11 is due to the subject matter. The objective of Article 11 is to protect Arizona native plants, therefore, the Department is establishing a formal rulemaking advisory committee of stakeholders, subject matter experts and state land managers which will take more time given the expected meetings that will need to occur and consensus that will need to be obtained to ensure the proposed changes are the least burdensome and maintain the protection of Arizona native plants. Although they will attempt to complete the rulemaking as quickly as possible, the Department is of the belief that 9 months is not sufficient.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   The Department cites both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

   The Department states that the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

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

   The Department states that the benefits for the rules outweigh the costs of the rules and that there are no more cost-effective ways to uphold the statutory mandates.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   The Department stated it received one criticism regarding rule R3-3-1104 and the fees associated with the protected native plant seals and tags required for movement of these commodities.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   Although the Department indicates the rules are generally clear, concise, and understandable, they also identify nine (9) rules that could be updated to increase the clearness, conciseness, and understandability of the rules. Some of these changes include updating citations, updating definitions, updating grammatical and word changes, and updating incorporated by reference materials in the rules.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   Although the Department indicates the rules are generally consistent with other rules and statutes, they also identify six (6) rules that could be updated to increase the rules consistency. Some of these changes include updating the language of the rule and updating permit requirements.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Although the Department indicates the rules are generally effective in meeting their objectives, they also identify thirteen (13) rules and one Appendix that could be updated to increase the rules effectiveness. Some of these changes include reducing the number of pesticide labels required, setting minimum inspection fees, updating definitions, and updating permit application requirements.

8. **Has the agency analyzed the current enforcement status of the rules?**

Although the Department indicates the rules are generally enforced as written, they also identify nine (9) rules that could be updated to increase the rules enforcement. Some of these changes include updating fees, updating permit requirements, and updating the required information for applicants.

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 states 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 Department indicates that the permits and certifications issued under Articles 7 through 11 are compliant with the requirements of A.R.S. § 41-1037, however rules R3-3-702, 802 and 902 require qualifying information to determine eligibility for a permit or license, and therefore do not qualify as general permits. The rules in R3-3-1104, 1105 and 1107 were not adopted or amended after July 29, 2010

11. **Conclusion**

This Five Year Review Report from the Arizona Department of Agriculture covers thirty-eight (38) rules and one Appendix in Title 3, Chapter 3, Articles 7-11 related to the Environmental Services Division. As stated above, the rules need to be updated to enhance their effectiveness and clarity. The Department anticipates finalizing a rulemaking to address the changes needed above by March and September of 2024.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

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July 27, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Five-Year Rule Review Report for A.A.C. Title 3, Chapter 3, Articles 7-11

Dear Ms. Sornsin:

Enclosed, please find the Arizona Department of Agriculture's ("Department") five-year rule review report for A.A.C. Title 3, Chapter 3, Articles 7 through 11. The Department reviewed all the rules in Articles 7 through 11. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Jack Peterson at (602) 542-3575 or jpeterson@azda.gov with any questions about this report.

Sincerely,

Paul E Brierley

Paul E. Brierley
Director

cc: Jack Peterson, Associate Director

Arizona Department of Agriculture

5 YEAR REVIEW REPORT

Title 3. Agriculture

Chapter 3. Department of Agriculture - Environmental Services Division

Articles 7-11

July 28, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 3-107

Specific Statutory Authority: A.R.S. §§ 3-343, 3-264, 3-351, 3-363, 3-903, 3-904, 3-905, 3-906, 3-912, 3-913, 3-2603, 3-3106 and 3-3108

2. The objective of each rule:

Rule	Objective of the rule.
R3-3-701	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 3, Article 7.
R3-3-702	The objective of this rule is to implement A.R.S. § 3-351 by establishing the requirements for registering a pesticide, including the applicable fee.
R3-3-703	The objective of the rule is to provide additional requirements regarding discontinued pesticides found in the channels of trade, requirements regarding analyzing pesticide samples.
R3-3-704	The objective of this rule is to require pesticide registrants to submit two new labels after every revision, allow the Department to request a new label if the label on file is three years old, and set out the allowed deviations from label claims for active ingredients.
R3-3-801	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 3, Article 8.
R3-3-802	The objective of this rule is to set forth the requirements for applying for a commercial fertilizer license or for specialty fertilizer registration. The rule also contains a temporary fee decrease for specialty fertilizer registration.
R3-3-803	The objective of this rule is to set forth the inspection fee for commercial fertilizers, an exemption from providing a quarterly tonnage report, the requirement to pay past due inspection fees and penalties before licensure, information to include in quarterly statements, and how to submit estimated annual tonnage reports.
R3-3-804	The objective of this rule is to prescribe fertilizer labeling requirements, establish how to calculate deficiencies in the amount of guaranteed nutrients, and prescribe requirements for labeling leased fertilizer material storage containers.
R3-3-901	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 3, Article 9.
R3-3-902	The objective of this rule is to prescribe the requirements for applying for a commercial feed license and require a person who ammoniates feed for sale to obtain a commercial feed license.
R3-3-903	The objective of this rule is to prescribe the inspection fee for commercial feed, an exemption from providing a quarterly tonnage report, the requirement to pay past due inspection fees and penalties before licensure, the information to include in quarterly tonnage report statements, and how to submit estimated annual tonnage reports.
R3-3-904	The objective of this rule is to prescribe the requirements for selling milk or milk products for commercial feed, including decharacterizing the milk or milk product, placing certain warnings on the labels, and not selling them where food is sold for human consumption.

R3-3-905	The objective of this rule is to set forth requirements regarding labeling commercial feed, including that labeling and guarantees that must be in compliance with the Official Publication and inclusion of directions for use and precautionary statements.
R3-3-906	The objective of this rule is to establish acceptable amounts of non-protein nitrogen products used in commercial feed and require labels with directions for use and precautionary statements in certain instances.
R3-3-910	The objective of this rule is to establish that a distributor of commercial feed using certain additives, including drugs, may be required to demonstrate the safety and efficacy of the commercial feed and to prescribe methods for establishing the safety and efficacy of the feed.
R3-3-913	The objective of this rule is to establish requirements for sampling commercial feed and whole cottonseed.
R3-3-1001	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 3, Article 10.
R3-3-1002	The objective of this rule is to incorporate by reference the federal worker protection standard related to pesticide use.
R3-3-1003	The objective of this rule is to prescribe the training requirements for handlers and workers, the employer's duty to provide or verify training, the requirements for becoming a trainer, training records requirements and department options if trainers are not following the training requirements.
R3-3-1004	The objective of this rule is to require agricultural establishments to notify farm labor contractors about the central posting location and restrictions on entering treated areas and to require farm labor contractors to pass that information along to their workers.
R3-3-1005	The objective of this rule is to prescribe the requirements of containers used for applying pesticides and to require handlers to ensure that pesticides do not spill when being mixed or back-siphon into the water supply.
R3-3-1006	The objective of this rule is to establish the procedures for growers to request the Department to declare an agricultural emergency, which would have the effect of allowing early entry into an area where pesticides were applied, and the Department's responsibilities in responding to such a request.
R3-3-1007	The objective of this rule is to set forth civil penalty calculations for violations of Article 10.
R3-3-1008	The objective of this rule is to prescribe the basis for increasing or reducing a civil penalty and the corresponding amount of the increase or reduction.
R3-3-1009	The objective of this rule is to prescribe the circumstances under which a person can receive a civil penalty for failure to comply with an abatement order and to describe how the abatement period is delayed when a person appeals a citation.
R3-3-1010	The objective of this rule is to prescribe how the Department calculates additional penalties for failure to timely abate a violation.
R3-3-1011	The objective of this rule is to describe how the Department calculates penalties for repeated or willful violations.
R3-3-1012	The objective of this rule is to require an employer to post a citation for three days or until the violation is abated.
R3-3-1101	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 3, Article 11.
R3-3-1102	The objective of this rule is to prescribe the requirements for a landowner to give the Department notice before destroying a protected native plant and describe what information must be in the notice so that the Department can notify salvage operators who may wish to preserve the plant.
R3-3-1103	The objective of this rule is to set forth the requirements for a state agency intending to move or destroy protected native plants to give the Department notice and dispose of the plants using a method identified in the rule.

R3-3-1104	The objective of this rule is to establish the application requirements for obtaining a permit to collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants, as well as permit fees, tag fees, and harvesting fees. The rule also sets out the term of salvage assessed native plant permits and tags.
R3-3-1105	The objective of this rule is to describe the purpose of a scientific permit and noncommercial salvage permit and to set out the requirements for obtaining each of those permits.
R3-3-1106	The objective of this rule is to describe what information the Department will provide when requested to perform a native plant survey and what expenses are included in the fee for performing the survey.
R3-3-1107	The objective of this rule is to prescribe the circumstances when a movement permit is needed and how to obtain one, to set out the plant seals that are needed when moving a plant under a movement permit, and to describe how to attach tags, seals and cords to native plants.
R3-3-1108	The objective of this rule is set out the requirements for holders of salvage assessed and harvest restricted native plant permits to keep transaction records and provide those records to the Department.
R3-3-1109	The objective of this rule is to set out the fees for attending a seminar or training course on Arizona native plant law offered by the Department.
R3-3-1110	The objective of this rule is to establish that a person who is denied a permit may request an administrative hearing.
Appendix A.	The objective of this Appendix is simply to distinguish protected native plants by the categories of highly safeguarded, salvage restricted, salvage assessed, and harvest restricted.

3. **Are the rules effective in achieving their objectives?** **Yes __ No ___X**

Except for rules R3-3-702 and 704, the rules in Article 7 are achieving their objective. Except for rules R3-3-801 and 803, the rules in Articles 8 are effective in achieving their objective. Except for rule R3-3-905, the rules in Article 9 are effective in achieving their objective. Except for rules R3-3-1002, 1003 and 1010, the rules in Article 10 are effective in achieving their objective. Rules R3-3-1101, 1102, 1103, 1106 and 1109 in Article 11 are achieving their objective.

Rule	Why is the rule not effective in achieving its objective?
R3-3-702	This rule is mostly effective in achieving the stated objective. The Department believes the rule would be more effective by referring to ADEQ's data submission requirements according to A.A.C. R18-6-102. Additionally, reducing the requirement for requiring one pesticide label as opposed to two would reduce a regulatory burden while achieving the same objective of the rule.
R3-3-704	The rule would reduce the regulatory burden, and maintain the effectiveness of the rule, by reducing the number of required pesticide labels from two to one when revising a label.
R3-3-801	The rule is mostly effective in achieving the objective. The rule would be more effective by updating the incorporated reference to the most recent version of the Official Publication - AAPFCO.
R3-3-803	The rule is mostly effective in achieving the objective. The rule would be more effective by setting a minimum inspection fee for producers of less than 400 tons of fertilizer.
R3-3-905	The rule is mostly effective in achieving the objective. The rule would be more effective by requiring expired feed be removed from sale and language for untested feed, in alignment with current industry standards.
R3-3-1002	The rule is mostly effective in achieving the objective. However, it would be most effective if the rule, which is a reference to a set of federal regulations, were included in the definitions rule R3-3-1001.

R3-3-1003	The rule is partially effective in achieving the objective. The rule would be most effective by replacing the provisions that detail the requirements for training with language to direct the training requirements found in federal regulations of the Worker Protection Standard (40 CFR Part 170).
R3-3-1010	This rule is partially effective in achieving the stated objective. While the rule provides some guidance for calculating a penalty for unabated violations, the rule could be more effective by providing guidance on how to calculate the penalty more precisely as prescribed in rules R3-3-1007 and 1008.
R3-3-1104	The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit, rules R3-3-1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required.
R3-3-1105	The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit, rules R3-3-1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required. The Department also believes that noncommercial salvage permits should be available for more than just highly safeguarded native plants.
R3-3-1107	The Department believes this rule is only partially effective. Presently, there are three different rules for applying for a permit, rules R3-3-1104, 1105 and 1107. The Department feels that this rule would be more effective by rearranging existing rules so that one rule covers application requirements for all types of permits, one rule covers all fees related to permits, and one rule clearly lists the types of available permits and plainly states when a permit is and is not required.
R3-3-1108	The Department believes this rule is only partially effective. The transaction record for salvage assessed plants does not include the place the plant came from or the place it was transplanted. With one FTE allocated to this program, this information would allow the Department to better trace permitted plant movements and identify illegal plant movements more effectively.
R3-3-1110	Title 41 provides the right referred to in this rule. There is no need to repeat that right here.
Appendix A.	This rule is mostly effective in achieving the objective. It would be more effective if subsection (A) specified that highly safeguarded plants include plants covered by the Endangered Species Act, as described in A.R.S.§ 3-903(B)(l).

4. **Are the rules consistent with other rules and statutes?** **Yes __ No ___X**

With the exception of rule R3-3-703, the rules in Article 7 are consistent with other rules and statutes. The rules in Articles 8 and 9 are consistent with other rules and statutes. With the exception of rule R3-3-1002, the rules in Article 10 are consistent with other rules and statutes. With the exception of rules R3-3-1103, 1105 and 1107 in Article 11, the rules are consistent with other rules and statutes.

Rule	Why is the rule not consistent with other rules or statutes?
R3-3-703	The rule would be more consistent in achieving the objective if the registration of a discontinued pesticide were allowed to match up with the pesticide registration period for a maximum of 2 years in rule R3-3-702.
R3-3-1002	The rule is not fully consistent with other rules in the Chapter. It would be more consistent to move the language of the rule, which is an incorporated reference, into the Definitions rule R3-3-1001, as, throughout the Chapter, other incorporated references are included in the definitions rules.

R3-3-1103	This rule is not fully consistent with A.R.S. § 3-905. Subsection (C) of the statute refers to disposing or salvaging under permit to other government agencies or nonprofit organizations, while the rule (subsection (A)(4)) says no permit is required for that action. The rule is, however, consistent with other pertinent statutes.
R3-3-1105	This rule is mostly consistent with A.R.S. § 3-906. Subsection (C) of the statute refers to limitations on issuing permits for highly safeguarded native plants that are not presently included in the rule. The rule is, however, consistent with other pertinent statutes.
R3-3-1106	The rule is not fully consistent with A.R.S. § 3-310. The rule does not make any statement to correlate with the implementing statute, such as, "In addition to A.R.S. § 3-310, the following provisions apply to the request of a protected native plant survey.". The rule is not consistent with the request for a survey by excluding the provision that the director may enter into an agreement to conduct a survey and that the request must include a suitable description of the land in question. The rule is not consistent with A.R.S. § 3-310 as to who may request a survey, it does not mention that a state or federal agency can make a request.
R3-3-1107	This rule is partially consistent with the native plant statutes. This rule requires a "Movement Permit" for plants previously transplanted from their original growing site. The native plant statutes, however, do not provide for a movement permit, nor do they require a permit to move, sell or destroy plants previously transplanted.

5. **Are the rules enforced as written?** **Yes ___No ___X**

Except for rule R3-3-702, the rules in Article 7 are enforced as written. Except for rules R3-3-802, 803, and 804, the rules in Article 8 are enforced as written. Except for rule R3-3-913, the rules in Article 9 are enforced as written. The rules in Article 10 are enforced as written. With the exception of rules R3-3-1104, 1105, 1106 and 1107, the rules in Article 11 are enforced as written.

Rule	Why is the rule not enforced as written?
R3-3-702	The Department mostly enforces the rule as written. The Department no longer enforces the $110 fee for registration since it expired after fiscal year 2020 and has reverted to the statutory fee established in A.R.S. § 3-351.
R3-3-802	The Department mostly enforces the rule as written. The Department no longer enforces the $40 per specialty product registration since it expired after fiscal year 2011 and has reverted to the statutory fee established in A.R.S. § 3-272.
R3-3-803	The Department mostly enforces the rule as written. The Department no longer enforces the $0.10 fee per ton for commercial fertilizer inspection fee since it expired after fiscal year 2011 and has reverted to the statutory fee established in A.R.S. § 3-268.
R3-3-804	The Department mostly enforces the rule as written. The Department no longer enforces the $0.10 fee per ton for commercial fertilizer inspection fee since it expired after fiscal year 2011 and has reverted to the statutory fee established in A.R.S. § 3-268.
R3-3-913	The Department mostly enforces the rule as written. The Department does not limit the sampling equipment to specific labeled products, as in Shop-Vac and Probe-a-Vac.
R3-3-1104	The Department enforces this rule as written except that it does not require an applicant to provide a social security number or tax identification number.
R3-3-1105	The Department enforces this rule as written except that it does not require an applicant to provide a social security number or tax identification number.
R3-3-1106	The Department no longer conducts protected plant surveys. A protected plant survey has not been provided in more than ten years.
R3-3-1107	This rule requires a "Movement Permit" for plants previously transplanted from their original growing site. The native plant statutes, however, do not require a permit to move, sell or destroy plants previously transplanted. Accordingly, the Department does not require a person to obtain a movement permit to move, sell or destroy plants previously transplanted, but does allow a person to voluntarily obtain a permit for that purpose.

6. **Are the rules clear, concise, and understandable?** **Yes __ No ___X**

In Article 9, the rule R3-3-906 is clear, concise, and understandable. The rules R3-3-1002, 1004, and 1005 in Article 10 are clear, concise and understandable. With the exception of rules R3-3-1101, 1103, 1108 and Appendix A, the rules in Article 11 are clear, concise and understandable.

Rule	Why is the rule not clear, concise, or understandable?
R3-3-701	The rule is mostly clear, concise and understandable. The rule would be clearer by removing the numbering and alphabetizing the definition terms.
R3-3-702	The rule is mostly clear, concise and understandable. The rule would be clearer by distinguishing that providing a Social Security Number would pertain to an "individual" applying for a registration.
R3-3-703	The rule is mostly clear, concise and understandable. The rule would be clearer by referring to FIFRA and related federal regulations, which is defined, instead of to "the Act", which is not defined.
R3-3-704	The rule is mostly clear, concise and understandable. The rule would be clearer by adding a subsection label to the incorporated table. The rule would be more concise by indicating that the "Department", and not "States", may categorize a sample as "uniform" or "non-uniform".
R3-3-801	The rule is mostly clear, concise and understandable. The rule would be more concise by stating that the publication is on file with the Department for inspection because the material is copyright protected and the Department cannot provide copies itself.
R3-3-802	The rule is mostly clear, concise and understandable. The rule could benefit from minor grammatical and wording changes and the removal of repetitive language in subsection (A)(l). The rule would be clearer by distinguishing that providing a Social Security Number would pertain to an "individual" applying for a registration. The rule would be more concise by replacing the requirement for including a facsimile on an application to an email address to align with current agency practices.
R3-3-803	The rule is partially clear, concise and understandable. In subsection (A)(2), the rule wrongly cites the inapplicable A.R.S.§ 3-2009 instead of the correct A.R.S. § 3-272.
R3-3-804	The rule is mostly clear, concise and understandable. The rule would be more concise by shortening subsection (D) to eliminate the incorporation by reference language since that language is already in rule R3-3-801.
R3-3-901	The Department believes the introductory sentence can be simplified and thus be made more concise. Additionally, updating any regulations that are referenced incorrectly, and updating outdated incorporated references would be more concise. The inclusion of the definition of "pneumatic probe sampler" would clarify the use of this term in the Article.
R3-3-902	The Department believes the rule can be more concise without affecting understandability by removing the reference to A.R.S. § 3-2609. The rule would be clearer by distinguishing that providing a Social Security Number would pertain to an "individual" applying for a registration. The rule would be more concise by replacing the requirement for including a facsimile on an application to an email address to align with current agency practices.
R3-3-903	The rule would be clearer by indicating that a "commercial feed license" number is required, rather than just an "assigned" number; and indicating the minimum inspection fee to align with small scale operations. The rule would be more understandable by indicating when the inspection fee is due.
R3-3-904	The Department believes the rule would be clearer and more concise by simplifying the language in subsection (A)(3)(b) and rephrasing subsection (C). Additionally, by updating the incorporated reference, the Agency's updated address information, and removing repetitive language would be make the rule more concise.
R3-3-905	The rule is mostly clear, concise and understandable. The Department believes the rule can be made more concise by removing the incorporation by reference language from subsection (B) as it is already included in rule R3-3-901.

R3-3-910	The rule is mostly clear, concise and understandable. The Department believes the rule can be made more concise by removing the incorporation by reference language from subsection (B) as it is already included in rule R3-3-901.
R3-3-913	The rule is mostly clear, concise and understandable. The Department believes the rule can be made more concise by updating the incorporated reference to the most current version, and clarifying that the publication is available for inspection at the Department since it is copyrighted material.
R3-3-1001	The rule is mostly clear, concise and understandable. The rule could be clearer and more concise by incorporating the federal definitions and federal Worker Protection Standards by reference and removing unnecessary definitions, numbering and rephrasing other definitions.
R3-3-1003	The individual sentences of the rule are clear and understandable, but the overall construction of the rule is not always easy to follow. The rule also contains redundancies in the Worker Protection Standard that do not need to be restated.
R3-3-1006	The Department believes subsection (B)(2) would be slightly clearer by adding the phrase "if a grower or requesting party submits written evidence that includes the information in (B)(l)."
R3-3-1007	Subsection (C)(3) refers to "this Section" when the correct reference is rule 1003. Subsection (F) creates uncertainty as to whether the Director has to engage in settlement decisions before assessing a penalty under A.R.S. § 3-3114.
R3-3-1008	The Department believes the rule needs some minor grammatical corrections. For example, in subsections (A)(l) and (A)(2), the verb "is" should be "are." Also, in step 1 under subsection (B), "concerns" should be "concern." Finally, subsection (A)(3) would be a little clearer by changing "in assessing a penalty" to "to decrease the penalty."
R3-3-1009	The rule refers to A.R.S. § 3-3116, which has been repealed. The rule also refers to a "notice of contest" instead of a request for hearing.
R3-3-1010	Subsection (A) refers to subsection (C), but there is no subsection (C). Also, the rule is somewhat confusing on how to actually calculate additional penalties.
R3-3-1011	The rule repetitively repeats the phrase, "the maximum allowed by A.R.S. § 3-3113(A)." Also, the penalty associated with a repeated violation covered by subsection (A)(4) is not clear as written.
R3-3-1012	The rule would be clearer and more concise by changing "prescribed at" to "as required under" and by removing the phrase "time period."
R3-3-1101	The rule is partially clear, concise and understandable. It contains unnecessary definitions and several definitions could be clearer and more precise. The agency did receive a complaint indicating they felt the fees were too high. The agency disagreed as the fees have remained the same since 2004.
R3-3-1103	The rule is partially clear, concise and understandable. Subsection (A) requires an agency to notify the Department per A.R.S. § 3-905, while it would be clearer to set out the applicable requirements of A.R.S. § 3-905 in the rule, including the 60-day notice requirement.
R3-3-1108	This rule is mostly clear, concise and understandable. The rule mistakenly refers to salvage restricted plants in subsection (A)(l) instead of salvage assessed plants. The heading to subsection (A) and the rule, as a whole, point out that the rule applies to salvage assessed plants.
Appendix A.	This rule is mostly clear, concise and understandable. The Department believes subsection (A) would be clearer by removing the cross-reference to rule R3-3-1105 and replacing it with a specific reference to scientific and noncommercial salvage permits.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes** X **No** __

The Department has received one criticism about rule R3-3-1104 regarding the fees associated to the protected native plant seals and tags required for movement of these commodities. The criticism indicated that the fee for protected native plant tags, for in-state producers, is more expensive at $0.50 each, than seals for imported protected native plants at $0.15 each. Fees have not

changed since May 3, 2008 with the addition of the $0.15 fee for imported protected native plants. Additionally, the $0.50 tag fee for locally produced protected native plants funds the native plant conservation program for Arizona, and not other states.

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

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?

The agency has not completed the course of action as indicated in the previous five-year rule review. However, the agency is in the process of completing the course of action in the previous five-year rule review for Articles 7 though 10 under a notice of proposed rulemaking that closed on July 5, 2023 and is expecting to be completed prior to the end of the current calendar year. The Department intends to complete the proposed actions for the rules in Article 11 with the adoption of revised rules within the next 12 months.

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:

It has been determined that once the proposed actions have been completed, the benefits of the rules will outweigh any additional costs. Once the proposed actions have been completed, the rules will also be the least burdensome and least costly as possible to the regulated persons in the state. Any costs that are imposed are necessary to carry out the provisions of the rules. There are no more cost-effective ways to uphold the statutory mandates set out in Title 3, Chapter 2, Articles 3 and 5, Chapter 7, Chapter 15, Article 1, and Chapter 17.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___** **No _X_**

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The permits and certifications issued under Articles 7 through 11 are compliant with the requirements of A.R.S. § 41-1037. Rules R3-3-702, 802 and 902 require qualifying information to determine eligibility for a permit or license, thereby they do not qualify as general permits. The rules in R3-3-1104, 1105 and 1107 were not adopted or amended after July 29, 2010.

14. Proposed course of action

The Department intends to complete the proposed course of action for Articles 7 through 10 by March, 2024 under a Notice of Proposed Rulemaking (Volume 29, Issue 22, of the Arizona Administrative Register, June 2, 2023) that closed on July 5, 2023. The Department intends to complete the proposed course of action for Article 11 by September, 2024 under a Notice of Docket Opening that posted in Volume 29, Issue 37, of the Arizona Administrative Register on September 15, 2023.

Rule	Proposed course of action for the rule.
R3-3-701	Pending changes remove the numbering and alphabetizes the definition terms.
R3-3-702	Pending changes clarify that only an individual applying for a license is required to submit a Social Security Number at the time of application; and prescribes what is needed to register a pesticide with the Arizona Department of Environmental Quality. Changes also reduce the requirement of providing two pesticide labels to one for registering a pesticide. The proposed changes will also remove an outdated fee requirement.

R3-3-703	Pending changes reduce the timeframe to register an expired pesticide from 3 years to 2 years and clarify that the term "Act" refers to the Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA) and related federal regulations in 40 CFR §§ 156 and 157.
R3-3-704	Pending changes reduce the requirement of providing two pesticide labels to one for a pesticide label revision and incorporates the table of allowed deviations into the rule as subsection "C." Changes also clarify that the Department may determine the categorization of a sample as "uniform" or "non-uniform".
R3-3-801	Pending changes update outdated reference to the "Official Publication" for fertilizers to the most current version and indicates the material is available for inspection at the Department because the material is copyright protected, the Department cannot provide copies itself.
R3-3-802	Pending changes remove the requirement of including a facsimile number and replace with email address, make technical changes to align with the rulemaking, and remove an outdated fee requirement that will revert to the statutory fee established in A.R.S. § 3-268.
R3-3-803	Pending changes correct an inapplicable statute reference; clarifies how an inspection fee is applied; and removes an outdated fee requirement that expired at the end of fiscal year 2011.
R3-3-804	Pending changes update an incorporated statutory reference and removes an outdated fee requirement that expired at the end of fiscal year 2011.
R3-3-901	Pending changes update the reference on how to obtain a copy of the "Official Publication", corrects an incorrect statutory reference, and include a definition for the term "pneumatic probe sampler" and removes the numbering of the definitions.
R3-3-902	Pending changes removes an un-necessary statutory reference, changes the requirement of including a facsimile number to requiring an email address. Pending changes clarify that only an individual applying for a license is required to submit a Social Security Number at the time of application.
R3-3-903	Pending changes to the rule clarify what information is needed when passing the inspection fee on to the purchaser by indicating a commercial feed license number is required. Changes clarify when the fee is required and how to apply it to the amount declared.
R3-3-904	Pending changes to the rule update where a milk and milk product "Color Requirement" card can be obtained to correlate with the recent move of the Department's office location and clarify requirements for milk and milk products used as commercial feed.
R3-3-905	Pending changes to the rule will add a requirement to remove expired feed from sale and a requirement to label whole cottonseed and commercial feed that has not been tested for aflatoxin contamination.
R3-3-906	There are no pending changes for this rule.
R3-3-910	Pending changes to the rule make changes to update where incorporated references and where they can be found.
R3-3-913	Pending changes to the rule updates incorporated references to the most current version, and identifies where they can be found. Changes include replacing equipment product names "Shop-vac" and "Probe-a-vac" with generalized product terms.
R3-3-1001	Pending changes incorporate the federal definitions by reference, removes the numbering of the definitions, and removes a number of terms not required and align with the other changes throughout the Article. Included, is the definition for the incorporated reference of the Worker Protection Standard in 40 CFR §§ 170.1 *et seq*.
R3-3-1002	This rule will be repealed and incorporated by reference in rule R3-3-1001.
R3-3-1003	Pending changes to this rule ensure compliance with federal regulations under the Worker Protection Standard in 40 CFR §§ 170.1 *et seq.*
R3-3-1004	Pending changes make a technical correction to refer to the Worker Protection Standard in 40 CFR §§ 170.120 and 122, as applicable.

R3-3-1005	There are no pending changes for this rule.
R3-3-1006	Pending changes include a requirement that a decision to declare an agricultural emergency based on written evidence.
R3-3-1007	Pending changes reformat the information in tables and makes technical corrections. The provision on assessing a penalty based on inability to negotiate a settlement will be removed and an incorrect reference will be changed.
R3-3-1008	Pending changes reformat the information in tables and makes technical corrections.
R3-3-1009	Pending changes, as required by federal law, prescribe the provisions for violations that require abatement to correct the violation.
R3-3-1010	Pending changes conform with current practices, by prescribing grounds to reduce or eliminate a penalty in order to comply with federal regulations under 40 CFR §§ 170.1 *et seq*.
R3-3-1011	Pending changes make technical corrections to align with the rulemaking and comply with federal regulations under 40 CFR § 170.305 and 40 CFR §§ 170.1 *et seq.* Changes also prescribe a cap of $10,000 on the amount that could be charged for repeated or willful violations and that repeated violations are those within 3 years.
R3-3-1012	There are no pending changes for this rule.
R3-3-1101	The Department proposes to amend this rule by (i) eliminating the unnecessary definitions for agent, Department, landowner, noncommercial salvage permit, permittee, scientific permit and wood receipt; (ii) adding new useful definitions for endangered species act, harvest restricted native plant, highly safeguarded native plant, import movement permit, salvage assessed native plant, salvage restricted native plant and wood permit; and (iii) clarifying the definitions of harvest restricted native plant permit, original growing site, protected native plant, protected native plant tag, salvage restricted native plant permit, securely tie, and small native plant.
R3-3-1102	The Department proposes to move all native plant fees into a single rule, including the fee referenced in subsection (C) of this rule.
R3-3-1103	The Department proposes several changes to this rule. The Department plans to incorporate language in subsection (A) from A.R.S. § 3-905(A) that refers to more than ¼ acre of land and a 60 day notice rather than just referring to the statute. The Department also plans to incorporate language in subsection (B) from A.R.S.§ 3-905(B) that makes that part of the rule consistent with the statute. The Department also proposes to rephrase subsections (A)(l) through (5) to remove the use of the passive voice and clarify it is a state agency. Finally, the Department proposes to change subsection (A)(4) to require a noncommercial salvage permit, which would make the rule consistent with A.R.S. § 3-905(C).
R3-3-1104	The Department proposes to rewrite this rule. The Department proposes to move subsections (B) and (F) into a rule focusing on permit application requirements and permit terms. The Department proposes to move subsections (C)-(E) into a rule focusing on fees. The Department proposes to use this rule, 1104, to detail what kinds of permits are available, when a permit is required, and when a permit is not required. This is the direction we are heading with all the rules in the division. See R3-3-103. The Department also plans to incorporate the requirement in A.R.S. § 3-909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required.
R3-3-1105	The Department proposes several changes to this rule. The Department proposes to combine and rephrase subsections (A)(l) and (B)(l). The Department proposes to move subsections (A)(2), (A)(4), (B)(2) and (B)(4) into a rule focusing on permit application requirements and permit terms. This is the direction we are heading with all the rules in the Chapter. The Department also proposes to add language to subsections (A)(3) and (B)(3)

	from A.R.S.§ 3-906(C) related to permit requirements for highly safeguarded native plants. Finally, the Department proposes to add a subsection to make clear that plants covered by a scientific or noncommercial salvage permit cannot be sold. The Department proposes to use this rule, R3-3-1105, to detail the permit application requirements. The Department also plans to incorporate the requirement in A.R.S. § 3-909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required.
R3-3-1106	The Department proposes to repeal this section since protected plant surveys are no longer provided by the Department.
R3-3-1107	The Department proposes to remove subsection (A). The Department proposes to incorporate subsection (B) into a rule describing salvage restricted permits because that is the proper type of permit for saguaro cacti. The Department proposes to incorporate subsection (C) into a rule describing import permits because that is the proper type of permit referred to. Finally, the Department proposes to leave subsections (D) and (E) in the rule which will now be dedicated to tags and seals with respect to all types of native plant permits and to revise the portion about how to obtain an import permit.
R3-3-1108	The Department proposes to change the reference to salvage restricted to salvage assessed. The Department also proposes to add to the recordkeeping requirements that the permittee must note the location where the plant was taken from and where it was replanted.
R3-3-1109	The Department proposes to move subsection (B) to a rule dedicated to fees. The Department also proposes to remove subsection (A) because it is unnecessary. These two changes will result in a repeal of the rule. Finally, the Department feels that the fee needs to be raised from $10 to $50.
R3-3-1110	The Department proposes to make this rule more useful by using it to state that a permit may be denied to a person who fails to keep or provide reports required by this Article.
Appendix A.	The Department proposes to amend Appendix A, subsection A in three respects. First, the Department will rephrase the opening paragraph so that a cross reference to rule R3-3-1105 is not necessary. Second, the Department plans to make clear that highly safeguarded plants include plants covered by the Endangered Species Act as described in A.R.S. § 3- 903(B)(l). Third, the Department plans to remove crested saguaros from the list of highly safeguarded plants where the saguaro is not in its original growing site. This change deals with the situation where a salvager is in possession of a non-crested saguaro that then crests because, at that point, the salvager is not allowed to sell the plant anymore. Under this proposal, a salvager in the described situation would be able to sell the plant.

§ R3-3-701. Definitions

In addition to the definitions in A.R.S. §3-341, the following terms apply to this Article:

1. "Discontinuation" means when the registrant is no longer distributing a pesticide into Arizona.

2. "Pest" means, in addition to the pests declared in A.R.S. §3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.

3. "Official sample" means any sample of pesticide taken by the Associate Director, or the Associate Director's agent, and designated as official.

History:

Former rule 1; Former Section R3-3-01 repealed, new Section R3-3-01 adopted effective January 18, 1978 (Supp. 78-1). Amended effective December 29, 1978 (Supp. 78-6). Section R3-3-701 renumbered from R3-3-01 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-702. Pesticide Registration; Fee

A. Registration. Any person registering a pesticide shall provide the following documents and information on a form provided by the Department with a nonrefundable $100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;

2. The name and address of the company appearing on the label;

3. The Social Security number or tax identification number;

4. The date of the application;

5. The brand and name of the pesticide being registered;

6. The EPA registration number of the pesticide if applicable;

7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, if requested by the Department;

8. The toxicological and safety data, if requested by the Department;

9. The name and telephone number of the person providing the toxicological and safety data;

10. Two pesticide labels for any pesticide not previously registered;

11. The material safety data sheet for each pesticide; and

12. The license time-period option.

B. A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for one or two years.

C. If an applicant elects a two-year pesticide registration, any additional pesticide registered during that two-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.

D. During fiscal year 2020, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of ten dollars plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

History:

Former rule II; Former Section R3-3-02 renumbered and amended as Section R3-3-01, former Sections R3-3-11 and R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective January 1, 1979, subsection (D) effective January 1, 1982 (Supp. 78-6). Editorial corrections, subsection (B), paragraphs (6) through (9) (Supp. 79-6). Amended by deleting subsection (D) effective March 5, 1982 (Supp. 82-2). Section R3-3-702 renumbered from R3-3-02 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 1334, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1759, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 20 A.A.R. 2452, effective 7/24/2014. Amended by final exempt rulemaking at 23 A.A.R. 1940, effective 8/9/2017. Amended by final exempt rulemaking at 24 A.A.R. 2222, effective 8/3/2018. Amended by final exempt rulemaking at 25 A.A.R. 2084, effective 8/27/2019.

§ R3-3-703. General Provisions

A. Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. §3-351(K), any person holding a pesticide found in the channels of trade following the three-year discontinuation period shall be responsible to register or dispose of the pesticide.

B. Sampling.

1. The Associate Director, or the Associate Director's agent, may sample, inspect, and analyze any pesticide distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article, or if a complaint has been filed with the Department.

2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).

3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.

C. Prohibited acts. No person shall purchase a pesticide to repackage the pesticide for distribution and sale without relabeling the repackaged container and complying with the provisions of the Act.

History:

Section R3-3-703 renumbered from R3-3-03 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-704. Labels

A. Within two weeks of a pesticide label revision, a registrant shall provide the Department with two pesticide labels that have been revised since the pesticide was originally registered.

B. The Associate Director may request a copy of a pesticide label if the label on file is older than three years.

ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS

Claim %	HCV(1) %	HSD(2)	Allowed Deviations for"uniform"(3) samples		Allowed Deviations for "non-uniform"(4) samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47

10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation = 2 (1 -0.5 log (claim %/100))

(2) HSD = Horwitz Standard Deviation = (Claim %) HCV %)/100

(3) "Uniform" samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

(4) "Non-uniform" samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the "non-uniform" guidelines may be used for allowed deviations. States may use judgment in placing a sample into the "uniform" or "non-uniform" category.

History:

Former rule IV; Former Section R3-3-04 renumbered and amended as Section R3-3-01 effective January 18, 1978 (Supp. 78-1). Section R3-3-704 renumbered from R3-3-04 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-705. Renumbered

History:

Former rule V; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-705 renumbered from R3-3-05 (Supp. 91-4).

§ R3-3-706. Renumbered

History:

Former rule VI; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-706 renumbered from R3-3-06 (Supp. 91-4).

§ R3-3-707. Renumbered

History:

Section R3-3-707 renumbered from R3-3-07 (Supp. 91-4).

§ R3-3-708. Renumbered

History:

Former rule VIII; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-708 renumbered from R3-3-08 (Supp. 91-4).

§ R3-3-709. Renumbered

History:

Former Administrative rule 1; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-709 renumbered from R3-3-09 (Supp. 91-4).

§ R3-3-710. Renumbered

History:

Section R3-3-710 renumbered from R3-3-10 (Supp. 91-4).

§ R3-3-711. Renumbered

History:

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-11 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-711 renumbered from R3-3-11 (Supp. 91-4).

§ R3-3-712. Renumbered

History:

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-712 renumbered from R3-3-12 (Supp. 91-4).

§ R3-3-801. Definitions

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not include any later amendments, and the definitions in A.R.S. §3-262, the following term applies to this Article:

"Official Publication" means the Official Publication of the Association of American Plant Food Control Officials, amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.

History:

Former rule I; Former Section R3-3-21 repealed, former Section R3-3-24 renumbered and amended as Section R3-3-21 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-801 renumbered from R3-3-21 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-802. Licensure; Specialty Fertilizer Registration; Fees

A. Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. §3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of $125 for each year of the license:

1. The following information on the license application provided by the Department:

2. The name, title, and signature of the applicant;

3. The date of the application;

4. The distributor or manufacturer name, mailing address, telephone, and facsimile number;

5. The Social Security number or tax identification number;

6. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(4);

7. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(4); and

8. The license time-period option.

B. A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Specialty fertilizer registration.

1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of $50 per brand and grade of specialty fertilizer for each year of the registration:

a. The name, address, telephone number, and signature of the applicant;

b. The name and address of the company on the label;

c. The date of the application;

d. The grade, brand, and name of the specialty fertilizer;

e. The current specialty fertilizer label; and

f. The registration time-period option.

2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

3. If an applicant elects a two-year specialty fertilizer registration, any additional fertilizer registered during that two-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.

D. During fiscal year 2011, notwithstanding subsection (C)(1), the nonrefundable fee per brand and grade of specialty fertilizer is $40.

History:

Former rule II; Former Section R3-3-22 repealed, former Section R3-3-25 renumbered and amended as Section R3-3-22 effective January 12, 1978 (Supp. 78-1). Section R3-3-802 renumbered from R3-3-22 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

§ R3-3-803. Tonnage Reports; Inspection Fee

A. Quarterly tonnage reports and inspection fee.

1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.

2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. §3-2009 shall pay all past due inspection fees and late penalties before a license is issued.

3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:

a. If the inspection fee is being passed on to the purchaser:

i. The assigned number and name of the currently licensed company;

ii. The commercial fertilizer by code or grade;

iii. The amount of commercial fertilizer in whole tons;

iv. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

v. The date of the report.

b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:

i. The grade;

ii. The amount of commercial fertilizer distribution by county;

iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;

iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;

v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

vi. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:

a. The estimated tonnage of commercial fertilizer to be distributed;

b. The grade;

c. The amount of distribution by county;

d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;

e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;

f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

g. The date of the report.

2. The licensee shall pay at least $8 per year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.

3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.

4. Overestimation of tonnage.

a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;

b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.

History:

Former rule III; Former Section R3-3-23 repealed, former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-803 renumbered from R3-3-23 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

§ R3-3-804. General Provisions

A. Labeling.

1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:

a. The guaranteed nutrient value follows the grade number;

b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and

c. The name printed on the label is as prominent as the numbers.

2. The materials from which claimed nutrients are derived shall be listed on the label.

3. No grade is required for fertilizer materials that claim no primary plant nutrient (i.e., 0-0-0).

4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.

5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.

6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.

B. Claims and misleading statements.

1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.

2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.

3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.

4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.

C. Deficiencies.

1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.

2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.

D. All investigational allowances shall be conducted as prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

E. Leased fertilizer material storage containers shall be clearly labeled with the following:

1. Grade numbers;

2. Brand name, if applicable; and

3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."

C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is $0.10 per ton. The tonnage must be rounded to the nearest whole ton.

History:

Former rule IV; Former Section R3-3-24 renumbered and amended as Section R3-3-21, new Section R3-3-24 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-804 renumbered from R3-3-24 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-805. [REPEALED]

History:

Former rule V; Former Section R3-3-25 renumbered and amended as Section R3-3-22, new Section R3-3-25 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-805 renumbered from R3-3-25 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-806. [REPEALED]

History:

Former rule VI; Former Section R3-3-26 repealed, new Section R3-3-26 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-806 renumbered from R3-3-26 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-807. [REPEALED]

History:

Former rule VII; Former Section R3-3-27 repealed, new Section R3-3-27 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-807 renumbered from R3-3-27 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-808. [REPEALED]

History:

Former rule VIII; Former Section R3-3-28 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-28 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-808 renumbered from R3-3-28 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-809. [REPEALED]

History:

Former rule IX; Former Section R3-3-29 repealed effective January 12, 1978 (Supp. 1). New Section R3-3-29 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-809 renumbered from R3-3-29 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-810. [REPEALED]

History:

Former rule X; Former Section R3-3-30 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-30 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-810 renumbered from R3-3-30 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-811. [REPEALED]

History:

Former Administrative rule 1; Amended effective December 14, 1979 (Supp. 79-6). Section R3-3-811 renumbered from R3-3-31 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-812. Renumbered

History:

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Section R3-3-812 renumbered from R3-3-32 (Supp. 91-4).

§ R3-3-901. Definitions

In addition to the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and the definitions in A.R.S. §3-2601, the following terms apply to this Article:

1. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611. A.R.S. §3-2601(2)

2. "Lot" means any distinct, describable, and measurable quantity that contains no more than 100 tons.

3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.

History:

Former rule I; Former Section R3-3-41 renumbered and amended as Section R3-3-42, new Section R3-3-41 adopted effective January 12, 1978 (Supp. 78-1). Amended effective April 13, 1978 (Supp. 78-2). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-901 renumbered from R3-3-41 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-902. Licensure; Fee; Ammoniation

A. Any person applying for a commercial feed license, under A.R.S. §3-2609, to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of $10 for each year of the license:

1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and

2. The following information on the license application provided by the Department:

a. The name, title, and signature of the applicant;

b. The distributor or manufacturer name, mailing address, telephone, and facsimile number;

c. The social security number or tax identification number;

d. The date of the application;

e. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(2)(b);

f. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and

g. The license time-period option.

B. A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

C. Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

History:

Former rule II; Former Section R3-3-42 renumbered and amended as Section R3-3-43, former Section R3-3-41 renumbered and amended as Section R3-3-42 effective January 12, 1978 (Supp. 78-1). Section R3-3-902 renumbered from R3-3-42 (Supp. 91-4). Section repealed; new Section

adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-903. Tonnage Reports; Inspection Fee

A. Quarterly tonnage report and inspection fee.

1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.

2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial feed distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial feed without a license as required under A.R.S. §3-2609 shall pay all past due inspection fees and late penalties before a license is issued.

3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:

a. If the inspection fee is being passed on to the purchaser:

i. The assigned number and name of the currently licensed company;

ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

iv. The date of the report.

b. If the licensee pays a tonnage fee for the distribution of a commercial feed:

i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

iii. The date of the report.

B. Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:

a. The estimated tonnage of commercial feed to be distributed;

b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and

d. The date of the report.

2. The licensee shall pay at least $8 per year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.

3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.

4. Overestimation of tonnage.

a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;

b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

History:

Former rule III; Former Section R3-3-43 renumbered and amended as Section R3-3-44, former Section R3-3-42 renumbered and amended as Section R3-3-43 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-903 renumbered from R3-3-43 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-904. Milk and Milk Products Decharacterized for Use As Commercial Feed

A. A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:

1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;

2. Is produced as prescribed in A.A.C. R3-2-805; or

3. Is decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization:

a. Does not affect nutritive value; and

b. Matches the color on the Color Requirement card, incorporated by reference and on file with the Office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the Environmental Services Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.

B. Labeling. All milk or milk product commercial feed labels shall be approved by the Associate Director before use.

1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state "WARNING - NOT FOR HUMAN CONSUMPTION" in capital letters. The letters shall be at least 1/4 inch on containers of 8 oz. or less and at least 1/2 inch on all other containers.

2. The container label shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria" in letters at least 1/8 inch in height.

C. Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and clearly identified "Not for Human Consumption."

History:

Former rule IV; Former Section R3-3-44 repealed, former Section R3-3-43 renumbered and amended as Section R3-3-44 effective January 12, 1978 (Supp. 78-1).Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-904 renumbered from

R3-3-44 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-905. Labeling; Precautionary Statements

A. Ingredient statement.

1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.

2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.

B. Labeling and expression of guarantees.

1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

2. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.

3. Directions for use and precautionary statements.

a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.

b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.

c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:

i. "This feed contains 20 or less ppb aflatoxin and may be fed to any animal;" or

ii. "WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption."

d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:

i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and

ii. The documentation prescribed in subsection (B)(3)(c) is not required.

e. The distributor shall maintain the documentation for one year.

f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: "WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws."

History:

Former rule V; Former Section R3-3-45 repealed, new Section R3-3-45 adopted effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-905 renumbered from R3-3-45 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-906. Non-protein Nitrogen

A. Urea and other non-protein nitrogen products are acceptable ingredients in commercial feed for ruminant animals as a source of equivalent crude protein.

1. If commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen or if the equivalent crude protein from all forms of non-protein nitrogen exceeds 1/3 of the total crude protein, the label shall include directions for the safe use of the feed and the following precautionary statement: "Caution: Use as Directed."

2. The directions for use and the precautionary statement shall be printed and placed on the label so that an ordinary person under customary conditions of purchase and use can read and understand the directions.

B. Non-protein nitrogen products are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. A medicated feed label shall contain feeding directions or precautionary statements, or both, with sufficient information to ensure that the feed is properly used.

History:

Former rule VI; Former Section R3-3-46 repealed, new Section R3-3-46 adopted effective January 12, 1978 (Supp. 78-1). Amended effective January 29, 1979 (Supp. 79-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-906 renumbered from R3-3-46 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-907. [REPEALED]

History:

Former rule VII; Former Section R3-3-47 repealed, former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). Amended by adding subsection (F) effective July 20, 1984 (Supp. 84-4). Section R3-3-907 renumbered from R3-3-47 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

§ R3-3-908. [REPEALED]

History:

Former rule VIII; Former Section R3-3-48 repealed, new Section R3-3-48 adopted effective January 12, 1978 (Supp. 78-1). Amended for spelling correction, subsection (E), effective January 29, 1979 (Supp. 79-1). Amended by adding subsection (J) effective July 20, 1984 (Supp. 84-4). Section R3-3-908 renumbered from R3-3-48 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

§ R3-3-909. [REPEALED]

History:

Former rule IX; Former Section R3-3-49 repealed, new Section R3-3-49 adopted effective Jan. 12, 1978 (Supp. 78- 1). Amended by adding subsection (D) effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-909 renumbered from R3-3-49 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-910. Drug and Feed Additives

A. Drug and feed additive approval.

1. Before a label is approved by the Associate Director for commercial feed containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions if the material is not recognized as a commercial feed.

2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.

B. Evidence of safety and efficacy of a commercial feed may be:

1. If the commercial feed containing additives conforms to the requirements of "Food Additives Permitted in Feed and Drinking" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not included any later amendments or editions; or

2. If the commercial feed is a substance generally recognized as safe and is defined in the Official Publication or listed as a "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

History:

Former rule X; Former Section R3-3-50 repealed, new Section 3-3-50 adopted effective January 12, 1978 (Supp. 78- 1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-910 renumbered from R3-3-50 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-911. [REPEALED]

History:

Former rule XI: Former Section R3-3-51 repealed, new Section R3-3-51 adopted effective January 12, 1978 (Supp. 78- 1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-911 renumbered from R3-3-51 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-912. [REPEALED]

History:

Former rule XII: Former Section R3-3-52 repealed. New Section R3-3-52 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-912 renumbered from R3-3-52 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-913. Sampling Methods

A. Sampling commercial feed. The methods of sampling commercial feed shall comply with the procedures established in 4.1.01, Official Method 965.16 Sampling of Animal Feed, in the "Official Methods of Analysis of AOAC International," 16th Edition, 1997, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter. Copies may be purchased from AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.

B. Sampling whole cottonseed.

1. Sample size - A gross sample not less than 30 pounds shall be taken from a lot. The gross sample shall consist of not less than 10 probes evenly spaced or 10 stream sample passes taken following the procedure prescribed in subsection (B)(4)(b).

2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and the results of the analysis reported by a certified laboratory within five working days from receipt of sample.

3. Sampling equipment. Sampling equipment includes:

a. Scale, graduated in one-half pound increments, and any of the following:

b. Corkscrew trier, approximately 50 inches in length and capable of taking at least a three-pound sample,

c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic sampler,

d. Stream sampler: A container at least 8 inches x 5 inches x 5 1/2 inches attached to a pole that enables the sampler to pass the container through falling streams of cottonseed,

e. Automatic stream samplers or other sampling equipment if scientific data documenting its ability to obtain a representative sample is approved by the Associate Director,

f. Shop-vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of 3/4 inch PVC pipe.

4. Sampling procedure.

a. If a corkscrew trier or Probe-a-Vac sampler is used, at least 10 evenly spaced probes shall be taken per lot. The probed samples shall be taken according to the following patterns:

The probes shall penetrate at least 50 inches, and at least two of the 10 probes per sample shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

b. If a shop-vac system is used, at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.

c. Stream samples shall be taken while the cottonseed is being discharged, if there is a uniform discharge flow over a set period of time. The sample shall consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the sample size specified in subsection (B)(1).

d. The gross sample shall be weighed to the nearest 1/2 pound but shall not be reduced in size. If any gross sample does not meet the minimum 30 pound weight, that gross sample shall be discarded and the sampling procedure repeated from the beginning. If the shop-vac gross sample is not at least 10 pounds, the sample shall be discarded and the sampling procedure repeated from the beginning.

e. The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.

History:

Former Administrative Rule 1. Former Section R3-3-53 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-53 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Amended as an emergency effective October 11, 1978, pursuant to A. R. S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-53 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-913 renumbered from R3-3-53 (Supp. 91-4). Patterns omitted in Supp. 98-4 under subsection (C)(4)(a) have been corrected to reflect filed rules (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-914. [REPEALED]

History:

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). New Section R3-3-54 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. §41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-54 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-914 renumbered from R3-3-54 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-915. [REPEALED]

History:

Adopted effective December 14, 1979 (Supp. 79-6). Section R3-3-915 renumbered from R3-3-55 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-916. [REPEALED]

History:

Adopted effective July 20, 1994 (Supp. 84-4). Section R3-3-916 renumbered from R3-3-56 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

§ R3-3-1001. Definitions

In addition to the definitions set forth in A.R.S. §3-3101 the following terms apply to this Article:

1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:

a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,

b. Requires entry into a treated area during a restricted-entry interval, and

c. No alternative practices would prevent or mitigate a substantial economic loss.

2. "Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses agricultural workers.

3. "Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only products that do not have a federal worker protection statement on the label.

4. "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes:

a. Food, feed, and fiber plants;

b. Trees;

c. Turfgrass;

d. Flowers, shrubs;

e. Ornamentals; and

f. Seedlings.

5. "Chemigation" means the application of pesticides through irrigation systems.

6. "Consultation" means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. §3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.

7. "De minimis violation" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health (A.R.S. §3-3101(2)).

8. "Early entry" means any worker or handler entering a treated area after a pesticide is applied to a location on the agricultural establishment and before the expiration of the restricted-entry interval.

9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.

10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.

11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.

12. "Handler" means any person, including a self-employed person:

a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who does any of the following:

i. Mixing, loading, transferring, or applying pesticides;

ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;

iii. Handling open containers of pesticides;

iv. Acting as a flagger;

v. Cleaning, adjusting, handling, or repairing any part of mixing, loading, or application equipment that may contain pesticide residue;

vi. Assisting with the application of pesticides;

vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling is reached or any of the ventilation criteria in R3-3-1002 or in the labeling has been met to operate ventilation equipment, adjust or remove coverings used in fumigation, or monitor air levels.

viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings.

ix. Performing tasks as a pest control advisor during any pesticide application.

b. The term handler does not include:

i. Any person who handles only pesticide containers that are emptied or cleaned according to pesticide product labeling instructions or, in the absence of labeling instructions, are triple-rinsed or its equivalent;

ii. Any person who handles only pesticide containers that are unopened; or

iii. Any person who repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.

13. "Handler employer" means any person who is self-employed as a handler or who employs a handler, for any type of compensation.

14. "Nonserious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice (A.R.S. §3-3101(6)).

15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.

17. "Pesticide" means:

(a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant (A.R.S. §3-341(21)).

18. "Restricted-entry interval" means the time after the completion of a pesticide application during which entry into a treated area is restricted as indicated by the pesticide product label.

19. "Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency (A.R.S. §3-361(8)).

20. "Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice (A.R.S. §3-3101(10)).

21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.

22. "Treated area" means any area to which a pesticide is being directed or has been directed.

23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who performs activities relating to the production of agricultural plants on an agricultural establishment. The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment who performs tasks as a pest control advisor.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1001 renumbered from R3-8-201 (Supp. 91-4). Amended effective March 3, 1995 (Supp. 95-1). Amended effective October 8, 1998 (Supp. 98-4).

§ R3-3-1002. Worker Protection Standards

Worker protection regulations shall be as prescribed in 40 CFR 170, excluding 40 CFR 170.130 and 170.230, as amended July 1, 2002. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1002 renumbered from R3-8-202 (Supp. 91-4). Section repealed, new Section adopted effective March 3, 1995 (Supp. 95-1). R3-3-1002 renumbered to R3-3-1003; new Section R3-3-1002 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-1003. Pesticide Safety Training

A. Training exemptions.

1. Handler. A handler who currently meets one of the following conditions is exempt from the requirements under subsection (D)(1) and (D)(3):

a. Certified as an applicator of restricted use pesticides under R3-3-208,

b. Certified as a trainer under this Section, or

c. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.

2. Worker. A worker who meets one of the following conditions is exempt from the requirements under subsections (C), (D)(1), and (D)(2):

a. Certified as an applicator of restricted use pesticides under R3-3-208,

b. Holds a current handler card under subsection (D)(4),

c. Certified as a trainer under this Section, or

d. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.

B. Training verification.

1. Handler. The handler employer shall verify, before the handler performs a handling task, that the handler:

a. Meets a condition listed in subsection (A)(1); or

b. Received pesticide safety training during the last three years, excluding the month in which the training was completed.

2. Worker. The agricultural employer shall verify that a worker:

a. Meets a condition listed in subsection (A)(2); or

b. Received pesticide safety training during the last five years before allowing a worker entry into an area:

i. To which a pesticide was applied during the last 30 days, or

ii. For which a restricted-entry interval for a pesticide was in effect during the last 30 days.

3. The agricultural employer and the handler employer, or designee, shall verify that a training exemption claimed in subsection (A)(1) or (A)(2) is valid by reviewing the appropriate certificate issued by the Department, the EPA, or an EPA-approved program.

4. The agricultural employer and the handler employer, or designee, shall visually inspect the handler's or worker's EPA-approved Worker Protection Standard training verification card to verify that the training requirements prescribed in subsections (B)(1) or (B)(2) are met. If the employer believes that a worker or handler training verification card is valid, the verification requirement of subsection (B)(1) or (B)(2) is satisfied.

5. An EPA-approved Worker Protection Standard training verification card is valid if issued:

a. As prescribed in this Section, or

b. By a program approved by the Department, and

c. Within the time-frames prescribed in subsection (B)(1) or (B)(2).

6. The agricultural employer shall provide a worker who does not possess the training required in subsection (B)(2) with the pesticide safety information prescribed in subsection (C) and the pesticide safety training prescribed in subsection (D)(1) and (D)(2). The agricultural employer shall provide pesticide safety training to a worker before:

a. The worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities; or

b. The sixth day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.

C. Pesticide safety information.

1. The agricultural employer shall provide pesticide safety information to a worker who does not meet the training requirements of subsection (B) before the worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect. The agricultural employer shall provide safety information in a manner that the worker can understand. The safety information shall include the following:

a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;

b. Workers may prevent pesticides from entering their bodies by:

i. Following directions or signs, or both, about keeping out of a treated or restricted area;

ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;

iii. Wearing work clothing that protects the body from pesticide residue;

iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;

v. Washing work clothes separately from other clothes before wearing; and

vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.

2. The agricultural employer shall document compliance by obtaining the employee's signature or other verifiable means to acknowledge the employee's receipt of the information required in subsection (C)(1).

D. Pesticide safety training. The agricultural employer or handler employer shall ensure that pesticide safety training is provided before the sixth day of entry into a pesticide-treated area. The pesticide safety training program shall be in a language easily understood by a worker or handler, using a translator if necessary. The program shall relate solely to pesticide safety training. Information shall be presented either orally from written material or in an audiovisual manner and shall contain nontechnical terms. The trainer shall respond to questions from attendees.

1. General pesticide safety training. The following pesticide safety training shall be presented to either a handler or a worker:

a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;

b. Routes by which pesticides can enter the body;

c. Signs and symptoms of common types of pesticide poisoning;

d. Emergency first aid for pesticide injuries or poisonings;

e. How to obtain emergency medical care;

f. Routine and emergency body decontamination procedures, including emergency eyeflushing techniques;

g. Warnings about taking pesticides or pesticide containers home; and

h. How to report violations to the Department, including providing the Department's toll-free pesticide hotline telephone number.

2. Worker training. In addition to the information in subsection (D)(1), a pesticide safety training program for a worker shall include the following:

a. Where and in what form pesticides may be encountered during work activities;

b. Hazards from chemigation and drift;

c. Hazards from pesticide residue on clothing; and

d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including:

i. Application and entry restrictions,

ii. Posting of warning signs,

iii. Oral warning,

iv. The availability of specific information about applications,

v. Protection against retaliatory acts, and

vi. The design of the following warning sign:

3. Handler training. In addition to the information in subsection (D)(1), a pesticide safety training program for a handler shall include the following:

a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;

b. Need for and appropriate use of personal protective equipment;

c. Prevention, recognition, and first aid treatment of heat-related illness;

d. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;

e. Environmental concerns such as drift, runoff, and potential impact on wildlife; and

f. Requirements of this Article applicable to handler employers for the protection of handlers and other individuals, including:

i. The prohibition against applying pesticides in a manner that will cause contact with workers or other individuals,

ii. The requirement to use personal protective equipment,

iii. The provisions for training and decontamination, and

iv. Protection against retaliatory acts.

4. The trainer shall issue an EPA-approved Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record in indelible ink containing the following information:

a. Name and signature of the trained worker or handler;

b. Training verification card number;

c. Issue and expiration date of the training verification card;

d. Social security number or a unique trainer-assigned identification number of the worker or handler;

e. Name and signature of the trainer; and

f. Address or location of where the training occurred, including city, county, and state.

E. Trainer requirements.

1. A person applying for pesticide safety trainer certification shall:

a. Complete the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or

b. Hold a current PCA license or restricted use certification, issued by the Department for a PCA or certified applicator, as prescribed under R3-3-207 or R3-3-208.

2. An applicant shall submit a signed and dated affidavit to the Department verifying that each worker or handler will be trained according to the requirements of subsection (D). The affidavit shall include the applicant's:

a. Name, address, e-mail address, and telephone and fax numbers, as applicable; and

b. Social security number.

3. Trainer certification is:

a. Nontransferable; and

b. Is valid for three years from the date issued under subsection (E)(1)(a), excluding the month in which the trainer was certified, and is renewable upon completion of the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or

c. Is valid initially for one year from the date issued under subsection (E)(1)(b) if the PCA license or restricted use certification remain current, and is renewable for three years upon completion of the pesticide safety training program established in subsection (D)(1) through (D)(3).

4. A trainer shall maintain the records required in subsection (D)(4) for five years for workers, and three years for handlers, excluding the month in which the verification card was issued.

5. Upon request by the Department, the trainer shall make available worker and handler records prescribed in subsection (D)(4) for inspection and copying by the Department.

F. A trainer shall permit the Assistant Director or designee to enter a place where worker safety training is being presented to observe and question trainers and attendees to determine compliance with the requirements of this Section.

G. The Department may suspend, revoke, or deny trainer certification if any of the following occur:

1. Failing to follow the worker and handler training requirements prescribed in subsections (D)(1) through (D)(3);

2. Failing to issue training verification cards to workers and handlers as prescribed in subsection (D)(4);

3. Failing to maintain the training information prescribed in subsection (E)(4);

4. Failing to fulfill the requirements of the affidavit as prescribed in subsection (E)(2); or

5. Having had a similar certification revoked, suspended, or denied in any jurisdiction within the last three years.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1003 renumbered from R3-8-203 (Supp. 91-4). R3-3-1003 repealed; new Section R3-3-1003 renumbered from R3-3-1002 and amended effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-1004. Notification Requirements for Farm Labor Contractors

A. The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:

1. The location of the agricultural establishment's central posting site; and

2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

B. The farm labor contractor shall:

1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;

2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1004 renumbered from R3-8-204 (Supp. 91-4). Amended effective October 8, 1998 (Supp. 98-4).

§ R3-3-1005. Container Used for Mixing or Applying Pesticides

A. All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.

B. All containers shall:

1. Be translucent, or

2. Have a means to indicate externally the internal liquid level in the container, or

3. Have a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.

C. Any employer who mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons shall have a handler present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container.

D. Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1005 renumbered from R3-8-205 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1006. Agricultural Emergency

A. Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.

B. Possibility of agricultural emergency.

1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:

a. The cause of the emergency,

b. The area where the emergency may occur,

c. An explanation of why early entry is necessary,

d. Why other methods cannot be used to avoid the early entry, and

e. The justification that substantial economic loss will occur.

2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within four hours of receiving the information.

3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.

4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within five days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

C. Occurrence of agricultural emergency.

1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business

day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:

a. The cause of the emergency,

b. The area where the emergency occurred,

c. A brief explanation of why early entry was necessary,

d. Why other methods could not be used to avoid the early entry, and

e. The justification that substantial economic loss would have occurred.

2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.

3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1006 renumbered from R3-8-206 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1007. Violations and Civil Penalties

A. Serious violations. The base penalty for any serious violation is $500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§3-3113 and 3-3114.

B. Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. §3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

VIOLATION GRAVITY FACTOR

(1 - lowest; 4 - highest)

VIOLATION GRAVITY

Central Posting 1 - 2

Training 1 - 4

Decontamination 1 - 4

Personal Protective Equipment 1 - 4

Pesticide Applications and Notice 1 - 4

Pesticide Application Restrictions 2 - 4

Other Requirements 1 - 4

C. Size-of-business. The Assistant Director shall use:

1. The maximum number of employees at any one time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or

2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or

3. The number of persons trained by a trainer during the previous 12 months that violate the training provisions of this Section.

SIZE-OF-BUSINESS

Number of Employees or

Size Category Number of People Trained

I 1-10

II 11-75

III 76-150

IV More than 150

D. Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

BASE PENALTY

Gravity Size Category

Factor I II III IV

1 $250 $300 $350 $400

2 300 350 400 450

3 350 400 450 500

4 500 500 500 500

E. Combined or group violations. The Assistant Director may combine or group violations.

1. Violations may be combined and assessed one penalty if the violation does not cause any immediate danger to public health or safety or damage to property. Example: Eight workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only one training penalty being assessed against the employer.

2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity. Example: Two crews from the same company are engaged in an improper handling activity and one crew is using a pesticide with a "danger" signal word, (skull and cross bones) while the other crew is

using a pesticide with a "warning" signal word. This situation may result in the employer being assessed one penalty based on the penalty for the "danger" (skull and cross bones) violation.

F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. §3-3114.

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1007 renumbered from R3-8-207 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1008. Penalty Adjustments

A. The Assistant Director shall assign an appropriate number of points for each of the following five factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.

1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.

2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.

3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

BASE ADJUSTMENT FACTORS

Pesticide

Signal word danger with skull and crossbones	5
Signal word danger	4
Warning	3
Caution	2
Indirect relation to the violation	1

Harm to Human Health

Actual Injuries or temporary reversible illness resulting	9

in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours)	
Actual (doctor care required, less than 8 hours)	6
Minor supportive care only	2 - 4
Consequence potential	1 - 2
No relationship found	0

Compliance History

One or more violations in the previous 12 months	4
One or more violations in the previous 24 months	3
One or more	1

violations in the previous 36 months	
No violation history	0

Culpability

Knowing or should have known	4
Negligence	2
Neither	0
Good Faith	0 - -2

B. The Assistant Director may reduce the base penalty for a nonserious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

FINAL PENALTY CALCULATION

Nonserious Violation	**Serious Violation**	
Number of Points	Penalty Adjustment	Penalty Adjustment
3 or below	Base -80%	Base Penalty
4	Base -65%	Base + 10%
5	Base -50%	Base + 20%

6	Base -35%	Base + 30%
7	Base -20%	Base + 40%
8	Base -5%	Base + 50%
9	Base Penalty	Base + 60%
10	Base + 20%	Base + 70%
11	Base + 35%	Base + 80%
12	Base + 50%	Base + 90%
13	Base + 65%	Base + 100%
14	Base + 80%	Base + 100%
15 or more	Base + 100%	Base + 100%

Example: A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection:

(1) No training for 35 seasonal workers on the harvest crew;

(2) No available decontamination supplies;

(3) No safety poster at the central posting location;

(4) No emergency telephone number posted, and no medical facility location posted at the central posting location;

(5) No posted pesticide application information at the central posting location.

Step 1. Use the Violation Gravity Factor table to determine the gravity of the violation.

(1) Training, 1-4	2 points, all 35 workers are combined;
(2) Decontamination,	1-4 3 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application;
(3) - (5) Central Posting, 1-2	1 point, since the violations concerns the same factor, they are combined. (There is evidence that the old poster blew away and the pesticide application information is kept available in the

	secretary's desk, but it is not 'readily' available.)

Step 2. Use the Size of Business table to determine the size category.

75 employees falls into the size category II;

Step 3. Use the Base Penalty table to determine the base penalty. Use column II based on the Size of Business determination from step 2.

Violation 1, with a gravity factor of 2, equals a base penalty of $350;

Violation 2, with a gravity factor of 3, equals a base penalty of $400;

Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of $300.

Step 4. Using the Base Adjustment Factors table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course two years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first two violations the supervisor should have known about the requirements. For the last three violations, the central posting sight was not checked frequently enough to ensure compliance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

Good Faith. The inspector came back five days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. -1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1 1 + 1 + 0 + 4 + -1 = 5

Violation 2 1 + 1 + 0 + 4 + -1 = 5

Violations 3, 4, 5 1 + 1 + 0 + 2 + -1 = 3

Step 6. Using the Final Penalty Calculation table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

Violation 1 5 points Base - 50% = 350-175 = $175

Violation 2 5 points Base - 50% = 400-200 = $200

Violations 3, 4, 5 3 points Base - 80% = 300-240 = $60

Adjusted Penalty Total $435

History:

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1008 renumbered from R3-8-208 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1009. Failure to Abate

A. The Director shall issue a notification of failure-to-abate an alleged violation if a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. §3-3113(E), shall be applied if an employer or handler has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.

B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.

C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.

History:

Adopted effective October 8, 1998 (Supp. 98-4). Section heading corrected at request of the Department, Office File No. M11-60, filed February 23, 2011 (Supp. 09-4).

§ R3-3-1010. Calculation of Additional Penalties for Unabated Violations

A. The Assistant Director shall calculate a daily penalty for unabated violations if failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).

1. If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than $1,000 per day, the maximum allowed by A.R.S. §3-3113(E).

2. The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection.

B. When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, whether the employer has made a good faith effort to correct the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty. Example: If three of five instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, three of five, or 60%.

History:

Adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1011. Repeated or Willful Violations

A. The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last three years from the date of notice.

1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. §3-3113(A).

2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven times if the violation has been cited twice before, up to the maximum allowed by A.R.S. §3-3113(A).

3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. §3-3113(A).

4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.

5. If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. §3-3113(A).

B. The Assistant Director may adjust the gravity based penalty by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. §3-3113(A).

C. The Assistant Director shall not allow a reduction for any serious or nonserious willfully repeated violation.

History:

Adopted effective October 8, 1998 (Supp. 98-4).

§ R3-3-1012. Citation; Posting

An employer shall post a citation prescribed at A.R.S. §3-3110(C) for three days or until the violation is abated, whichever time period is longer.

History:

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-1101. Definitions

In addition to the definitions in A.R.S. §3-901, the following terms apply to this Article:

"Agent" means a person authorized to manage, represent, and act for a landowner.

"Certificate of inspection for interstate shipments" means a certificate to transport protected native plants out of the state.

"Conservation" means prevention of exploitation, destruction, or neglect of native plants while helping to ensure continued public use.

"Cord" means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

"Cord of wood" means a measurement of firewood equal to 128 cubic feet.

"Department" means the Arizona Department of Agriculture.

"Destroy" means to cause the death of any protected native plant.

"Harvest restricted native plant permit" means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

"Landowner" means a person who holds title to a parcel of land.

"Noncommercial salvage permit" means a permit required for the noncommercial salvage of a highly safeguarded native plant.

"Original growing site" means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

"Permittee" means any person who is issued a permit by the Department for removing and transporting protected native plants.

"Protected native plant" means any living plant or plant part listed in Appendix A and growing wild in Arizona.

"Protected native plant tag" means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

"Saguaro tag" means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

"Salvage assessed native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (C).

"Salvage restricted native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (B).

"Scientific permit" means a permit required to remove a native plant for a controlled experimental project by a qualified person.

"Securely tie" means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

"Small Native Plant" means any protected plant eight inches in height or less.

"Survey" means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.

"Wood receipt" means a receipt issued by the Department to identify the lawful removal of a protected native plant harvested for fuel, being removed from its original growing site.

History:

New Section recodified from R3-4-601 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1102. Protected Native Plant Destruction by a Private Landowner

A. Notice of intent.

1. Before a protected native plant is destroyed, the private landowner shall provide the following information to the Department on a form obtained from the Department:

a. Name, address, and telephone number of the landowner;

b. Name, address, and telephone number of the landowner's agent, if applicable;

c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;

d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;

e. Earliest date of plant destruction; and

f. Landowner's intent for the disposal or salvage of protected native plants on the land.

2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

B. A landowner shall not destroy a protected native plant until:

1. The landowner receives a written confirmation notice from the Department, and

2. Notice is given to the Department within the following minimum time periods:

a. Twenty days before the plants are destroyed over an area of less than one acre.

b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.

c. Sixty days before the plants are destroyed over an area of 40 acres or more.

C. The Department shall provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner's name, address, telephone number, and payment of an annual $25 nonrefundable fee.

History:

New Section recodified from R3-4-602 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. §3-905, and shall propose a method of disposal from the following list:

1. The plants may be sold at a public auction;

2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;

3. The plants may be donated to nonprofit organizations as provided in A.R.S. §3-916;

4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or

5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. §3-906 or 3-907.

B. If the plants are highly safeguarded native plants, they shall first be made available to the holder of a scientific permit or a noncommercial salvage permit.

History:

New Section recodified from R3-4-603 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees

A. A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.

B. An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable:

1. Name, business name, address, telephone number, Social Security number or tax identification number, and signature of the applicant;

2. Name and number of plants to be removed;

3. Purpose of the plant removal;

4. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;

5. Except for salvage assessed native plants;

a. Name, address, telephone number, and signature of the landowner;

b. Location of the permitted site and size of acreage;

c. Destination address where the plants will be transplanted;

d. Legal and physical description of the location of the original growing site; and

e. Parcel identification number for the permitted site or other documents proving land ownership.

C. Permit fees.

1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:

a. Salvage assessed native plant permit, annual use, $35;

b. Harvest restricted native plant permit, annual use, $35;

c. All other native plant permits, one-time use, $7;

d. Certificate of inspection for interstate shipments, $15.

2. Exemptions. Protected native plants are exempt from fees if:

a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;

b. The protected native plants are collected for scientific purposes; or

c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.

D. Tag and harvesting fees.

1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:

a. Saguaro, $8 per plant;

b. Trees cut for firewood and listed in the harvest restricted category, $6 per cord of wood;

c. Small native plant, $.50 per plant;

d. Any other protected native plant referenced in A.R.S. §3-903(B) and (C) and listed in Appendix A, $6 per plant.

2. The fee for harvesting nolina or yucca parts is $6 per ton. Payment shall be made to the Department in the following manner:

a. Unprocessed nolina or yucca fiber shall be weighed on a state-certified bonded scale; and

b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.

E. Seal fees. A person obtaining a seal shall submit a $.15 per plant fee to the Department at the time a seal is obtained.

F. Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

History:

New Section recodified from R3-4-604 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

A. Scientific Permit

1. A person shall not collect any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit.

2. An applicant shall submit the following information to the Department on a form obtained from the Department:

a. Name, address, and telephone number of the company or research facility applying for the permit;

b. Name, title and experience of the person conducting the research project;

c. Purpose and intent of the research project;

d. Controls to be used;

e. Variables to be considered;

f. Time-frame for the project;

g. Anticipated results and plans for publication;

h. Reports and recordkeeping that will be used to monitor the project;

i. Project funding source;

j. Funding of the company or research facility;

k. Written authorization from the landowner for collection of the plants;

l. Date of the application;

m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and

n. Tax identification number, or if applicant is an individual, a Social Security number.

3. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:

a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;

b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;

c. The native plants used in the project shall remain accessible to the Department;

d. The ecology of the project site is beneficial to the growth of the specific plants in the project if practical;

e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and

f. Description of plant disposition and research hypothesis.

4. A scientific permit is valid for the calendar year in which it is issued.

B. Noncommercial salvage permit:

1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit.

2. An applicant shall submit the following information to the Department, on a form obtained from the Department:

a. Name, address, and telephone number of the applicant applying for the permit;

b. Proposed relocation site for the plants;

c. Written authorization from the landowner for collection of the plants;

d. Date of the application; and

e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.

3. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:

a. The native plants used in the project shall be accessible to the Department after transplant, and

b. The relocation site is beneficial to the growth of the specific plants in the project.

4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.

History:

New Section recodified from R3-4-605 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1106. Protected Native Plant Survey; Fee

A. Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:

1. The date the survey was performed;

2. The amount of the survey fee payable to the Department;

3. The name of Department personnel performing the survey;

4. Upon payment, the survey results including the names and numbers of protected native plants.

B. A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.

History:

New Section recodified from R3-4-606 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1107. Movement Permits; Tags, Seals, and Cord Use

A. Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:

1. The name, telephone number, and signature of the landowner;

2. The location of the plant;

3. The name, address, and telephone number of the receiver;

4. The name, address, and telephone number of the carrier;

5. The number, species, and description of the plant being removed;

6. The tax parcel identification number; and

7. The date of the application.

B. Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.

1. The name, telephone number, and signature of the landowner;

2. The address where the saguaro cactus is located;

3. The name, address, and telephone number of the receiver;

4. The name, address, and telephone number of the carrier;

5. The number, species, and description of the plant being removed;

6. The tax parcel identification number of the property where the saguaro cactus is being moved; and

7. The date of the application.

C. Movement of protected native plants obtained outside Arizona.

1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under "Warning Hold" to the nearest permitting office.

2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.

3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.

D. Any person moving protected native plants shall obtain the following seals from the Department and securely attach the appropriate seal to each protected native plant:

1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.

2. Imported seals identify all imported protected native plants.

E. Tag, seal, and cord attachment.

1. A permittee shall attach a tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.

2. The cord shall be securely tied around the plant, and the tag attached so that it cannot be removed without breaking the seal or cutting the cord.

3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.

4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.

5. The imported seal shall be attached directly to the plant.

6. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

History:

New Section recodified from R3-4-607 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

A. Salvage Assessed Native Plants.

1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed and the permit and tag numbers.

2. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.

B. Harvest Restricted Native Plants. A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

History:

New Section recodified from R3-4-608 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1109. Arizona Native Plant Law Education

A. The Department may schedule seminars and training courses on an as-needed basis.

B. In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:

1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of $10 to the Department before attending the class.

2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of $25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

History:

New Section recodified from R3-4-609 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1110. Permit Denial

Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

History:

New Section recodified from R3-4-610 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ R3-3-1111. [REPEALED]

History:

New Section recodified from R3-4-611 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

APPENDIX A. Protected Native Plants by Category

A. Highly safeguarded native plants as prescribed in A.R.S. §3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

AGAVACEAE Agave Family

Agave arizonica Gentry & Weber-Arizona agave

Agave delamateri Hodgson & Slauson

Agave murpheyi Gibson-Hohokam agave

Agave parviflora Torr.-Santa Cruz striped agave, Small-flowered agave

Agave phillipsiana Hodgson

Agave schottii Engelm. var. treleasei (Toumey) Kearney & Peebles

APIACEAE Parsley Family. [= Umbelliferae]

Lilaeopsis schaffneriana (Schlecht.) Coult. & Rose ssp. recurva (A. W. Hill) Affolter-Cienega false rush, Huachuca water umbel. Syn.: Lilaeopsis recurva A. W. Hill

APOCYNACEAE Dogbane Family

Amsonia kearneyana Woods.-Kearney's bluestar

Cycladenia humilis Benth. var. jonesii (Eastw.) Welsh & Atwood-Jones' cycladenia

ASCLEPIADACEAE Milkweed Family

Asclepias welshii N. & P. Holmgren-Welsh's milkweed

ASTERACEAE Sunflower Family [= Compositae]

Erigeron lemmonii Gray-Lemmon fleabane

Erigeron rhizomatus Cronquist-Zuni fleabane

Senecio franciscanus Greene-San Francisco Peaks groundsel

Senecio huachucanus Gray-Huachuca groundsel

BURSERACEAE Torch Wood Family

Bursera fagaroides (H.B.K.) Engler-Fragrant bursera

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose-Saguaro: 'Crested' or 'Fan-top' form Syn.: Cereus giganteus Engelm.

Coryphantha recurvata (Engelm.) Britt. & Rose-Golden-chested beehive cactus Syn.: Mammillaria recurvata Engelm.

Coryphantha robbinsorum (W. H. Earle) A. Zimmerman-Cochise pincushion cactus, Robbin's cory cactus. Syn.: Cochiseia robbinsorum W.H. Earle

Coryphantha scheeri (Kuntze) L. Benson var. robustispina (Schott) L. Benson-Scheer's strong-spined cory cactus. Syn.: Mammillaria robustispina Schott

Echinocactus horizonthalonius Lemaire var. nicholii L. Benson-Nichol's Turk's head cactus

Echinocereus triglochidiatus Engelm. var. arizonicus (Rose ex Orcutt) L. Benson-Arizona hedgehog cactus

Echinomastus erectocentrus (Coult.) Britt. & Rose var. acunensis (W.T. Marshall) L.Benson-Acuna cactus Syn.: Neolloydia erectocentra (Coult.) L. Benson var. acunensis (W. T. Marshall) L. Benson

Pediocactus bradyi L. Benson-Brady's pincushion cactus

Pediocactus paradinei B. W. Benson-Paradine plains cactus

Pediocactus peeblesianus (Croizat) L. Benson var. fickeiseniae L. Benson

Pediocactus peeblesianus (Croizat) L. Benson var. peeblesianus Peebles' Navajo cactus, Navajo plains cactus Syn.: Navajoa peeblesiana Croizat

Pediocactus sileri (Engelm.) L. Benson-Siler pincushion cactus Syn.: Utahia sileri (Engelm.) Britt. & Rose

COCHLOSPERMACEAE Cochlospermum Family

Amoreuxia gonzalezii Sprague & Riley

CYPERACEAE Sedge Family

Carex specuicola J. T. Howell-Navajo sedge

FABACEAE Pea Family [=Leguminosae]

Astragalus cremnophylax Barneby var. cremnophylax Sentry milk vetch

Astragalus holmgreniorum Barneby-Holmgren milk-vetch

Dalea tentaculoides Gentry-Gentry indigo bush

LENNOACEAE Lennoa Family

Pholisma arenarium Nutt.-Scaly-stemmed sand plant

Pholisma sonorae (Torr. ex Gray) Yatskievych-Sandfood, sandroot Syn.: Ammobroma sonorae Torr. ex Gray

LILIACEAE Lily Family

Allium gooddingii Ownbey-Goodding's onion

ORCHIDACEAE Orchid Family

Cypripedium calceolus L. var. pubescens (Willd.) Correll-Yellow lady's slipper

Hexalectris warnockii Ames & Correll-Texas purple spike

Spiranthes delitescens C. Sheviak

POACEAE Grass Family [=Gramineae]

Puccinellia parishii A.S. Hitchc.-Parish alkali grass

POLYGONACEAE Buckwheat Family

Rumex orthoneurus Rech. f.

PSILOTACEAE Psilotum Family

Psilotum nudum (L.) Beauv. Bush Moss, Whisk Ferm

RANUNCULACEAE Buttercup Family

Cimicifuga arizonica Wats.-Arizona bugbane

Clematis hirsutissima Pursh var. arizonica (Heller) Erickson-Arizona leatherflower

ROSACEAE Rose Family

Purshia subintegra (Kearney) J. Hendrickson-Arizona cliffrose, Burro Creek cliffrose Syn.: Cowania subintegra Kearney

SALICACEAE Willow Family

Salix arizonica Dorn-Arizona willow

SCROPHULARIACEAE Figwort Family

Penstemon discolor Keck-Variegated beardtongue

B. Salvage restricted native plants as prescribed in A.R.S. §3-903(B)(2) that require a permit for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:

AGAVACEAE Agave Family

Agave chrysantha Peebles

Agave deserti Engelm. ssp. simplex Gentry-Desert agave

Agave mckelveyana Gentry

Agave palmeri Engelm.

Agave parryi Engelm. var. couseii (Engelm. ex Trel.) Kearney & Peebles

Agave parryi Engelm. var. huachucensis (Baker) Little ex L. Benson Syn.: Agave huachucensis Baker

Agave parryi Engelm. var. parryi

Agave schottii Engelm. var. schottii - Shindigger

Agave toumeyana Trel. ssp. bella (Breitung) Gentry

Agave toumeyana Trel. ssp. toumeyana

Agave utahensis Engelm. spp. kaibabensis (McKelvey) Gentry Syn.: Agave kaibabensis McKelvey

Agave utahensis Engelm. var. utahensis

Yucca angustissima Engelm. var. angustissima

Yucca angustissima Engelm. var. kanabensis (McKelvey) Reveal Syn.: Yucca kanabensis McKelvey

Yucca arizonica McKelvey

Yucca baccata Torr. var. baccata-Banana yucca

Yucca baccata Torr. var. vespertina McKelvey

Yucca baileyi Woot. & Standl. var. intermedia (McKelvey) Reveal Syn.: Yucca navajoa Webber

Yucca brevifolia Engelm. var. brevifolia-Joshua tree

Yucca brevifolia Engelm. var. jaegeriana McKelvey

Yucca elata Engelm. var. elata-Soaptree yucca, palmilla

Yucca elata Engelm var. utahensis (McKelvey) Reveal Syn.: Yucca utahensis McKelvey

Yucca elata Engelm. var. verdiensis (McKelvey) Reveal Syn.: Yucca verdiensis McKelvey

Yucca harrimaniae Trel.

Yucca schidigera Roezl.-Mohave yucca, Spanish dagger

Yucca schottii Engelm.-Hairy yucca

Yucca thornberi McKelvey

Yucca whipplei Torr. var. whipplei-Our Lord's candle Syn.: Yucca newberryi McKelvey

AMARYLLIDACEAE Amaryllis Family

Zephyranthes longifolia Hemsl.-Plains Rain Lily

ANACARDIACEAE Sumac Family

Rhus kearneyi Barkley-Kearney Sumac

ARECACEAE Palm Family [=Palmae]

Washingtonia filifera (Linden ex Andre) H. Wendl-California fan palm

ASTERACEAE Sunflower Family [=Compositae]

Cirsium parryi (Gray) Petrak ssp. mogollonicum Schaak

Cirsium virginensis Welsh-Virgin thistle

Erigeron kuschei Eastw.-Chiricahua fleabane

Erigeron piscaticus Nesom-Fish Creek fleabane

Flaveria macdougalii Theroux, Pinkava & Keil

Perityle ajoensis Todson-Ajo rock daisy

Perityle cochisensis (Niles) Powell-Chiricahua rock daisy

Senecio quaerens Greene-Gila groundsel

BURSERACEAE Torch-Wood Family

Bursera microphylla Gray-Elephant tree, torote

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose-Saguaro Syn.: Cereus giganteus Engelm.

Coryphantha missouriensis (Sweet) Britt. & Rose

Coryphantha missouriensis (Sweet) Britt. & Rose var. marstonii (Clover) L. Benson

Coryphantha scheeri (Kuntze) L. Benson var. valida (Engelm.) L. Benson

Coryphantha strobiliformis (Poselger) var. orcuttii (Rose) L. Benson

Coryphantha strobiliformis (Poselger) var. strobiliformis

Coryphantha vivipara (Nutt.) Britt. & Rose var. alversonii (Coult.) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. arizonica (Engelm.) W. T. Marshall Syn.: Mammillaria arizonica Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. bisbeeana (Orcutt) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. deserti (Engelm.) W. T. Marshall Syn.: Mammillaria chlorantha Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. rosea (Clokey) L. Benson

Echinocactus polycephalus Engelm. & Bigel. var. polycephalus

Echinocactus polycephalus Engelm. & Bigel. var. xeranthemoides Engelm. ex Coult. Syn.: Echinocactus xeranthemoides Engelm. ex Coult.

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. acicularis L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. armatus L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. chrysocentrus L. Benson

Echinocereus engelmannii (Parry ex. Engelm.) Lemaire var. engelmannii

Echinocereus engelmannii (Parry) Lemaire var. variegatus (Engelm.) Engelm. ex Rumpler

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. fasciculatus Syn.: Echinocereus fendleri (Engelm.) Rumpler var. fasciculatus (Engelm. ex B. D. Jackson) N. P. Taylor, Echinocereus fendleri (Engelm.) Rumpler var. robusta L. Benson; Mammillaria fasciculata Engelm.

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. bonkerae (Thornber & Bonker) L. Benson. Syn.: Echinocereus boyce-thompsonii Orcutt var. bonkerae Peebles; Echinocereus fendleri (Engelm.) Rumpler var. bonkerae (Thornber & Bonker) L. Benson

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. boyce-thompsonii (Orcutt) L. Benson Syn.: Echinocereus boyce-thompsonii Orcutt

Echinocereus fendleri (Engelm.) Rumpler var. boyce-thompsonii (Orcutt) L. Benson

Echinocereus fendleri (Engelm.) Rumpler var. fendleri

Echinocereus fendleri (Engelm.) Rumpler var. rectispinus (Peebles) L. Benson

Echinocereus ledingii Peebles

Echinocereus nicholii (L. Benson) Parfitt. Syn.: Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. nicholii L. Benson

Echinocereus pectinatus (Scheidw.) Engelm. var. dasyacanthus (Engelm.) N. P. Taylor Syn.: Echinocereus pectinatus (Scheidw.) Engelm. var. neomexicanus (Coult.) L. Benson

Echinocereus polyacanthus Engelm. (1848) var. polyacanthus

Echinocereus pseudopectinatus (N. P. Taylor) N. P. Taylor Syn.: Echinocereus bristolii W. T. Marshall var. pseudopectinatus N. P. Taylor, Echinocereus pectinatus (Scheidw.) Engelm. var. pectinatus sensu Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.

Echinocereus rigidissimus (Engelm.) Hort. F. A. Haage.

Syn.: Echinocereus pectinatus (Scheidw.) Engelm. var. rigidissimus (Engelm.) Engelm. ex Rumpler-Rainbow cactus

Echinocereus triglochidiatus Engelm. var. gonacanthus (Engelm. & Bigel.) Boiss.

Echinocereus triglochidiatus Engelm. var. melanacanthus (Engelm.) L. Benson Syn.: Mammillaria aggregata Engelm.

Echinocereus triglochidiatus Engelm. var. mojavensis (Engelm.) L. Benson

Echinocereus triglochidiatus Engelm. var. neomexicanus (Standl.) Standl. ex W. T. Marshall. Syn.: Echinocereus triglochidiatus Engelm. var. polyacanthus (Engelm. 1859 non 1848) L. Benson

Echinocereus triglochidiatus Engelm. var. triglochidiatus

Echinomastus erectocentrus (Coult.) Britt. & Rose var. erectocentrus Syn.: Neolloydia erectocentra (Coult.) L. Benson var. erectocentra

Echinomastus intertextus (Engelm.) Britt. & Rose Syn.: Neolloydia intertexta (Engelg.) L. Benson

Echinomastus johnsonii (Parry) Baxter-Beehive cactus Syn.: Neolloydia johnsonii (Parry) L. Benson

Epithelantha micromeris (Engelm.) Weber ex Britt. & Rose

Ferocactus cylindraceus (Engelm.) Orcutt var. cylindraceus-Barrel cactus Syn.: Ferocactus acanthodes (Lemaire) Britt. & Rose var. acanthodes

Ferocactus cylindraceus (Engelm.) Orcutt var. eastwoodiae (Engelm.) N. P. Taylor Syn.: Ferocactus acanthodes (Lemaire) Britt. & Rose var. eastwoodiae L. Benson; Ferocactus eastwoodiae (L. Benson) L. Benson

Ferocactus cylindraceus (Engelm.) Orcutt. var. lecontei (Engelm.) H. Bravo Syn.: Ferocactus acanthodes (Lemaire) Britt. & Rose var. leconti (Engelm.) Lindsay; Ferocactus lecontei (Engelm.) Britt. & Rose

Ferocactus emoryi (Engelm.) Orcutt-Barrel cactus Syn.: Ferocactus covillei Britt. & Rose

Ferocactus wislizenii (Engelm.) Britt. & Rose-Barrel cactus

Lophocereus schottii (Engelm.) Britt. & Rose-Senita

Mammillaria grahamii Engelm. var. grahamii

Mammillaria grahamii Engelm. var. oliviae (Orcutt) L. Benson Syn.: Mammillaria oliviae Orcutt

Mammillaria heyderi Muhlenpf. var. heyderi Syn.: Mammillaria gummifera Engelm. var. applanata (Engelm.) L. Benson

Mammillaria heyderi Muhlenpf. var. macdougalii (Rose) L. Benson Syn.: Mammillaria gummifera Engelm. var. macdougalii (Rose) L. Benson; Mammillaria macdougalii Rose

Mammillaria heyderi Muhlenpf. var. meiacantha (Engelm.) L. Benson Syn.: Mammillaria gummifera Engelm. var. meiacantha (Engelm.) L. Benson

Mammillaria lasiacantha Engelm.

Mammillaria mainiae K. Brand.

Mammillaria microcarpa Engelm.

Mammillaria tetrancistra Engelm.

Mammillaria thornberi Orcutt

Mammillaria viridiflora (Britt. & Rose) Bodeker. Syn.: Mammillaria orestra L. Benson

Mammillaria wrightii Engelm. var. wilcoxii (Toumey ex K. Schumann) W. T. Marshall Syn.: Mammillaria wilcoxii Toumey

Mammillaria wrightii Engelm. var. wrightii

Opuntia acanthocarpa Engelm. & Bigel. var. acanthocarpa-Buckhorn cholla

Opuntia acanthocarpa Engelm. & Bigel. var. coloradensis L. Benson

Opuntia acanthocarpa Engelm. & Bigel. var. major L. Benson Syn.: Opuntia acanthocarpa Engelm. & Bigel var. ramosa Peebles

Opuntia acanthocarpa Engelm. & Bigel. var. thornberi (Thornber & Bonker) L. Benson Syn.: Opuntia thornberi Thornber & Bonker

Opuntia arbuscula Engelm.-Pencil cholla

Opuntia basilaris Engelm. & Bigel. var. aurea (Baxter) W. T. Marshall-Yellow beavertail Syn.: Opuntia aurea Baxter

Opuntia basilaris Engelm. & Bigel. var. basilaris-Beavertail cactus

Opuntia basilaris Engelm. & Bigel. var. longiareolata (Clover & Jotter) L. Benson

Opuntia basilaris Engelm. & Bigel. var. treleasei (Coult.) Toumey

Opuntia bigelovii Engelm.-Teddy-bear cholla

Opuntia campii ined.

Opuntia canada Griffiths (O. phaeacantha Engelm. var. laevis X major and O. gilvescens Griffiths).

Opuntia chlorotica Engelm. & Bigel.-Pancake prickly-pear

Opuntia clavata Engelm.-Club cholla

Opuntia curvospina Griffiths

Opuntia echinocarpa Engelm. & Bigel-Silver cholla

Opuntia emoryi Engelm.-Devil cholla Syn.: Opuntia stanlyi Engelm. ex B. D. Jackson var. stanlyi

Opuntia engelmannii Salm-Dyck ex Engelm. var. engelmannii-Engelmann's prickly-pear Syn.: Opuntia phaeacantha Engelm. var. discata (Griffiths) Benson & Walkington

Opuntia engelmannii Salm-Dyck ex Engelm. var. flavospina (L.Benson) Parfitt & Pinkava Syn.: Opuntia phaeacantha Engelm. var. flavispina L. Benson

Opuntia erinacea Engelm. & Bigel. var. erinacea-Mohave prickly-pear

Opuntia erinacea Engelm. & Bigel. var. hystricina (Engelm. & Bigel.) L. Benson Syn.: Opuntia hystricina Engelm. & Bigel.

Opuntia erinacea Engelm. & Bigel. var. ursina (Weber) Parish-Grizzly bear prickly-pear Syn.: Opuntia ursina Weber

Opuntia erinacea Engelm. & Bigel. var. utahensis (Engelm.) L. Benson Syn.: Opuntia rhodantha Schum.

Opuntia fragilis Nutt. var. brachyarthra (Engelm. & Bigel.) Coult.

Opuntia fragilis Nutt. var. fragilis-Little prickly-pear

Opuntia fulgida Engelm. var. fulgida-Jumping chain-fruit cholla

Opuntia fulgida Engelm. var. mammillata (Schott) Coult.

Opuntia imbricata (Haw.) DC.-Tree cholla

Opuntia X kelvinensis V. & K. Grant pro sp. Syn.: Opuntia kelvinensis V. & K. Grant

Opuntia kleiniae DC. var. tetracantha (Toumey) W. T. Marshall Syn.: Opuntia tetrancistra Toumey

Opuntia kunzei Rose. Syn.: Opuntia stanlyi Engelm. ex B. D. Jackson var. kunzei (Rose) L. Benson; Opuntia kunzei Rose var. wrightiana (E. M. Baxter) Peebles; Opuntia wrightiana E. M. Baxter

Opuntia leptocaulis DC.-Desert Christmas cactus, Pencil cholla

Opuntia littoralis (Engelm.) Cockl. var. vaseyi (Coult.) Benson & Walkington

Opuntia macrocentra Engelm.-Purple prickly-pear Syn.: Opuntia violacea Engelm. ex B. D. Jackson var. macrocentra (Engelm.) L. Benson; Opuntia violacea Engelm. ex B. D. Jackson var. violacea

Opuntia macrorhiza Engelm. var. macrorhiza-Plains prickly-pear Syn.: Opuntia plumbea Rose

Opuntia macrorhiza Engelm. var. pottsii (Salm-Dyck) L. Benson

Opuntia martiniana (L. Benson) Parfitt Syn.: Opuntia littoralis (Engelm.) Cockerell var. martiniana (L. Benson) L. Benson; Opuntia macrocentra Engelm. var. martiniana L. Benson

Opuntia nicholii L. Benson-Navajo Bridge prickly-pear

Opuntia parishii Orcutt. Syn.: Opuntia stanlyi Engelm. ex B. D. Jackson var. parishii (Orcutt) L. Benson

Opuntia phaeacantha Engelm. var. laevis (Coult.) L. Benson Syn.: Opuntia laevis Coult.

Opuntia phaeacantha Engelm. var. major Engelm.

Opuntia phaeacantha Engelm. var. phaeacantha

Opuntia phaeacantha Engelm. var. superbospina (Griffiths) L. Benson

Opuntia polyacantha Haw. var. juniperina (Engelm.) L. Benson

Opuntia polyacantha Haw. var. rufispina (Engelm.) L. Benson

Opuntia polyacantha Haw. var. trichophora (Engelm. & Bigel.) L. Benson

Opuntia pulchella Engelm.-Sand cholla

Opuntia ramosissima Engelm.-Diamond cholla

Opuntia santa-rita (Griffiths & Hare) Rose-Santa Rita prickly-pear Syn.: Opuntia violacea Engelm. ex B. D. Jackson var. santa-rita (Griffiths & Hare) L. Benson

Opuntia spinosior (Engelm.) Toumey-Cane cholla

Opuntia versicolor Engelm.-Staghorn cholla

Opuntia vivipara Engelm

Opuntia whipplei Engelm. & Bigel. var. multigeniculata (Clokey) L. Benson

Opuntia whipplei Engelm. & Bigel. var. whipplei-Whipple cholla

Opuntia wigginsii L. Benson

Pediocactus papyracanthus (Engelm.) L. Benson Grama grass cactus Syn.: Toumeya papyracanthus (Engelm.) Britt. & Rose

Pediocactus simpsonii (Engelm.) Britt & Rose var. simpsonii

Peniocereus greggii (Engelm.) Britt. & Rose var. greggii-Night-blooming cereus Syn.: Cereus greggii Engelm.

Peniocereus greggii (Engelm.) Britt & Rose var. transmontanus-Queen-of-the-Night

Peniocereus striatus (Brandegee) Buxbaum. Syn.: Neoevansia striata (Brandegee) Sanchez-Mejorada; Cereus striatus Brandegee; Wilcoxia diguetii (Webber) Peebles

Sclerocactus parviflorus Clover & Jotter var. intermedius (Peebles) Woodruff & L. Benson Syn.: Sclerocactus intermedius Peebles

Sclerocactus parviflorus Clover & Jotter var. parviflorus Syn.: Sclerocactus whipplei (Engelm. & Bigel.) Britt. & Rose var. roseus (Clover) L. Benson

Sclerocactus pubispinus (Engelm.) L. Peebles

Sclerocactus spinosior (Engelm.) Woodruff & L. Benson Syn.: Sclerocactus pubispinus (Engelm.) L. Benson var. sileri L. Benson

Sclerocactus whipplei (Engelm. & Bigel.) Britt. & Rose

Stenocereus thurberi (Engelm.) F. Buxbaum-Organ pipe cactus Syn.: Cereus thurberi Engelm.; Lemairocereus thurberi (Engelm.) Britt. & Rose

CAMPANULACEAE Bellflower Family

Lobelia cardinalis L. ssp. graminea (Lam.) McVaugh-Cardinal flower

Lobelia fenestralis Cav.-Leafy lobelia

Lobelia laxiflora H. B. K. var. angustifolia A. DC.

CAPPARACEAE Cappar Family [=Capparidaceae]

Cleome multicaulis DC.-Playa spiderflower

CHENOPODIACEAE Goosefoot Family

Atriplex hymenelytra (Torr.) Wats.

CRASSULACEAE Stonecrop Family

Dudleya arizonica (Nutt.) Britt. & Rose Syn.: Echeveria pulverulenta Nutt. ssp. arizonica (Rose) Clokey

Dudleya saxosa (M.E. Jones) Britt. & Rose ssp. collomiae (Rose) Moran Syn.: Echeveria collomiae (Rose) Kearney & Peebles

Graptopetalum bartramii Rose Syn.: Echevaria bartramii (Rose) K. & P.

Graptopetalum bartramii Rose-Bartram's stonecrop, Bartram's live-forever Syn.: Echeveria bartramii (Rose) Kearney & Peebles

Graptopetalum rusbyi (Greene) Rose Syn.: Echeveria rusbyi (Greene) Nels. & Macbr.

Sedum cockerellii Britt.

Sedum griffithsii Rose

Sedum lanceolatum Torr. Syn.: Sedum stenopetalum Pursh

Sedum rhodanthum Gray

Sedum stelliforme Wats.

CROSSOSOMATACEAE Crossosoma Family

Apacheria chiricahuensis C. T. Mason-Chiricahua rock flower

CUCURBITACEAE Gourd Family

Tumamoca macdougalii Rose-Tumamoc globeberry

EUPHORBIACEAE Spurge Family

Euphorbia plummerae Wats.-Woodland spurge

Sapium biloculare (Wats.) Pax-Mexican jumping-bean

FABACEAE Pea Family [=Leguminosae]

Astragalus corbrensis Gray var. maguirei Kearney

Astragalus cremnophylax Barneby var. myriorraphis Barneby-Cliff milk-vetch

Astragalus hypoxylus Wats.-Huachuca milk-vetch

Astragalus nutriosensis Sanderson-Nutrioso milk-vetch

Astragalus xiphoides (Barneby) Barneby-Gladiator milk-vetch

Cercis occidentalis Torr.-California redbud

Errazurizia rotundata (Woot.) Barneby Syn.: Parryella rotundata Woot.

Lysiloma microphylla Benth. var. thornberi (Britt. & Rose) Isely-Feather bush Syn.: Lysiloma thornberi Britt. & Rose

Phaseolus supinus Wiggins & Rollins

FOUQUIERIACEAE Ocotillo Family

Fouquieria splendens Engelm.-Ocotillo, coach-whip, monkey-tail

GENTIANACEAE Gentian Family

Gentianella wislizenii (Engelm.) J. Gillett Syn.: Gentiana wislizenii Engelm.

LAMIACEAE Mint Family

Hedeoma diffusum Green-Flagstaff pennyroyal

Salvia dorrii ssp. mearnsii

Trichostema micranthum Gray

LILIACEAE Lily Family

Allium acuminatum Hook.

Allium bigelovii Wats.

Allium biseptrum Wats. var. palmeri (Wats.) Cronq. Syn.: Allium palmeri Wats.

Allium cernuum Roth. var. neomexicanum (Rydb.) Macbr.-Nodding onion

Allium cernuum Roth. var. obtusum Ckll.

Allium geyeri Wats. var. geyeri

Allium geyeri Wats. var. tenerum Jones

Allium kunthii Don

Allium macropetalum Rydb.

Allium nevadense Wats. var. cristatum (Wats.) Ownbey

Allium nevadense Wats. var. nevadense

Allium parishii Wats.

Allium plummerae Wats.

Allium rhizomatum Woot. & Standl. Incl.: Allium glandulosum Link & Otto sensu Kearney & Peebles

Androstephium breviflorum Wats.-Funnel-lily

Calochortus ambiguus (Jones) Ownbey

Calochortus aureus Wats. Syn.: Calochortus nuttallii Torr. & Gray var. aureus (Wats.) Ownbey

Calochortus flexuosus Wats.-Straggling mariposa

Calochortus gunnisonii Wats.

Calochortus kennedyi Porter var. kennedyi-Desert mariposa

Calochortus kennedyi Porter var. munzii Jeps.

Dichelostemma pulchellum (Salisbi) Heller var. pauciflorum (Torr.) Hoover

Disporum trachycarpum (Wats.) Benth. & Hook. var. subglabrum Kelso

Disporum trachycarpum (Wats.) Benth. & Hook. var. trachycarpum

Echeandia flavescens (Schultes & Schultes) Cruden Syn.: Anthericum torreyi Baker

Eremocrinum albomarginatum Jones

Fritillaria atropurpurea Nutt.

Hesperocallis undulata Gray-Ajo lily

Lilium parryi Wats.-Lemon lily

Lilium umbellatum Pursh

Maianthemum racemosum (L.) Link. ssp. amplexicaule (Nutt.) LaFrankie Syn.: Smilacina racemosa (L.) Desf. var. amplexicaulis (Nutt.) Wats.

Maianthemum racemosum (L.) Link ssp. racemosum-False Solomon's seal Syn.: Smilacina racemosa (L.) Desf. var. racemosa; Smilacina racemosa (L.) Desf. var. cylindrata Fern.

Maianthemum stellatum (L.) Link Syn.: Smilacina stellata (L.) Desf.-Starflower

Milla biflora Cav.-Mexican star

Nothoscordum texanum Jones

Polygonatum cobrense (Woot. & Standl.) Gates

Streptopus amplexifolius (L.) DC.-Twisted stalk

Triteleia lemmonae (Wats.) Greene

Triteleiopsis palmeri (Wats.) Hoover

Veratrum californicum Durand.-False hellebore

Zephyranthes longifolia Hemsl.-Plains rain lily

Zigadenus elegans Pursh-White camas, alkali-grass

Zigadenus paniculatus (Nutt.) Wats.-Sand-corn

Zigadenus virescens (H. B. K.) Macbr.

MALVACEAE Mallow Family

Abutilon parishii Wats.-Tucson Indian mallow

Abutilon thurberi Gray-Baboquivari Indian mallow

NOLINACEAE Nolina

Dasylirion wheeleri Wats.-Sotol, desert spoon

Nolina bigelovii (Torr.)Wats.-Bigelow's nolina

Nolina microcarpa Wats.-Beargrass, sacahuista

Nolina parryi Wats.-Parry's nolina

Nolina texana Wats. var. compacta (Trel.) Johnst.- Bunchgrass

ONAGRACEAE Evening Primrose Family

Camissonia exilis (Raven) Raven

ORCHIDACEAE Orchid Family

Calypso bulbosa (L.) Oakes var. americana (R. Br.) Luer

Coeloglossum viride (L.) Hartmann var. virescens (Muhl.) Luer Syn.: Habenaria viridis (L.) R. Br. var. bracteata (Muhl.) Gray

Corallorhiza maculata Raf.-Spotted coral root

Corallorhiza striata Lindl.-Striped coral root

Corallorhiza wisteriana Conrad-Spring coral root

Epipactis gigantea Douglas ex Hook.-Giant helleborine

Goodyera oblongifolia Raf.

Goodyera repens (L.) R. Br.

Hexalectris spicata (Walt.) Barnhart-Crested coral root

Listera convallarioides (Swartz) Nutt.-Broad-leaved twayblade

Malaxis corymbosa (S. Wats.) Kuntze

Malaxis ehrenbergii (Reichb. f.) Kuntze

Malaxis macrostachya (Lexarza) Kuntze-Mountain malaxia Syn.: Malaxis soulei L. O. Williams

Malaxis tenuis (S. Wats.) Ames

Platanthera hyperborea (L.) Lindley var. gracilis (Lindley) Luer Syn.: Habenaria sparsiflora Wats. var. laxiflora (Rydb.) Correll

Platanthera hyperborea (L.) Lindley var. hyperborea-Northern green orchid Syn.: Habenaria hyperborea (L.) R. Br.

Platanthera limosa Lindl.-Thurber's bog orchid Syn.: Habenaria limosa (Lindley) Hemsley

Platanthera sparsiflora (Wats.) Schlechter var. ensifolia (Rydb.) Luer

Platanthera sparsiflora (Wats.) var. laxiflora (Rydb.) Correll

Platanthera sparsiflora (Wats.) Schlechter var. sparsiflora-Sparsely-flowered bog orchid Syn.: Habenaria sparsiflora Wats.

Platanthera stricta Lindl.-Slender bog orchid Syn.: Habenaria saccata Greene; Platanthera saccata (Greene) Hulten

Platanthera viridis (L.) R. Br. var. bracteata (Muhl.) Gray-Long-bracted habenaria

Spiranthes michaucana (La Llave & Lex.) Hemsl.

Spiranthes parasitica A. Rich. & Gal.

Spiranthes romanzoffiana Cham.-Hooded ladies tresses

PAPAVERACEAE Poppy Family

Arctomecon californica Torr. & Frém.-Golden-bear poppy, Yellow-flowered desert poppy

PINACEAE Pine Family

Pinus aristata Engelm.-Bristlecone pine

POLYGONACEAE Buckwheat Family

Eriogonum apachense Reveal

Eriogonum capillare Small

Eriogonum mortonianum Reveal-Morton's buckwheat

Eriogonum ripleyi J. T. Howell-Ripley's wild buckwheat, Frazier's Well buckwheat

Eriogonum thompsonae Wats. var. atwoodii Reveal-Atwood's buckwheat

PORTULACEAE Purslane Family

Talinum humile Greene-Pinos Altos flame flower

Talinum marginatum Greene

Talinum validulum Greene-Tusayan flame flower

PRIMULACEAE Primrose Family

Dodecatheon alpinum (Gray) Greene ssp. majus H. J. Thompson

Dodecatheon dentatum Hook. ssp. ellisiae (Standl.) H. J. Thompson

Dodecatheon pulchellum (Raf.) Merrill

Primula hunnewellii Fern.

Primula rusbyi Greene

Primula specuicola Rydb.

RANUNCULACEAE Buttercup Family

Aquilegia caerulea James ssp. pinetorum (Tidest.) Payson-Rocky Mountain Columbine

Aquilegia chrysantha Gray

Aquilegia desertorum (Jones) Ckll.-Desert columbine, Mogollon columbine

Aquilegia elegantula Greene

Aquilegia longissima Gray-Long Spur Columbine

Aquilegia micrantha Eastw.

Aquilegia triternata Payson

ROSACEAE Rose Family

Rosa stellata Woot.-ssp. abyssa A. Phillips Grand Canyon rose

Vauquelinia californica (Torr.) Sarg. ssp. pauciflora (Standl.) Hess & Henrickson-Few-flowered Arizona rosewood

SCROPHULARIACEAE Figwort Family

Castilleja mogollonica Pennell

Penstemon albomarginatus Jones

Penstemon bicolor (Brandeg.) Clokey & Keck ssp. roseus Clokey & Keck

Penstemon clutei A. Nels.

Penstemon distans N. Holmgren-Mt. Trumbull beardtongue

Penstemon linarioides spp. maguirei

SIMAROUBACEAE Simarouba Family

Castela emoryi (Gray) Moran & Felger-Crucifixion thorn

Syn.: Holacantha emoryi Gray

STERCULIACEAE Cacao Family

Fremontodendron californicum (Torr.) Coville-Flannel bush

C. Salvage assessed native plants as prescribed in A.R.S. §3-903(B)(3) that require a permit for removal:

BIGNONIACEAE Bignonia Family

Chilopsis linearis (Cav.) Sweet var. arcuata Fosberg-Desert-willow

Chilopsis linearis (Cav.) Sweet var. glutinosa (Engelm.) Fosberg

FABACEAE Pea Family [=Leguminosae]

Cercidium floridum Benth.-Blue palo verde

Cercidium microphyllum (Torr.) Rose & Johnst.-Foothill palo verde

Olneya tesota Gray-Desert ironwood

Prosopis glandulosa Torr. var. glandulosa-Honey mesquite Syn.: Prosopis juliflora (Swartz) DC. var. glandulosa (Torr.) Ckll.

Prosopis glandulosa Torr. var. torreyana (Benson) M. C. Johnst.-Western honey mesquite Syn.: Prosopis juliflora (Swartz) DC. var. torreyana Benson

Prosopis pubescens Benth.-Screwbean mesquite

Prosopis velutina Woot.-Velvet mesquite Syn.: Prosopis juliflora (Swartz) DC. var. velutina (Woot.) Sarg.

Psorothamnus spinosus (Gray) Barneby-Smoke tree. Syn.: Dalea spinosa Gray

D. Harvest restricted native plants as prescribed at A.R.S. §3-903(B)(4) that require a permit to cut or remove the plants for their by-products, fibers, or wood:

AGAVACEAE Agave Family (including Nolinaceae)

Nolina bigelovii (Torr.) Wats.-Bigelow's nolina

Nolina microcarpa Wats.-Beargrass, sacahuista

Nolina parryi Wats.-Parry's nolina

Nolina texana Wats. var. compacta (Trel.) Johnst.- Bunchgrass

Yucca baccata Torr. var. baccata-Banana yucca

Yucca schidigera Roezl.-Mohave yucca, Spanish dagger

FABACEAE Pea Family [=Leguminosae]

Olneya tesota Gray-Desert ironwood

Prosopis glandulosa Torr. var. glandulosa-Honey mesquite Syn.: Prosopis juliflora (Swartz) DC. var. glandulosa (Torr.) Ckll.

Prosopis glandulosa Torr. var. torreyana (Benson) M. C. Johnst.-Western honey mesquite Syn.: Prosopis juliflora (Swartz) DC. var. torreyana Benson

Prosopis pubescens Benth.-Screwbean mesquite

Prosopis velutina Woot.-Velvet mesquite Syn.: Prosopis juliflora (Swartz) DC. var. velutina (Woot.) Sarg.

History:

New Section recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

§ 3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. 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.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. 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 director may:

1. 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.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

History:

Amended by L. 2013, ch. 161,s. 1, eff. 9/13/2013. L12, ch 321, sec 1.

§ 3-264. Enforcement and administrative powers

A. The associate director may refuse to license or may cancel the license of any distributor who violates any provision of this article. The director shall review the associate director's action on request of any person adversely affected by the action.

B. The director may, after an opportunity for a hearing:

1. Determine and publish at least annually the values per unit of weight of nitrogen, phosphorus and potassium in commercial fertilizers in the state for the purpose of assessing penalties on commercial fertilizers under the provisions of section 3-276.

2. Adopt rules that the director deems necessary for the efficient administration and enforcement of this article, including the collection and examination of samples of fertilizer materials, and rules pertaining to composition and use of fertilizer materials, including, without limiting the foregoing general terms, the establishment of tolerances, deficiencies and penalties where not specifically provided for in this article.

3. Prohibit the sale or use in fertilizer materials of any substance proven to be detrimental to agriculture.

4. Provide for incorporating into commercial fertilizers other substances as pesticides and provide for proper labeling of the mixture.

5. Prescribe the information which shall appear on the tag, other than as specifically set forth in this article.

§ 3-343. Enforcement and administrative powers

A. This article shall be administered and its provisions and all rules adopted under this article shall be enforced by the associate director.

B. The director may, after a hearing:

1. Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles or substances.

2. Determine whether or not pesticides present an unreasonable risk to humans.

3. Determine standards of coloring or discoloring for pesticides, and subject pesticides to the requirements of section 3-352.

C. The director may, after a hearing, make rules concerning safety in the distribution and sale of pesticides or devices.

D. All rules adopted under authority of this article shall be divided into two classes to be known as "technical rules" and "administrative rules", such rules to be filed in the office of the secretary of state and subject to judicial review.

E. The director may adopt administrative and technical rules deemed necessary to effectuate the purposes of this article, but only after a hearing.

§ 3-351. Registration; fee; confidential information

A. Every pesticide that is distributed shall be registered with the division. The director may provide by rule for registrations having a term of one or more years and may prescribe the date on which registrations expire.

B. The registrant shall file with the division a statement including:

1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

2. The name of the pesticide.

3. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use. If the registrant distributes labels in a language in addition to English, the registrant shall provide a copy of both labels with a signed statement that the label directions have the same meaning and provide the same use directions as on the written English label.

4. If requested by the division, a full description of the tests made and the results of those tests on which the claims are based.

C. For a renewal of registration:

1. A statement shall be required only with respect to information that is different from that furnished when the pesticide was registered or last reregistered.

2. If requested by the director, a complete copy of labeling shall be submitted.

D. Any person desiring to register under this article shall pay to the division a registration fee of one hundred dollars per year for each pesticide. The monies collected from registration fees shall be allocated as follows:

1. Twenty-five dollars for each year of the registration term shall be allocated pursuant to section 3-350.

2. Seventy-five dollars for each year of the registration term shall be deposited in the water quality assurance revolving fund established by section 49-282.

E. All federal, state and county offices shall register without fee all pesticides sold at cost by them.

F. If the director deems it necessary in the administration of this article, the director may require the submission of the complete formula of any pesticide or the confidential statement of formula and the analytical methods for the analysis of the active ingredients in the formulation. For any product having a federal registration, the director may request, on reasonable cause, the analytical methods for the analysis of residues of the active ingredients of the pesticide in environmental media provided that this information has been developed by the applicant and submitted to the United States environmental protection agency. Information provided by the applicant pursuant to this section shall be afforded applicable trade secret and confidentiality protections. Other products exempted from federal registration requirements and required to be registered under this section shall be subject to this subsection.

G. If it appears to the director that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3-352, the division shall register the article. If the director finds that the pesticide does not warrant the proposed claims, the director may request a full description of the tests conducted and the results of the tests on which the claims are based. If the pesticide or its labeling and other material that are required to be submitted do not comply with this article, the director shall notify the applicant of the manner in which the pesticide, labeling or other material fails to comply with the law to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections and cannot support the claim on the label, the director may refuse to register the pesticide.

H. In submitting data required by this article, the applicant shall clearly mark any portions that are trade secrets or commercial or financial information. The applicant shall identify as confidential information any such marked material and submit it separately from other material required to be submitted under this article. The information shall be kept confidential by the department unless written permission to release the information is granted by the registrant or on order of a court of jurisdiction.

I. In order to protect the public, the associate director, after a hearing, may cancel the registration of a pesticide. The associate director shall cancel the registration of a pesticide on notification by the director of environmental quality pursuant to section 49-306 or 49-309.

J. Notwithstanding any other provision of this article, registration is not required in the case of a pesticide shipped from one plant within the state to another plant within the state operated by the same person.

K. A registrant who discontinues distribution of a pesticide shall continue its registration in this state for three years after the discontinuation to allow the remaining product to move through the channels of trade. The registrant shall notify the appropriate entities within the channels of trade of the effective date of the discontinuation.

§ 3-363. Rules

The director shall adopt rules to regulate pesticides that include provisions to:

1. Administer and implement this article.

2. Prescribe measures to control, monitor, inspect and govern pesticide use.

3. Prohibit or restrict pesticide use.

4. Restrict the areas in which pesticide use may occur.

5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements, and meet financial responsibility standards.

6. Prescribe appropriate recordkeeping and reporting requirements regarding pesticide use, except that the recordkeeping and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).

7. Prohibit pesticide use that is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).

8. Exempt from regulation under this article pesticide use that is regulated in chapter 20 of this title.

9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.

10. Charge and collect the following fees for each permit, license and certification under this article:

(a) Not more than twenty dollars per year for a grower permit.

(b) Not more than one hundred dollars per year for a seller permit.

(c) Not more than one hundred dollars per year for a custom applicator license.

(d) Not more than fifty dollars per year for a pilot license.

(e) Not more than fifty dollars per year for a pest control advisor license.

(f) Not more than twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.

(g) Not more than fifty dollars per year for restricted use certification.

(h) Not more than the amount set by the director by rule for a license or certificate for pesticide use on golf courses.

11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.

12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:

(a) Violators shall be assessed a number of points for each violation, depending on such factors as:

(i) Potential and actual consequences of the violation on public and worker health and safety and the environment.

(ii) The wrongfulness of the conduct.

(iii) The degree of culpability of the violator.

(iv) The duration of the violation.

(v) Prior violations or citations.

(b) Penalties shall be assessed depending on the number of points accrued by the violator.

History:

Amended by L. 2016, ch. 221,s. 2, eff. 8/5/2016. Amended by L. 2013, ch. 64,s. 1, eff. 9/13/2013.

§ 3-903. Protected group of plants; botanical names govern; categories of protected plants; power to add or remove plants; annual hearing

A. The protected group of native plants shall include, and protected native plants shall be, any plant or part of a plant, except, unless otherwise specifically included, its seeds or fruit, which is growing wild on state land or public land or on privately owned land without being propagated or cultivated by human beings and which is included by the director on any of the definitive lists of protected categories of protected native plants described in this section. The director by definitive lists may divide any protected category into subcategories which are to receive different treatment under the rules adopted under this article to conserve or protect such plants. In the preparation of each list of plants within a protected category or subcategory the director shall list by botanical names all of those protected plants which are to fall within the protection of that category or subcategory. The botanical names of the listed plants govern in all cases in the interpretation of this article and any rules adopted under this article.

B. The director shall establish by rule the lists of plants in the following categories of protected native plants:

1. Highly safeguarded native plants to be afforded the exclusive protections, including the use of scientific or threatened collection and salvage permits, provided this category in this chapter. This category includes those species of native plants and parts of plants, including the seeds and fruit, whose prospects for survival in this state are in jeopardy or which are in danger of extinction throughout all or a significant portion of their ranges, and those native plants which are likely within the foreseeable future to become jeopardized or in danger of extinction throughout all or a significant portion of their ranges. This category also includes those plants resident to this state and listed as endangered, threatened, or category 1 in the federal endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 et seq.), as amended, and any regulations adopted under that act.

2. Salvage restricted native plants to be afforded the exclusive protections involving the use of salvage permits, tags and seals provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are nevertheless subject to a high potential for damage by theft or vandalism.

3. Salvage assessed native plants to be afforded the exclusive protections, involving the use of salvage tags and seals and annual salvage permits, provided in this chapter. This category includes those native plants which

are not included in either the highly safeguarded or salvage restricted categories but nevertheless have a sufficient value if salvaged to support the cost of salvage tags and seals.

4. Harvest restricted native plants to be afforded the exclusive protections involving the use of harvest permits and wood receipts provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are subject to excessive harvesting or overcutting because of the intrinsic value of their by-products, fiber or woody parts.

C. The director by rule may add or remove a native plant to or from the protected group or any of the categories of protected native plants.

D. The director shall hold a public hearing on native plants at least every twelve months after giving notice as required by section 3-912, subsection B.

§ 3-904. Destruction of protected plants by private landowners; notice; exception

A. This chapter does not prevent the destruction of protected native plants or clearing of land or cleaning or removing protected native plants by the owner of the land or the owner's agent if:

1. The land is in private ownership.

2. The protected native plants are not transported from the land or offered for sale.

3. The owner or the owner's agent notifies the department pursuant to this section of the intended destruction at least:

(a) Twenty days before the plants are destroyed over an area of less than one acre.

(b) Thirty days before the plants are destroyed over an area of one acre or more but less than forty acres.

(c) Sixty days before the plants are destroyed over an area of forty acres or more.

4. The protected plants are destroyed within one year of the date of destruction disclosed in the notice given the department in paragraph 3 of this subsection.

B. The notice under subsection A, paragraph 3, subdivision (a) may be oral or written. The notice under subsection A, paragraph 3, subdivisions (b) and (c) must be in writing. The notice under subsection A, paragraph 3, whether written or oral, shall include:

1. The name and address of the owner of the land and, if the owner is not a resident of this state, the name and address of the owner's agent in this state to be contacted regarding the destruction or salvage of the native plants.

2. The earliest date that destruction of the protected native plants will begin.

3. A general description of the area in which the protected native plants will be destroyed.

4. Whether the owner intends to allow salvage of the plants to be destroyed.

C. The director by rule shall:

1. Prescribe the form and content of the notice that shall be adequate and comply with subsection B and shall provide landowners with copies of the notice on request.

2. Provide for an alternative procedure in cases in which the landowner is not required to notify the department in writing. The alternative procedure shall include:

(a) Oral notification by the landowners to the department.

(b) Preparation by the department of a written notice form. The department shall transmit a confirming copy to the landowner, and the owner may not begin destruction of protected native plants until the owner receives the written confirmation and the time prescribed under subsection A, paragraph 3 has elapsed.

D. The written notice form, whether completed by the landowner or the department, shall include the following notice in bold-faced type:

Notice: Consent of the landowner is required before entering any lands described in this notice.

E. Within five working days after receiving the notice required under this section the department shall post a copy of the notice in a conspicuous location in the public area of the division office that administers the department activities in the county where the land is located on which the native plants are to be destroyed. The division shall also mail a copy of the notice to any salvage operator or interested party that has requested notice of such activities occurring during the current calendar year. The director by rule may establish and the associate director shall collect a reasonable fee from those receiving copies of the notice to cover the cost of providing this notice.

F. If the department receives a notice of intended destruction under subsection A, paragraph 3 and subsequently receives a complete and correct application for a salvage permit executed by the owner of the land or the owner's agent for any highly safeguarded or salvage restricted native plants intended to be destroyed under the notice, the department shall facilitate the prompt salvage of the plants by issuing a permit, and any associated tags and seals, within four working days.

G. The notice requirements of subsection A, paragraph 3 do not apply to the destruction of native plants that occurs in the normal course of mining, commercial farming and stock raising operations.

H. This section does not apply to the destruction of protected native plants on individually owned residential property of ten acres or less where initial construction has already occurred.

§ 3-905. Destruction of protected plants by state

A. Except in an emergency, if a state agency proposes to remove or destroy protected native plants over an area of state land exceeding one-fourth acre, the agency shall notify the department in writing as provided in section 3-904 at least sixty days before the plants are destroyed, and any such destruction must occur within one year of the date of destruction disclosed in the notice. The department shall post and disseminate copies of the notice as provided in section 3-904, subsection E. This state and its agencies and political subdivisions are exempt from any fees established for salvaged plants.

B. If the director determines that the proposed action by the state agency may affect a highly safeguarded plant, he shall consult with the state agency and other appropriate parties and use the best scientific data available to issue a written finding as to whether the proposed action would appreciably reduce the likelihood of survival or recovery of the plant taxon in this state. If the determination is affirmative, the director shall also specify reasonable, prudent and distinct alternatives to the proposed project that can be implemented and are consistent with conserving the plant taxon.

C. The director shall adopt rules for the disposal and salvage of native plants subject to removal or destruction by a state agency either under permit to other government agencies or nonprofit organizations or sale to the general public or commercial dealers. The department may issue permits to donate, sell, salvage or harvest the plants after the it ascertains the validity of the request and determines the kinds and approximate number of the plants involved. The permit shall specify the number and species of protected native plants and the area from which they may be taken.

§ 3-906. Collection and salvage of protected plants; procedures, permits, tags and seals; duration; exception

A. Except as provided in this chapter a person shall not take, transport or possess any protected native plant taken from the original growing site in this state without possessing a valid permit issued by the division. The division shall issue permits in either a name or business name. A permit to take, transport or possess native plants is nontransferable, except that a permittee, by subcontract or otherwise, may allow its agents to work under the permit if the permittee remains primarily responsible for the actions of persons acting under his expressed or implied authority.

B. In addition to the requirements prescribed by this section, a person who moves or salvages a saguaro cactus (cereus giganteus) that is more than four feet tall, from other than its original growing location, must purchase a permit, tag and seal from the department. A person may move a saguaro cactus without obtaining a permit, tag and seal only if the person maintains documentation of a previous legal movement or if the department has record of a previous legal movement of the cactus by the person. Saguaro cacti that are propagated by humans are exempt from the requirements of this subsection.

C. Permits applicable to highly safeguarded native plants may be issued only for collection for scientific purposes or for the noncommercial salvage of highly safeguarded native plants whose existence is threatened by intended destruction, or by their location or by a change in land usage, and if the permit may enhance the survival of the affected species.

D. Permits issued for the salvage of salvage assessed native plants shall be issued for a period of one calendar year without respect to the land from which the plants will later be taken. The associated tags and seals shall be issued individually or in bulk on payment of any fees required under section 3-913, subsection A, without respect to the specific plants for which they will be used. All such tags and seals remain valid for use in subsequent years as long as the permit is renewed.

E. The division shall provide tags and seals for each permit issued for taking, transporting or possessing highly safeguarded, salvage restricted or salvage assessed native plants. The director by rule shall establish procedures and forms for permits, tags and seals to be issued for the collection and salvage of highly safeguarded native plants and the salvage of salvage restricted and salvage assessed native plants. The director by rule may establish and modify the form and character of the tags and seals described in this section. All such tags and seals shall be attached to the plants at the time of taking and before transporting. It is unlawful to remove a tag or seal from a

protected native plant that has been taken and tagged pursuant to this article before the plant has been transplanted at its designated site. A tag or seal may be removed only by a designated agent of the division or by the owner of the plant.

F. This section does not apply to the transporting of protected native plants by a landowner or his agent from one of his properties to another if the plants are not offered for sale.

§ 3-912. Rules; additional notice requirements

A. The director shall adopt rules to enforce this chapter pursuant to title 41, chapter 6.

B. In addition to the notice requirements prescribed in title 41, chapter 6, at least thirty days before any hearing at which a new rule or a change in a rule will be considered the department shall send a copy of the notice by first class mail to persons or entities requesting notice pursuant to section 3-904, subsection E.

§ 3-913. Fiscal provisions; fees; Arizona protected native plant trust fund

A. The department shall collect nonrefundable fees for issuing permits, tags, seals and receipts under this article, except for scientific purposes, from landowners moving protected plants from one of their properties to another, or from the independent owner of residential property of ten acres or less if no such plants are to be offered for sale.

B. The director shall establish the amount of the fee by rule to reasonably reflect the cost to the department for administering this chapter or to reflect the value of the service, permit, tag, seal or receipt, including at least the following amounts:

1. For cereus giganteus (saguaro), at least three dollars for each plant.

2. For native plants that the director determines to be useful for revegetation and that cannot be salvaged economically at a higher fee, at least twenty-five cents per plant.

3. For all other native plants, at least two dollars for each plant.

4. For all receipts for live harvest restricted native plants cut or removed for wood, at least one dollar per cord.

5. For a permit for the by-products or fiber of harvest restricted native plants, at least one dollar per ton.

C. The Arizona protected native plant trust fund is established for the exclusive purpose of implementing, continuing and supporting the program established by this chapter. All fees and other monies collected under this chapter except civil penalties assessed pursuant to section 3-933 or 3-934 shall be deposited in the trust fund. The director shall administer the trust fund as trustee. The state treasurer shall accept, separately account for and hold in trust any monies deposited in the state treasury, which are considered to be trust monies as defined in section 35-310 and which shall not be commingled with any other monies in the state treasury except for investment purposes. On notice from the director, the state treasurer shall invest and divest any trust fund monies deposited in the state treasury as provided by sections 35-313 and 35-314.03 and monies earned from investment shall be credited to the trust fund. The beneficiary of the trust is the program established by this chapter. The trust fund shall be used exclusively for the purposes of this chapter on the order of the director. Surplus monies, including any unexpended and unencumbered balance at the end of the fiscal year, do not revert to the state general fund.

§ 3-2603. Enforcement and administrative powers

A. The associate director may refuse to license or may cancel the license of any distributor in violation of this article. The director shall review the associate director's action on request of any person adversely affected by the action.

B. The director may, after a hearing:

1. Adopt rules:

(a) Requiring the guarantee of substances and elements when claimed present in a commercial feed, and declare the form in which the guarantee shall appear on the label.

(b) Setting forth acceptable descriptive terms by which ingredients shall be listed on the labeling when used as ingredients of a commercial feed or customer-formula feed.

(c) Requiring a statement of warning and directions for use of commercial feeds and customer-formula feeds containing drugs or chemicals.

(d) Establishing limits of viable weed seeds contained in commercial feed.

(e) Both administrative and technical, which the director deems necessary for the efficient administration of this article.

2. Cooperate with, and enter into agreements with, universities under the jurisdiction of the Arizona board of regents, other agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this article, including the implementation and use of commercial feed trust fund monies to assist the efforts of an ALIRT agreement.

3. Exempt from the definition of commercial feed or from specific provisions of this article commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or substances are not intermixed or mixed with other materials and are not adulterated within the meaning of section 3-2611.

4. Define weights in the metric system.

History:

Amended by L. 2016, ch. 160,s. 7, eff. 8/5/2016.

§ 3-3106. Pesticides

The department shall adopt rules consistent with this section prescribing safe work practices for employees who mix, load, apply, store or otherwise handle pesticides for agricultural uses and for employees who are exposed to residues of these pesticides after application or persons who are incidentally exposed to pesticides when or after they are applied. The rules shall include, but are not limited to, provisions that relate to:

1. Exposure to pilots, mixers, loaders, flaggers and ground and aerial applicators.

2. Employee training and instruction.

3. Emergency medical care.

4. The times and conditions under which employees may work alone with pesticides.

5. Adequate facilities, equipment and water for changing clothes and washing.

6. Necessary safety equipment and its cleaning.

7. Limiting, as necessary, field reentry after pesticide application.

§ 3-3108. Development of standards and rules

A. Safety and health standards and rules shall be formulated in the following manner:

1. The assistant director shall either propose adoption of national consensus standards or federal standards or draft such rules as he considers necessary after conducting sufficient investigations through the employees of the office and through consultation with the department advisory council, an ad hoc advisory committee if one is appointed and other persons knowledgeable in agriculture for which the standards or rules are being formulated

2. Proposed standards or rules, or both, shall be submitted to the director for his approval. If the director approves the proposed standards or rules, or both, he shall adopt them pursuant to title 41, chapter 6.

B. The assistant director shall not propose standards or rules for products distributed or used in interstate commerce which are different from federal standards for such products unless the standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or rules adopted under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms, appropriate emergency treatment and proper conditions and precautions of safe use or exposure. If appropriate, the standards or rules shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary to protect employees. In addition, if appropriate, any such standards or rules shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or rules adopted pursuant to this section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

D. In case of conflict between standards and rules, the rules take precedence.

E. A person who may be adversely affected by a standard or rule issued under this article at any time before the sixtieth day after the standard or rule is adopted may file a complaint challenging the validity of the standard

or rule with the superior court in the county in which the person resides or has his principal place of business for a judicial review of the standard or rule. The filing of a complaint, unless otherwise ordered by the court, does not operate as a stay of the standard or rule. The determinations of the director are conclusive if supported by substantial evidence in the record considered as a whole.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 21

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 16, 2023

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 21

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to fifty-four (54) rules in Title 9, Chapter 20 regarding Behavioral Health Services for Persons with Serious Mental Illness. Specifically, the report covers rules in the following Articles:

- Article 1 - General Provisions
- Article 2 - Rights of Persons with Serious Mental Illness
- Article 3 - Individual Service Planning for Behavioral Health Services for Persons with Serious Mental Illness
- Article 4 - Appeals, Grievances, and Requests for Investigation for Persons with Serious Mental Illness
- Article 5 - Court-Ordered Evaluation and Treatment

In the prior 5YRR for these rules, AHCCCS proposed to make several changes to improve the clarity, conciseness, understandability, and consistency of the rules. Specifically, AHCCCS indicated that in R9-21-101, the term "County Annex" in the definition section needed to be updated to "MIHS Behavioral Health Annex." Also, AHCCCS indicated that in R9-22-401, a reference to the federal IMD rule needed to be added to clarify the reason for

rejection of a stay longer than 16 days. Moreover, AHCCCS stated that, to be consistent with statutory changes, the reference to "Human Rights Committees" in Chapter 21 needed to be changed to "Independent Oversight Committees." AHCCCS also indicated that the references to "regional authorities" in Chapter 21 needed to be changed to managed care organizations to reflect AHCCCS Complete Care integration. AHCCCS indicates it completed this prior proposed course of action.

Proposed Action

In the current report, AHCCCS is not proposing any additional changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

These regulations govern the rights of seriously mentally ill members and AHCCCS and other State responsibilities to them. AHCCCS states the rules only contain technical and conforming changes. There is no economic, small business or consumer financial impact.

Stakeholders are identified as private persons, consumers, and AHCCCS members.

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

AHCCCS states the underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS 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?

AHCCCS indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are 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?

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. AHCCCS indicates the rules do not require a permit, license, or agency authorization.

11. Conclusion

This 5YRR from AHCCCS relates to fifty-four (54) rules in Title 9, Chapter 20, Article 1-5 regarding Behavioral Health Services for Persons with Serious Mental Illness. AHCCCS indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, AHCCCS is not proposing to make any changes to the rules.

Council staff recommends approval of this report.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Director

July 31, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 21

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 21 due on July 31, 2023.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or Nicole.Fries@azahcccs.gov.

Sincerely,
Nicole Fries
Deputy General Counsel

Attachments

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 21

July 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-502

Specific Statutory Authority: A.R.S. § 36-546.01

2. The objective of each rule:

Rule	Objective
R9-21-101	This rule sets forth definitions applicable to the Article.
R9-21-102	This rule sets forth which agencies these rules apply to.
R9-21-103	This rule describes how time is calculated in this Article.
R9-21-104	This rule describes the roles and responsibilities of the Office of Human Rights and Human Rights Advocates.
R9-21-105	This rule describes the role of Independent Oversight Committees.
R9-21-106	This rule describes the role of the State Protection and Advocacy System.
R9-21-201	This rule describes the civil and other legal rights of members.
R9-21-202	This rule describes the support and treatment rights of members.
R9-21-203	This rule describes the rights of members to be free from abuse, neglect, exploitation and mistreatment.
R9-21-204	This rule prescribes when and in what manner restraint and seclusion may be used regarding members.
R9-21-205	This rule prescribes when a member may or may not do labor.
R9-21-206	This rule establishes the competency and consent requirements regarding members.
R9-21-206.01	This rule prescribes when and how informed consent of a member must be sought.
R9-21-207	This rule establishes the requirements surrounding administering medicine to members.
R9-21-208	This rule describes the rights of members to their property and possessions while receiving services.
R9-21-209	This rule prescribes how and what records must be kept.
R9-21-210	This rule outlines what policies and procedures service providers are required to develop.
R9-21-211	This rule outlines what must be in the Notice of Rights and how they must be posted.
R9-21-301	This rule outlines the general provisions of AHCCCS and Regional Behavioral Health Agency's responsibilities to members.
R9-21-302	This rule outlines the Identification, Application, and Referral for Services of Persons with Serious Mental Illness (SMI).
R9-21-303	This rule outlines how eligibility is determined and the initial assessment of persons with SMI.
R9-21-304	This rule outlines what interim and emergency services persons with SMI are entitled to.
R9-21-305	This rule outlines how assessments of member's behavioral health needs are carried out.
R9-21-306	This rule outlines how potential service providers are identified.
R9-21-307	This rule outlines how a service plan is developed and what it contains.

R9-21-308	This rule outlines how a member or their guardian may accept or reject a service plan.
R9-21-309	This rule outlines how service providers are selected by a case manager.
R9-21-310	This rule outlines how a service plan is implemented.
R9-21-311	This rule outlines how alternative services to those outlined in the service plan may be implemented.
R9-21-312	This rule outlines when and how an inpatient treatment and discharge plan is developed.
R9-21-313	This rule outlines when a service plan should be reviewed.
R9-21-314	This rule outlines when a service plan may be modified or terminated.
R9-21-401	This rule outlines the rights and procedures for members to appeal.
R9-21-402	This rule outlines the general process of grievances and appeals for persons with SMI.
R9-21-403	This rule explains how a grievance or investigation may be initiated by a member or employee.
R9-21-404	This rule outlines which persons are responsible for resolving grievances and requests for investigation.
R9-21-405	This rule outlines the process of a preliminary disposition of a grievance or investigation.
R9-21-406	This rule explains the process of the Administration conducting an investigation.
R9-21-407	This rule explains the process of an administrative appeal.
R9-21-408	This rule explains how to appeal to an administrative hearing.
R9-21-409	This rule outlines what notices must contain and to whom they must be sent. It also explains what records must be kept and by whom.
R9-21-410	This rule explains disqualifying behavior by individuals involved, as well as procedural irregularities that can be ground for appeal.
R9-21-501	This rule explains when a court-ordered evaluation shall take place.
R9-21-502	This rule outlines when an emergency admission for evaluation is necessary.
R9-21-503	This rule explains the ground for voluntary admission for evaluation.
R9-21-504	This rule outlines the procedures and responsibilities of the Administration in court-ordered treatment.
R9-21-505	This rule outlines coordination of court-ordered treatment plans with service plans and inpatient treatment plans.
R9-21-506	This rule outlines when review of court-ordered treatment plans is necessary.
R9-21-507	This rule outlines when transfers of court-ordered persons are necessary.
R9-21-508	This rule outlines requests for notification and who may request.
R9-21-509	This rule outlines when voluntary admission for treatment may be requested and by whom.
R9-21-510	This rule outlines informed consent in voluntary application for admission and treatment.
R9-21-511	This rule outlines when use of psychotropic medication in court-ordered treatment is permissible.
R9-21-512	This rule outlines when seclusion and restraint in court-ordered treatment is permissible.

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 regulations govern the rights of seriously mentally ill members and AHCCCS and other State responsibilities to them. There is no economic, small business or consumer financial impact.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___ No _X_**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
Yes _X_ No ___

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 underlying regulatory objectives are the most cost-effective means and impost the least burden to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___ No _X__**

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**
Not applicable.

14. **Proposed course of action**
There are no recommended changes at this time.

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ADMINISTRATIVE RULES DIVISION

TITLE 9. HEALTH SERVICES

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2023 through March 31, 2023

Questions about these rules? Contact:

Department: AHCCCS
Office of the General Counsel
Address: 801 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Website: www.ahcccs.gov
Name: Nicole Fries
Telephone: (602) 417-4232
Email: AHCCCSRules@azahcccs.gov

The release of this Chapter in Supp. 23-1 replaces Supp. 22-4, 1-63 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 9. HEALTH SERVICES

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Authority: A.R.S. § 36-520

Supp. 21-3

Editor's Note: Laws 2015, Ch. 195 provided for the statutory transfer of behavioral health responsibilities from the Arizona Department of Health Services to the Arizona Health Care Cost Containment System (AHCCCS). Therefore the Chapter name has been amended from Department of Health Services to the Arizona Health Care Cost Containment System at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).

Editor's Note: Title 9, Chapter 21 was adopted and amended by the Department of Health Services under the provisions of Laws 1992, Ch. 301, § 61, which provided for an exemption from the rulemaking process as specified in the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, § 41-1001 et seq.). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the provisions of the Arizona Administrative Procedure Act, the Chapter is printed on blue paper.

Former Title 9, Chapter 21 renumbered to Title 18, Chapter 11.

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CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

ARTICLE 5. COURT-ORDERED EVALUATION AND TREATMENT

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

ARTICLE 1. GENERAL PROVISIONS

R9-21-101. Definitions and Location of Definitions

A. Location of definitions. Unless the context otherwise requires, terms used in this Chapter that are defined in A.R.S. § 36-501 shall have the same meaning as in A.R.S. § 36-501. In addition, the following definitions applicable to this Chapter are found in the following Section or Citation:

"Abuse"	R9-21-101
"ADHS"	R9-22-101
"Administration"	A.R.S. § 36-2901
"Court"	A.R.S. § 36-501
"Danger to others"	A.R.S. § 36-501
"Department"	R9-21-101, A.R.S. § 36-501
"Director"	A.R.S. § 36-501
"Evaluation"	A.R.S. § 36-501
"Family member"	A.R.S. § 36-501
"Informed consent"	A.R.S. § 36-501
"Licensed physician"	A.R.S. § 36-501
"Mental disorder"	A.R.S. § 36-501
"Mental health provider"	A.R.S. § 36-501
"Outpatient treatment"	A.R.S. § 36-501
"Persistent or acute disability"	A.R.S. § 36-501
"Professional"	A.R.S. § 36-501
"Proposed patient"	A.R.S. § 36-501
"Psychiatrist"	A.R.S. § 36-501
"Psychologist"	A.R.S. § 36-501
"Records"	A.R.S. § 36-501
"Regional Behavioral Health Authority (RBHA)"	A.R.S. § 36-3401
"Seriously Mentally Ill (SMI)"	A.R.S. § 36-550
"Social worker"	A.R.S. § 36-501

B. In this Chapter, unless the context otherwise requires:

"Abuse" means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.

"Administration" means the Arizona Health Care Cost Containment System.

"Agency director" means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, health plan or the Administration, or their designees.

"AHCCCS" means the Arizona Health Care Cost Containment System.

"Applicant" means an individual who:

Submits to a health plan an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or

Is referred to a health plan for a determination of eligibility for behavioral health services according to this Chapter.

"ASH" means the Arizona State Hospital.

"Authorization" means written permission for a mental health agency to release or disclose a client's record or information, containing:

The name of the mental health agency releasing or disclosing the client's record or information;

The purpose of the release or disclosure;

The individual, mental health agency, or entity requesting or receiving the client's record or information;

A description of the client's record or information to be released or disclosed;

A statement:

Of permission for the mental health agency to release or disclose the client's record or information; and

That permission may be revoked at any time;

The date when or conditions under which the permission expires;

The date the document is signed; and

The signature of the client or, if applicable, the client's guardian.

"Behavioral health issue" means an individual's condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.

"Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.

"Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.

"Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.

"Client" means an individual who has a qualifying serious mental illness and is being evaluated or treated for a mental disorder by or through a health plan.

"Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.

"Client who needs special assistance" means a client who has been:

Deemed by a qualified clinician, case manager, clinical team, or health plan to need special assistance in participating in the ISP or ITDP process, which may include, but is not limited to:

A client who requires 24-hour supervision;

A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or

A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or

Otherwise deemed by a program director, the Administration, or an Administrative Law Judge to

need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.

"Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of behavioral health services or community services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor.

"Community services" means services such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

"Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.

"Court-ordered treatment" means treatment ordered by the court under A.R.S. Title 36, Chapter 5.

"Court-ordered evaluation" means evaluation ordered by the court under A.R.S. Title 36, Chapter 5.

"Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.

"Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.

"Department" means the Arizona Department of Health Services.

"Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated in writing by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client's rights and voicing the client's service needs.

"Determining Entity" means either the AHCCCS designee authorized to make SMI determinations or a Tribal Regional Behavioral Health Authority (for each TRBHA, tribal members only) authorized to make the final determination of SMI eligibility.

"Discharge plan" means a hospital or community treatment and discharge plan prepared according to Article 3 of this Chapter.

"Drug used as a restraint" means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client's medical condition or behavioral health issue and is administered to:

Manage the client's behavior in a way that reduces the safety risk to the client or others,

Temporarily restrict the client's freedom of movement.

"DSM" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.

"Emergency safety situation" means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:

The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or

Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that places another individual or individuals in reasonable fear of sustaining injury.

"Exploitation" means the illegal or improper use of a client or a client's resources for another's profit or advantage.

"Frivolous" as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the grievance:

Involves conduct that is not within the scope of this Chapter,

Is impossible on its face, or

Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.

"Generic services" means services other than behavioral health or other services for which clients may have a need and include, but are not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

"Grievance" means a complaint regarding an act, omission or condition, as provided in this Chapter.

"Guardian" means an individual appointed by court order according to A.R.S. Title 14, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.

"Health Plan" means a Regional Behavioral Health Authority (RBHA), health plan, or Arizona Long Term Care Plan under contract with the Administration to coordinate the delivery of behavioral health services members in a geographically specific service area of the state for eligible persons.

"Hearing officer" refers to an impartial person designated by the Office of Administrative Hearing to hear a dispute and render a written decision.

"Human rights advocate" means the human rights advocates appointed by the Administration under R9-21-105.

"Independent Oversight committee" means the committee established under A.R.S. § 41-3803.

"Illegal" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.

"Individual service plan" or "ISP" means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.

"Inhumane" as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.

"Inpatient facility" means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility registered with or funded by or through the Administration to provide behavioral health services, including psychiatric health facilities, psychiatric hospitals, and psychiatric units in general hospitals.

"Inpatient treatment and discharge plan" or "ITDP" means the written plan for services to a client prepared and implemented by an inpatient facility in accordance with Article 3 of this Chapter.

"Long-term view" means a planning statement that identifies, from the client's perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client's unique interests, strengths, and personal desires. It includes predicted times for achievement.

"Mechanical restraint" means any, device, article, or garment attached or adjacent to a client's body that the client cannot easily remove and that restricts the client's freedom of movement or normal access to the client's body, but does not include a device, article, or garment:

Used for orthopedic or surgical reasons, or

Necessary to allow a client to heal from a medical condition or to participate in a treatment program for a medical condition.

"Medical practitioner" means a

Physician,

Physician assistant, or

Nurse practitioner.

"Meeting" means an encounter or assembly of individuals which may be conducted in person or by telephone or by video-conferencing.

"Mental health agency" includes a health plan, service provider, inpatient facility, or an entity that conducts screening and evaluation under Article 5.

"MIHS Behavioral Health Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.

"Nurse" means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.

"Party" or "parties" as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate Independent Oversight committee.

"Personal restraint" means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client's body.

"PRN order" or "Pro re nata medication" means medication given as needed.

"Program director" means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.

"Qualified clinician" means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.

"Region" means the geographical region designated by the Administration in its contract with the health plan.

"Restraint" means personal restraint, mechanical restraint, or drug used as a restraint.

"Seclusion" means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, according to specific provisions of an individual service plan or court order, does not constitute seclusion.

"Seriously mentally ill" means a person 18 years of age or older as defined in A.R.S. § 36-550.

"Service provider" means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, certified by, approved by, registered with, or supervised by the Administration or receiving funds under Title XIX, to provide behavioral health services or community services.

"State Protection and Advocacy System" means the agency designated as the Protection and Advocacy System for individuals with mental illness, according to 42 U.S.C. 10801-10851.

"Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

"Treatment team" means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is in an inpatient facility

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final

rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-102. Applicability

With regard to the provision of behavioral health services or community services to clients under A.R.S. Title 36 Chapter 5, this Chapter shall apply to the Administration and to all mental health agencies. This Chapter shall not apply to the Arizona Department of Corrections.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-103. Computation of Time

For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:

1. The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;
2. If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;
3. If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;
4. If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-103 renumbered from R9-21-104 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-104. Office of Human Rights; Human Rights Advocates

A. An Office of Human Rights shall be established within the Administration. The office shall have its own chief officer who shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of human rights advocates.

B. The chief officer shall appoint at least one human rights advocate for each 2,500 clients in each region. Each region shall have at least one human rights advocate. The chief officer shall appoint at least one human rights advocate for ASH. All clients shall have the right of access to The Office of Human Rights in order to understand, exercise, and protect their rights. The human rights advocate shall advocate on behalf of clients and shall assist clients in understanding and protecting their rights and obtaining needed services. The human rights advocate shall also assist clients in resolving appeals and grievances under Article 4 of this Chapter and shall coordinate and assist the Independent Oversight committees in performing their duties.

C. The human rights advocates shall be given access to all:

1. Clients; and
2. Client records from a service provider, health plan, or the Administration, except as prohibited by federal or state law.

D. Staff of inpatient facilities, health plans, and service providers shall cooperate with the advocate by providing relevant information, reports, investigations, and access to meetings, staff persons, and facilities except as prohibited by federal or state law and the client's right to privacy.

E. An agency director shall notify the health plan and the Office of Human Rights of each client who needs special assistance.

F. The Office of Human Rights shall:

1. Assign a designated representative to each Special Assistance member;
   a. The Office of Human Rights shall assign a natural support if one exists and is willing to act as a designated representative, (e.g. a family member or friend), or
   b. If a natural support does not exist or is unwilling, an Advocate from the Office of Human Rights.
2. Maintain a list that contains the names of each client who needs special assistance and, if applicable, the name and address of the residential program providing behavioral services to the client; and
3. Provide each Independent Oversight committee with a list of all clients who need special assistance who reside in the respective jurisdiction of the Independent Oversight committee.

G. The Administration shall ensure appropriate Independent Oversight committees have access to copies of all reports received according to this Chapter (e.g., reports regarding clients who need special assistance, allegations of mistreatment, denial of rights, restraint, and seclusion).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-104 renumbered to R9-21-103; new Section R9-21-104 renumbered from R9-21-105 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-105. Independent Oversight Committees

A. According to A.R.S. §§ 41-3803 and 41-3804, the Department of Administration shall establish Independent Oversight committees to provide independent oversight to ensure that the rights of clients are protected. The Administration shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights committee, if more than 2,500 clients reside within a region, the Administration shall establish additional human rights committees until there is one human rights committee for each 2,500 clients in a region.

B. Each human rights committee shall be composed of at least seven and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be

parents of enrolled children and at least three members shall have expertise in one of the following areas: psychology, law, medicine, education, special education, social work, or behavioral health services.

C. The Department of Administration shall appoint the initial members to each regional committee and the Independent Oversight committee for the Arizona State Hospital. Members shall be appointed to fill vacancies on an Independent Oversight committee, subject to the approval of the committee.

D. Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the Administration for approval.

E. No employee or individual under contract with the Administration, regional authority, or service provider may be a voting member of a committee.

F. If a member of an Independent Oversight committee or the Independent Oversight committee determines that a member has a conflict of interest regarding an agenda item, the member shall refrain from:
1. Participating in a discussion regarding the agenda item, and
2. Voting on the agenda item.

G. Each committee shall, within its respective jurisdiction, provide independent oversight and review of:
1. Allegations of illegal, dangerous, or inhumane treatment of clients;
2. Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents, or injuries;
3. The provision of services to clients identified under R9-21-301 in need of special assistance;
4. Violations of rights of clients and conditions requiring investigation under Article 4 of this Chapter;
5. Research in the field of mental health according to A.R.S. § 41-3804(E); and
6. Any other issue affecting the human rights of clients.

H. Within its jurisdiction, each Independent Oversight committee shall, for a client who needs special assistance, and may, for other clients:
1. Make regular site visits to residential environments;
2. Meet with the client, including a client who needs special assistance, in residential environments to determine satisfaction of the clients with the residential environments; and
3. Inspect client records, upon written request to the Administration, including client records for clients who need special assistance, except as prohibited by federal or state law and a client's right to privacy.

I. A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Administration or health plan subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee, be a member of another committee or an employee of the Administration, health plan, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.

J. Committee members and committee consultants and staff persons shall have access to client records according to A.R.S. §§ 36-509(A)(11) and 41-3804(I). If an Independent Oversight committee's request for information or records is denied, the committee may request a review of the decision to deny the request according to A.R.S. § 41-3804(J). Nothing in this Section shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.

K. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Department of Administration according to A.R.S. § 41-3804, and make any recommendations for changes it believes the Administration or health plans should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the Administration.

L. The Department of Administration shall provide training and support to Independent Oversight committees.

M. An Independent Oversight committee may request:
1. An investigation for a client according to this Chapter, or
2. A health plan or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.

N. The health plan or the Arizona State Hospital, as applicable, when requested by an Independent Oversight committee, shall conduct an investigation concerning a client as provided in Article 4 of this Chapter.

O. An Independent Oversight committee shall submit an annual report of the Independent Oversight committee's activities and recommendations to the Director at the end of each calendar year according to A.R.S. § 41-3804(G).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-105 renumbered to R9-21-104; new Section R9-21-105 renumbered from R9-21-106 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-106. State Protection and Advocacy System

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, 42 U.S.C. 10801-10851. Nothing in this Section shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by this Chapter.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to

Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Former Section R9-21-106 renumbered to R9-21-105; new Section R9-21-106 renumbered from R9-21-107 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-107. Renumbered

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-106 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-201. Civil and Other Legal Rights

A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through 36-517.02. Any individual or agency providing behavioral health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:

1. Those civil rights set forth in A.R.S. § 36-506;
2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's licenses, unless the client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;
3. The right to be free from unlawful discrimination by the Administration or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the Administration as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
7. The right to communicate including:
   a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
   b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to receive assistance when desired and necessary to implement this right;
8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental health agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;
10. The right to privacy, including the right not to be fingerprinted and photographed without authorization, except as provided by A.R.S. § 36-507(2);
11. The right to be informed, in appropriate language and terms, of client rights;
12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of this Chapter, and the right not to be retaliated against for filing a grievance;
13. The right of access to the Office of Human Rights to request assistance in order to understand, exercise, and protect a client's rights;
14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this Chapter shall be construed to require the Administration or any mental health agency to pay for the services of an attorney who consults with or represents a client;
15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of behavioral health services or community services set forth in A.R.S. §§ 36-504 through 36-517.02;
16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.

B. Nothing in this Article shall be interpreted to:

1. Give the power, right, or authority to any person or mental health agency to authorize sterilization, abortion, or psychosurgery with respect to any client, except as may otherwise be provided by law; or
2. Restrict the right of physicians, nurses, and emergency medical technicians to render emergency care or treatment in accordance with A.R.S. § 36-512; or
3. Construe this rule to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to

Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-202. Right to Support and Treatment

A. A client has the following rights with respect to the client's support and treatment:

1. The right to behavioral health services or community services:
   a. Under conditions that support the client's personal liberty and restrict personal liberty only as provided by law or in this Chapter;
   b. From a flexible service system that responds to the client's needs by increasing, decreasing and changing services as needs change;
   c. Provided in a way that:
      i. Preserves the client's human dignity;
      ii. Respects the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
      iii. Encourages the client's self-determination, freedom of choice, and participation in treatment to the client's fullest capacity;
      iv. Ensures the client's freedom from the discomfort, distress and deprivation that arise from an unresponsive and inhumane environment;
      v. Protects and promotes the client's privacy, including an opportunity whenever possible to be provided clearly defined private living, sleeping and personal care spaces; and
      vi. Maximizes integration of the client into the client's community through services which are located in residential neighborhoods, rely as much as possible on generic support services to provide training and assistance in ordinary community experiences, and utilize specialized mental health programs that are situated in or near generic community services;
      vii. Offers the client humane and adequate support and treatment that is responsive to the client's needs, recognizes that the client's needs may vary, and is capable of adjusting to the client's changing needs; and
   d. That provide the client with an opportunity to:
      i. Receive services that are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
      ii. Receive treatment and services that are culturally sensitive in structure, process and content;
      iii. Receive services on a voluntary basis to the maximum extent possible and entirely if possible;
      iv. Live in the client's own home;
      v. Undergo normal experiences, even though the experiences may entail an element of risk, unless the client's safety or well-being or that of others is unreasonably jeopardized; and
      vi. Engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.
2. The right to ongoing participation in the planning of services as well as participation in the development and periodic revision of the individual service plan;
3. The right to be provided with a reasonable explanation of all aspects of one's condition and treatment;
4. The right to give informed consent to all behavioral health services and the right to refuse behavioral health services in accordance with A.R.S. §§ 36-512 and 36-513, except as provided for in A.R.S. §§ 36-520 through 36-544 and 13-3994;
5. The right not to participate in experimental treatment without voluntary, written informed consent; the right to appropriate protection associated with such participation; and the right and opportunity to revoke such consent;
6. The right to a humane treatment environment that affords protection from harm, appropriate privacy, and freedom from verbal or physical abuse;
7. The right to enjoy basic goods and services without threat of denial or delay. For residential service providers, these basic goods and services include at least the following:
   a. A nutritionally sound diet of wholesome and tasteful food available at appropriate times and in as normal a manner as possible;
   b. Arrangements for or provision of an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually chosen and owned;
   c. Assistance in securing prompt and adequate medical care, including family planning services, through community medical facilities;
   d. Opportunities for social contact in the client's home, work or schooling environments;
   e. Opportunities for daily activities, recreation and physical exercise;
   f. The opportunity to keep and use personal possessions; and
   g. Access to individual storage space for personal possessions;
8. The right to be informed, in advance, of charges;
9. The right to a continuum of care in a unified and cohesive system of community services that is well integrated, facilitates the movement of clients among programs, and ensures continuity of care;
10. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, supportive housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance;
11. The right to a continuum of care with programs that offer different levels of intensity of services in order to meet the individual needs of each client;
12. The right to appropriate mental health treatment, based on each client's individual and unique needs, and to those community services from which the client would reasonably benefit;
13. The right to community services provided in the most normal and least restrictive setting, according to the least restrictive means appropriate to the client's needs;
14. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the

provision of services and ensures the client's smooth transition with service providers and among agencies;

15. The right to participate in treatment decisions and in the development and implementation of the client's ISP, and the right to participate in choosing the type and location of services, consistent with the ISP;
16. The right to prompt consideration of discharge from an inpatient facility and the identification of the steps necessary to secure a client's discharge as part of an ISP;
17. The rights prescribed in Articles 3 and 4 of this Chapter, including the right to:
    a. A written individual service plan;
    b. Assert grievances; and
    c. Be represented by a qualified advocate or other designated representative of the client's choosing in the development of the ISP and the inpatient treatment and discharge plan and in the grievance process, in order to understand, exercise and protect the client's rights.

B. Subsection (A) shall not be construed to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-203. Protection from Abuse, Neglect, Exploitation, and Mistreatment

A. No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action or omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:

1. Abuse, neglect, or exploitation;
2. Corporal punishment;
3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;
5. Incitement or encouragement of clients or others to mistreat a client;
6. Transfer or the threat of transfer of a client for punitive reasons;
7. Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the Administration; or
9. Commercial exploitation.

B. The following special sanctions shall be available to the Department and/or the Administration, in addition to those set forth in 9 A.A.C. 10, Article 10 of the Department's rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.

1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of financial assistance, and, with respect to employees of the mental health agency, grounds for disciplinary action, which may include dismissal.
2. Failure of an employee of the Administration to report any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
3. Failure of a mental health agency to report client deaths and allegations of sexual and physical abuse to the Administration and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for revocation of provider participation agreement of the mental health agency or the provision of financial assistance, and, with respect to a service provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.
4. A mental health agency shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the health plan for review and monitoring in accordance with R9-21-105.

C. A mental health agency shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.

D. If a mental health agency has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.

E. The identity of persons making reports of abuse, neglect, exploitation, or mistreatment shall not be disclosed by the mental health agency or by the Administration, except as necessary to investigate the subject matter of the report.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-204. Restraint and Seclusion

A. A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, and other applicable federal or state law.

B. A mental health agency shall only use restraint or seclusion:

1. To ensure the safety of the client or another individual in an emergency safety situation;
2. After other available less restrictive methods to control the client's behavior have been tried and were unsuccessful;
3. Until the emergency safety situation ceases and the client's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired; and
4. In a manner that:
    a. Prevents physical injury to the client,
    b. Minimizes the client's physical discomfort and mental distress, and

c. Complies with the mental health agency's policies and procedures required in subsection (E) and with this Section.

C. A mental health agency shall not use restraint or seclusion as a means of coercion, discipline, convenience, or retaliation.

D. A service provider shall at all times have staff qualified on duty to provide:
1. Restraint and seclusion according to this Section, and
2. The behavioral health services the mental health agency is authorized to provide.

E. A mental health agency shall develop and implement written policies and procedures for the use of restraint and seclusion that are consistent with this Section and other applicable federal or state law and include:
1. Methods of controlling behavior that may prevent the need for restraint or seclusion,
2. Appropriate techniques for placing a client in each type of restraint or seclusion; used at the mental health agency, and
3. Immediate release of a client during an emergency.

F. A mental health agency shall develop and implement a training program on the policies and procedures in subsection (E).

G. A mental health agency shall only use restraint or seclusion according to:
1. A written order given:
   a. By a physician providing treatment to a client; or
   b. If a physician providing treatment to a client is not present on the premises or on-call:
      i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
      ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC, by a medical practitioner.
2. An oral order given to a nurse by:
   a. A physician providing treatment to a client, or
   b. If a physician providing treatment to a client is not present on the premises or on-call:
      i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
      ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, by a medical practitioner.

H. If a restraint or seclusion is used according to subsection (G)(2), the individual giving the order shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for:
1. If the agency is licensed as a level 1 psychiatric acute hospital, a physician to examine the client as soon as possible and, if applicable, the physician shall examine the client as soon as possible; or
2. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, a medical practitioner to examine the client as soon as possible and, if applicable, the medical practitioner shall examine the client as soon as possible.

I. An individual who gives an order for restraint or seclusion shall:
1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;
2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;
3. Include the following information on the order:
   a. The name of the individual ordering the restraint or seclusion,
   b. The date and time that the restraint or seclusion was ordered,
   c. The restraint or seclusion ordered,
   d. The criteria for release from restraint or seclusion without an additional order, and
   e. The maximum duration for the restraint or seclusion;
4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.
5. If the order is for a drug used as a restraint, limit the:
   a. Dosage to that necessary to achieve the desired effect, and
   b. Drug ordered to a drug other than a time-released drug designed to be effective for more than three hours; and
6. If the individual ordering the use of restraint or seclusion is not a physician providing treatment to the client:
   a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and
   b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.

J. PRN orders shall not be used for any form of restraint or seclusion.

K. If an individual has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:
1. For a behavioral health agency licensed as a level 1 psychiatric acute hospital, a physician or nurse practitioner who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion; or
2. For a behavioral health agency licensed as a level 1 RTC or a level 1 sub-acute agency a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion.

L. A face-to-face assessment of a client according to subsection (K) shall include a determination of:
1. The client's physical and psychological status,
2. The client's behavior,
3. The appropriateness of the restraint or seclusion used,
4. Whether the emergency safety situation has passed, and
5. Any complication resulting from the restraint or seclusion used.

M. For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:
1. The nature of the restraint or seclusion;
2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
3. The types of less restrictive alternatives that were attempted and the reasons for the failure of the less restrictive alternatives;

4. The name of each individual authorizing the use of restraint or seclusion and each individual restraining or secluding a client or monitoring a client who is in restraint or seclusion;
5. The evaluation and assessment of the need for seclusion or restraint conducted by the individual who ordered the restraint or seclusion;
6. The determination and the reasons for the determination made according to subsection (H);
7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
8. The date and times the restraint or seclusion actually began and ended;
9. The time and results of the face-to-face assessment required in subsection (L);
10. For the monitoring of a client in restraint or seclusion required by subsection (P):
    a. The time of the monitoring,
    b. The name of the staff member who conducted the monitoring, and
    c. The observations made by the staff member during the monitoring; and
11. The outcome of the restraint or seclusion.

N. If, at any time during a seclusion or restraint, a medical practitioner or registered nurse determines that the emergency which justified the seclusion or restraint has subsided, or if the required documentation reflects that the criteria for release have been met, the client shall be released and the order terminated. The client shall be released no later than the end of the period of time ordered for the restraint or seclusion, unless a the order for restraint or seclusion is renewed according to subsection (Q).

O. For any client in restraint, the individual ordering the restraint shall determine whether one-to-one supervision is clinically necessary and shall document the determination and the reasons for the determination in the client's record.

P. A mental health agency shall monitor a client in restraint or seclusion as follows:
1. The client shall be personally examined at least every 15 minutes for the purpose of ensuring the client's general comfort and safety and determining the client's need for food, fluid, bathing, and access to the toilet. Personal examinations shall be conducted by staff members with documented training in the appropriate use of restraint and seclusion and who are working under the supervision of a licensed physician, nurse practitioner or registered nurse.
2. A registered nurse shall personally examine the client every hour to assess the status of the client's mental and physical condition and to ensure the client's continued well-being.
3. If the client has any medical condition that may be adversely affected by the restraint or seclusion, the client shall be monitored every five minutes, until the medical condition resolves, if applicable.
4. If other clients have access to a client being restrained or secluded or, if the individual ordering the restraint or seclusion determines that one-to-one supervision is clinically necessary according to subsection (O), a staff member shall continuously supervise the client on a one-to-one basis.
5. If a mental health agency maintains a client in a mechanical restraint, a staff member shall loosen the mechanical restraints every 15 minutes.
6. Nutritious meals shall not be withheld from a client who is restrained or secluded, if mealtimes fall during the period of restraint. Staff shall supervise all meals provided to the client while in restraint or seclusion.
7. At least once every two hours, a client who is restrained or secluded shall be given the opportunity to use a toilet.

Q. An order for restraint or seclusion may be renewed as follows:
1. For the first renewal order, the order shall meet the requirements of subsection (G)(1) or (G)(2); and
2. For a renewal order subsequent to the first renewal order:
    a. The individual in (G)(1) or (G)(2) shall personally examine the client before giving the renewal order, and
    b. The order shall not permit the continuation of the restraint or seclusion for more than 12 consecutive hours unless the requirements of subsection (P) are met.

R. No restraint or seclusion shall continue for more than 12 consecutive hours without the review and approval by the medical director or designee of the mental health agency in consultation with the client and relevant staff to discuss and evaluate the needs of the client. The review and approval, if any, and the reasons justifying any continued restraint or seclusion shall be documented in the client's record.

S. If a client requires the repeated or continuous use of restraint or seclusion during a 24-hour period, a review process shall be initiated immediately and shall include the client and all relevant staff persons and clinical consultants who are available to evaluate the need for an alternative treatment setting and the needs of the client. The review and its findings and recommendations shall be documented in the client's record.

T. Whenever a client is subjected to extended or repeated orders for restraint or seclusion during a 30-day period, the medical director shall require a special meeting of the client's clinical team according to R9-21-314 to determine whether other treatment interventions would be useful and whether modifications of the ISP or ITDP are required.

U. As part of a mental health agency's quality assurance program, an audit will be conducted and a report filed with the agency's medical director within 24 hours, or the first working day, for every episode of the use of restraint or seclusion to ensure that the agency's use of seclusion or restraint is in full compliance with the rules set forth in this Article.

V. Not later than the tenth day of every month, the program director shall prepare and file with the Administration and the Office of Human Rights a written report describing the use of any form of restraint or seclusion during the preceding month in the mental health agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.

W. The Office of Human Rights, and any applicable human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.

X. If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigat-

ing the matter itself or referring the matter to the Administration for remedial action.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-205. Labor

A. No client shall be required to perform labor which involves the essential operation and maintenance of the service provider or the regular care, treatment or supervision of other clients, provided however, that:

1. Only a residential service provider may require clients to perform activities related to maintaining their bedrooms, other personal areas, and their clothing and personal possessions in a neat and clean manner.
2. Clients may perform labor in accordance with a planned and supervised program of vocational and rehabilitation training as set forth in an ISP or ITDP developed according to Article 3 of this Chapter.

B. Any client may voluntarily perform any labor available.

C. The requirements of federal and state laws relating to wages, hours of work, workers' compensation and other labor standards shall be met with respect to all labor.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-206. Competency and Consent

A. A client shall not be deemed incompetent to manage the client's affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to make wills, to vote or to exercise any other civil or legal right solely by reason of admission to a mental health agency.

B. An applicant or client is presumed to be legally competent to conduct the client's personal and financial affairs, unless otherwise determined by a court in a guardianship or conservatorship proceeding.

C. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. A mental health agency shall use the following criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client:

1. An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.
3. If the applicant or client has been determined to be incapable of making important decisions with regard to the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
4. If the applicant or client is capable of making important decisions concerning the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.
5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this Chapter shall be construed to require the Administration or any health plan or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
6. The assessment or periodic review shall identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.

D. Mental health agencies shall devise and implement procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee, or other fiduciary are reported to the court or other appropriate authorities.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-206.01. Informed Consent

A. Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:
1. Before providing a client a treatment with known risks or side effects, including:
   a. Psychotropic medication,
   b. Electro-convulsive therapy, or
   c. Telemedicine;
2. Before a client participates in research activities; and
3. Before admitting a client to any medical detoxification, inpatient facility, or residential program operated by a mental health agency.

B. The informed consent in subsection (A) shall be voluntary and shall be obtained from:
1. The client, if the client is determined to be competent according to R9-21-206; or
2. The client's guardian, if a court of competent jurisdiction has adjudicated the client incompetent.

C. If informed consent is required according to subsection (A), a medical practitioner or a registered nurse with at least one year of behavioral health experience shall, before obtaining the informed consent, provide a client or, if applicable, the client's guardian with the following information:
1. The client's diagnosis;
2. The nature of and procedures involved with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
3. The intended outcome of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
4. The risks, including any side effects, of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
5. The risks of not proceeding with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
6. The alternatives to the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency, particularly alternatives offering less risk or other adverse effects;
7. That any informed consent given may be withheld or revoked orally or in writing at any time, with no punitive action taken against the client;
8. The potential consequences of revoking the informed consent; and
9. A description of any clinical indications that might require suspension or termination of the proposed treatment, research activity, or program operated by a mental health agency.

D. A client or, if applicable, the client's guardian who gives informed consent for a treatment, participation in a research activity, or admission in a program operated by a mental health agency, shall give the informed consent by:
1. Signing and dating an acknowledgment that the client or, if applicable, the client's guardian has received the information in subsection (C) and gives informed consent to the proposed treatment, participation in a research activity, or admission of the client to the program operated by a mental health agency; or
2. If the informed consent is for use of psychotropic medication or telemedicine and the client or, if applicable the client's guardian, refuses to sign an acknowledgement according to subsection (D)(1), giving verbal informed consent.

E. If a client or, if applicable, a client's guardian gives verbal informed consent according to subsection (D)(2), a medical practitioner shall document in the client's record that:
1. The information in subsection (C) was given to the client or, if applicable, the client's guardian;
2. The client or, if applicable, the client's guardian refused to sign an acknowledgement according to subsection (D)(1); and
3. The client or, if applicable, the client's guardian gives informed consent to the use of the psychotropic medication or telemedicine.

F. A client or, if applicable, the client's guardian may revoke informed consent at any time orally or by submitting a written statement revoking the informed consent.

G. If informed consent is revoked according to subsection (F):
1. The treatment, the client's participation in a research activity, or the applicant's or client's admission to a program operated by a mental health agency shall be immediately discontinued, or
2. If abrupt discontinuation of a treatment poses an imminent risk to a client, the treatment shall be phased out to avoid any harmful effects.

H. If a client or, if applicable, the client's guardian needs assistance with revoking informed consent according to subsection (F), the client or, if applicable, the client's guardian shall receive the assistance.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-207. Medication

A. Medication shall only be administered with the informed consent of the client or Title 36 guardian. Information relating to common risks and side effects of the medication, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of the drug therapy shall be available to the client, guardian, if any, and the staff in every mental health agency. Such information shall be available to family members in accordance with A.R.S. §§ 36-504, 36-509, and 36-517.01.

B. All clients have a right to be free from unnecessary or excessive medication.

C. Medication shall not be used as punishment, for the convenience of the staff, or as a substitute for other behavioral health services and shall be given in the least amount medically necessary with particular emphasis placed on minimizing side effects which otherwise would interfere with aspects of treatment.

D. Medication administered by a mental health agency shall be prescribed by a licensed physician, certified physician assistant, or a licensed nurse practitioner.

1. Psychotropic medication shall be prescribed by:
   a. A psychiatrist who is a licensed physician; or
   b. A licensed nurse practitioner, certified physician assistant, or physician trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the client's medical history or, in an emergency, is at least familiar with the client's medical history.
2. Each client receiving psychotropic medication shall be seen monthly or as indicated in the client's ISP by a licensed nurse practitioner, certified physician's assistant or physician prescribing the medication, who shall note in the client's record:
   a. The appropriateness of the current dosage,
   b. All medication being taken by the client and the appropriateness of the mixture of medications,
   c. Any signs of tardive dyskinesia or other side effects,
   d. The reason for the use of the medication, and
   e. The effectiveness of the medication.
3. When a client on psychotropic medication receives a yearly physical examination, the results of the examination shall be reviewed by the physician prescribing the medication. The physician shall note any adverse effects of the continued use of the prescribed psychotropic medication in the client's record.
4. Whenever a prescription for medication is written or changed, a notation of the medication, dosage, frequency of administration, and the reason why the medication was ordered or changed shall be entered in the client's record.

E. Self-administration of medication by clients shall be permitted unless otherwise restricted by the responsible physician or licensed nurse practitioner. Such clients shall be trained in self-administration of medication and, if necessary, shall be monitored by trained staff.

F. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

G. PRN orders for medication shall not be given for a drug used as a restraint.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-208. Property and Possessions

A. No mental health agency shall interfere with a client's right to acquire, retain and dispose of personal property, including the right to maintain an individual bank account, except where:
1. The client is under guardianship, conservatorship, or has a representative payee;
2. Otherwise ordered by court; or
3. A particular object, other than money or personal funds, poses an imminent threat of serious physical harm to the client or others. Any restriction on the client's control of property deemed to pose an imminent threat of serious physical harm shall be recorded in the client's record together with the reasons the particular object poses an imminent threat of serious physical harm to the client or others.

B. If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of $250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest shall become the property of the client or the fair allocation of the interest in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.
1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
2. The mental health agency shall obtain prior written permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The permission shall set forth the terms and conditions of the arrangement.
3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
   a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by a client fee schedule authorized by the Administration;
   b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
   c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
   d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
   e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated management responsibilities to the receiving mental health agency;
   f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
   g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.
5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-209. Records

A. Records of a client who is currently receiving or has received services from a mental health agency are private and shall be disclosed only to those individuals authorized according to federal and state law.

B. Inspection by the client, the client's guardian, attorney, paralegal working under the supervision of an attorney, or any other designated representative shall be permitted as follows:

1. Except as prohibited by federal and state law, the client and, if applicable, the client's guardian shall be permitted to inspect and copy the client's record as soon as possible after a request, and no later than 10 working days after a request. If any portion of the client record is withheld under federal or state law, the mental health agency shall provide written notice to the client or, if applicable, the client's guardian including:
   a. The reason the mental health agency is withholding a portion of the client's record,
   b. An explanation of the client's right to a review of the decision to withhold a portion of the client's record, and
   c. An explanation of the client's right to file a grievance according to Article 4 of this Chapter.
2. An attorney, paralegal working under the supervision of an attorney, or other designated representative of the client shall be permitted to inspect and copy the record, if such attorney or representative furnishes written authorization from the client or guardian.
3. When necessary for the understanding of the client or guardian and, if the client or the client's guardian provides authorization, when necessary for the understanding of an attorney, paralegal working under the supervision of an attorney, or designated representative, staff of the mental health agency possessing the records shall read or interpret the record for the client, guardian, attorney, paralegal working under the supervision of an attorney, or designated representative.

C. Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:

1. Records of a client may be available to those individuals and agencies listed in A.R.S. § 36-509.
2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible.
4. Records of a client shall be made available to staff authorized by the Administration to monitor the quality of services being provided by the mental health agency to the client.
5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B). Except when inspection of a client's record is required under a proper judicial order or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.

D. Unless otherwise permitted by federal or state law, records shall be open to inspection by other third parties only upon the authorization of the client or guardian. Before authorization is given, the client or guardian shall be offered an opportunity to examine the information to be disclosed and be provided with the name of the recipient and uses to be made of the information.

E. The fee for copying records obtained under this Section shall be no more than the actual expense of reproducing the record or the requested parts and may be limited further by A.R.S. § 12-2295.

F. A client or guardian shall be informed of a court order or subpoena commanding production of a client's record as soon as possible and in any event prior to the date for production and of the client's or guardian's right to request the court to quash or modify the order or subpoena.

G. The records maintained by the mental health agency shall contain accurate, complete, timely, pertinent, and relevant information.

1. If a client or guardian believes that the record contains inaccurate or misleading information, the client or guardian may prepare, with assistance if requested, a statement of disagreement which shall be entered in the record.
2. If a client or guardian objects to the collection of the information in the record, the client or guardian may file a grievance according to Article 4 of this Chapter.

H. A list shall be kept of every person or organization who inspects the client's records, other than the client's clinical team, the uses to be made of that information, and the person authorizing access. A list of such access shall be placed in the client's record and shall be made available to the client or other designated representative.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-210. Policies and Procedures of Service Providers

A. A mental health agency may establish policies and procedures for the provision of behavioral health services or community services that are consistent with Articles 1 through 5 of these rules and with all other requirements of Arizona law. No policy or procedure may restrict any right protected by these rules.

B. The mental health agency shall inform all prospective clients of its policies and procedures prior to the client or, if applicable, the client's guardian giving informed consent to the cli-

ent's admission to the program according to R9-21-206.01(A)(3).

C. If a client acts in a manner that is seriously in disregard of a reasonable policy, the agency director shall make all reasonable efforts to respond to the situation, including making reasonable accommodation to the program's policy if the client's failure to conform to a reasonable policy is due to the client's disability.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-211. Notice of Rights

A. Every mental health agency shall provide written notice of the civil and legal rights of its clients by posting a copy of AHCCCS Form MH-211, "Notice of Client's Rights," set forth in Exhibit A, in one or more areas of the agency so that it is readily visible to clients and visitors.

B. In addition to posting as required by subsection (A), a copy of ADHS Form MH-211, set forth in Exhibit B, shall be given to each client, or guardian if any, at the time of admission to the agency for evaluation or treatment. The person receiving the notice shall be required to acknowledge in writing receipt of the notice and the acknowledgment shall be retained in the client's record.

C. Every mental health agency shall provide written notice of the terms of A.R.S. § 36-506 to each client upon discharge by giving the client a copy of ADHS Form MH-209, "Discrimination Prohibited".

D. All notices required under this Section shall be provided and posted in both English and Spanish.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness

If you have a serious or chronic mental illness, you have legal rights under federal and state law. Some of these rights include:

- The right to appropriate mental health services based on your individual needs;
- The right to participate in all phases of your mental health treatment, including individual service plan (ISP) meetings;
- The right to a discharge plan upon discharge from a hospital;
- The right to consent to or refuse treatment (except in an emergency or by court order);
- The right to treatment in the least restrictive setting;
- The right to freedom from unnecessary seclusion or restraint;
- The right not to be physically, sexually, or verbally abused;
- The right to privacy (mail, visits, telephone conversations);
- The right to file an appeal or grievance when you disagree with the services you receive or your rights are violated;
- The right to choose a designated representative(s) to assist you in ISP meetings and in filing grievances;
- The right to a case manager to work with you in obtaining the services you need;
- The right to a written ISP that sets forth the services you will receive;
- The right to associate with others;
- The right to confidentiality of your psychiatric records;
- The right to obtain copies of your own psychiatric records (unless it would not be in your best interests to have them);
- The right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days;
- The right not to be discriminated against in employment or housing.

If you would like information about your rights, you may request a copy of the "Your Rights in Arizona as an Individual with Serious Mental Illness" brochure or you may also call Administration, Office of Human Rights at 1-800-421-2124.

ADHS/BHS Form MH-211 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 21, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

Exhibit B. Notice of Legal Rights for Persons with Serious Mental Illness

NOTICE
Discrimination Prohibited
Pursuant to A.R.S. § 36-506 and R9-21-101(B)

A. Persons undergoing evaluation or treatment pursuant to this Chapter shall not be denied any civil right, including, but not limited to, the right to dispose of property, sue and be sued, enter into contractual relationships and vote. Court-ordered treatment or evaluation pursuant to this Chapter is not a determination of legal incompetency, except to the extent provided in A.R.S. § 36-512.

B. A person who is or has been evaluated or treated in an agency for a mental disorder shall not be discriminated against in any manner, including but not limited to:

1. Seeking employment.
2. Resuming or continuing professional practice or previous occupation.
3. Obtaining or retaining housing.
4. Obtaining or retaining licenses or permits, including but not limited to, motor vehicle licenses, motor vehicle operator's and chauffeur's licenses and professional or occupational licenses.

C. "Discrimination" for purposes of this Section means any denial of civil rights on the grounds of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet the standards applicable to all persons. Applications for positions, licenses and housing shall contain no requests for information which encourage such discrimination.

D. Upon discharge from any treatment or evaluation agency, the patient shall be given written notice of the provisions of this Section.

AVISO
Discriminacion Prohibida
Conforme a A.R.S. § 36-506 y R9-21-101(B)

A. A las personas que estan bajo evaluacion o tratamiento conforme a este capitulo, no se les negara ningun derecho civil, incluyendo pero no limitado a, el derecho a disponer de propiedad, a demandar y ser demandado, a tomar parte en relaciones contractuales y a votar. El tratamiento o evaluacion ordenado por la corte conforme a este capitulo no es una determinacion de incompetencia legal, excepto hasta el punto proveido en la seccion 36-512.

B. No se haran discriminaciones de ninguna clase, en contra de una persona que ha sido o esta siendo evaluada o tratada en una agencia debido a un desorden mental, incluyendo pero no limitado a:
1. Buscar trabajo.
2. Reasumir o continuar una practica profesional u ocupacion previa.
3. Obtener o retener vivienda.
4. Obtener o retener licencias o permisos, incluyendo pero no limitado a, licencias para vehiculo de motor, licencias de operador de vehiculo de motor y de chofer, y licencias ocupacionales o profesionales.

C. "Discriminacion" para propositos de esta seccion quiere decir cualquier denegacion de derechos civiles por motives de hospitalizacion o tratamiento externo no relacionado a la capacidad actual de la persona para cumplir con las normas aplicables a toda persona. Las solicitudes para posiciones, licencias y vivienda no contendran peticion de informacion que pueda fomentar tal discriminacion.

D. Al ser dado de alta de cualquier agencia de tratamiento o evaluacion, se dara al paciente notificacion por escrito sobre las provisiones de esta seccion.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-301. General Provisions

A. Responsibilities of the regional authority, clinical team, and case manager.
1. The regional authority is responsible for providing, purchasing, or arranging for all services identified in ISPs.
   a. The regional authority shall perform all intake and case management for its region. The regional authority may contract with a mental health agency to perform intake or case management but only with the written approval of the Administration, which may be given in its sole discretion.
   b. Other services may be provided directly by programs operated by the Administration or by the regional authority through contracts with service providers, or through arrangements with other agencies or generic providers.
2. The regional authority and the clinical team shall work diligently to ensure equal access to generic services for its clients in order to integrate the client into the mainstream of society.
3. The initial clinical team shall work to meet the individual's needs from the date of application or referral for services until such time as eligibility is established and an ISP is developed.
4. The assigned clinical team shall be primarily responsible for providing continuous treatment, outreach and support to a client, for identifying appropriate behavioral health services or community services, and for developing, implementing and monitoring ISPs for clients.
5. The case manager, in conjunction with the clinical team, shall:
   a. Locate services identified in the ISP;
   b. Confirm the selection of service providers and include the names of such providers in the ISP;
   c. Obtain a written client service agreement from each provider;
   d. Be responsible for ensuring that services are actually delivered in accordance with the ISP; and
   e. Monitor the delivery of services rendered to clients. Monitoring shall consider, at a minimum, the consistency of the services with the goals and objectives of the ISP.
6. The case manager shall also be responsible to:
   a. Initiate and maintain close contact with clients and service providers;
   b. Provide support and assistance to a client, with the client's permission and consistent with the client's individual needs;
   c. Ensure that each service provider participates in the development of the ISP for each client of the service provider;
   d. Ensure that each inpatient facility, according to R9-21-312, develops an ITDP that is integrated in and consistent with the ISP;
   e. Assess progress toward, and identify impediments to, the achievement of the client's goals and objectives identified in the ISP;
   f. Promote client involvement in the development, review, and implementation of the ISP;
   g. Attempt to resolve problems and disagreements with respect to any component of the ISP;
   h. Assist in resolving emergencies concerning the implementation of the ISP;
   i. Attend all periodic reviews of the ISP and ITDP meetings;
   j. Assist in the exploration of less restrictive alternatives to hospitalization or involuntary commitment; and
   k. Otherwise coordinate services provided to the client.
7. If a case manager is assigned to a client who, at any time, is admitted to an inpatient facility, the case manager shall ensure the development, modification or revision of a client's ISP and the integration of the ITDP according to this Article.
   a. The inpatient facility clinician responsible for coordinating the ITDP shall immediately notify the client's case manager of the time of the admission and ensure that all treatment and discharge planning includes the case manager.
   b. The case manager shall be provided notice of all treatment and discharge meetings, shall participate as a full member of the inpatient facility treatment

team in such meetings, shall receive periodic and other reports concerning the client's treatment, and shall be responsible for identifying and securing appropriate community services to facilitate the client's discharge.

c. If no case manager has been assigned, the inpatient facility clinician primarily responsible for the client's inpatient care shall, within three days of admission, make a referral to the appropriate regional authority for the appointment of a case manager.

d. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the clinically appropriate discharge of a client from an inpatient facility.

e. Inpatient facilities shall establish a mechanism for the credentialing of case managers and other members of the clinical team in order that they may participate in ITDP meetings.

B. Client participation in service planning.

1. It is the responsibility of the regional authority and its service providers to engage in service planning, including the provision of assessments, case management, ISPs, ITDPs, and service referrals, according to the provisions of these rules for the benefit of clients requesting, receiving or referred for behavioral health services or community services. Clients and the clients' guardians may refuse to participate in or to receive any service planning. In the event of such refusal, service planning shall not be provided unless:
   a. There is an emergency in which a qualified clinician determines that immediate intervention is necessary to prevent serious harm to the client or others; or
   b. The client is subject to court-ordered evaluation or treatment.
2. A client's refusal to accept a particular service, including case management services, or a particular mode or course of treatment, shall not be grounds for refusing a client's access to other services that the client accepts.
3. A physical examination shall not be conducted over a client's refusal unless the examination is consented to by the client's guardian, or the examination is otherwise required by court order.
4. A decision to provide services, including assessment, service planning, and case management services, to a client who is refusing such services, or a decision not to provide such services to such an individual, may be appealed according to the provisions of R9-21-401. This subsection does not limit the rights of a client to accept, reject, or appeal particular results of the service planning process as identified in other applicable provisions of these rules.

C. Clients with special needs.

1. Whenever, according to an assessment or in the development or review of any plan prepared under this Article, it is determined that a client is a client who needs special assistance or a client who needs counsel or advice in making treatment decisions or in enforcing the client's rights, the case manager shall:
   a. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committee of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
   b. If the client does not have a guardian, identify a friend, relative, or other person who is willing to serve as a designated representative of the client.
2. The clinical team shall make arrangements to have qualified interpreters or other reasonable accommodations, including qualified interpreters for the deaf, present at any assessment, meeting, service delivery, notice, review, or grievance for clients who cannot converse adequately in spoken English.
3. Clients who are incarcerated in jails shall receive ISPs in accordance with R9-21-307. If legitimate security requirements of any jail in which a client is incarcerated require a reasonable modification of a specific procedure set forth in this rule, the clinical team may modify the method for preparing the ISP only to the extent necessary to accommodate the legitimate security concerns.
   a. No modification may unreasonably restrict the client's right to participate in the ISP process;
   b. No modification may alter the standards for developing an ISP, the client's right to obtain services identified in the ISP, as provided in this Article, or the client's right to appeal any aspect of treatment planning according to R9-21-401, including the decision to modify the process for security reasons.

D. Notices to the individual.

1. Any individual or mental health agency required to give notice to an individual of any documents, including eligibility determinations, assessment reports, ISPs, and ITDPs according to this rule shall do so by:
   a. Providing a copy of the document to the individual;
   b. Providing copies to any designated representative and guardian;
   c. Personally explaining to the individual and designated representative and/or guardian any right to accept, reject, or appeal the contents of the document and the procedures for doing so under this Article.
2. Individuals requesting or receiving behavioral health services or community services shall be informed:
   a. Of the right to request an assessment;
   b. Of the right to have a designated representative assist the client at any stage of the service planning process;
   c. Of the right to participate in the development of any plan prepared under this Article, including the right to attend all planning meetings;
   d. Of the right to appeal any portion of any assessment, plan, or modification to an assessment or plan, according to R9-21-401;
   e. Of the Administration's authority to require necessary and relevant information about the individual's needs, income, and resources;
   f. Of the availability of assistance from the regional authority in obtaining information necessary to determine the need for behavioral health services or community services;
   g. Of the Administration's or mental health agency's authority to charge for services and assessments;
   h. That if the individual declines the services of a case manager or an ISP, the individual has the right to apply for services at a subsequent time; and
   i. That if the individual declines any particular service or treatment modality, it will not jeopardize other accepted services.

E. Extensions of time.
1. The time to initiate or complete eligibility determinations, assessments, ISPs, and other actions according to this Chapter may be extended if:
   a. There is substantial difficulty in scheduling a meeting at which all necessary participants can attend;
   b. The client fails to keep an appointment for assessment, evaluation, or any other necessary meeting;
   c. The client is capable of but temporarily refuses to cooperate in the preparation of the plan or completion of an assessment or evaluation;
   d. The client or the client's guardian and/or designated representative requests an extension of time or
   e. Additional documentation has been requested but has not yet been received.
2. An extension under this rule shall not exceed the number of days incurred by the delay and in no event may exceed 20 days, unless the whereabouts of the client are unknown.
3. For an SMI eligibility determination, an extension of time shall only apply if an applicant agrees to the extension.

F. Meeting attendance through telecommunications link. Attendance by any person at any meeting that is required or recommended according to this Article may be accomplished through a telecommunications link that is contemporaneous with the meeting.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-302. Identification, Application, and Referral for Services of Persons with Serious Mental Illness

A. Each regional authority shall develop and implement outreach programs that identify individuals within the authority's geographic area, including persons who reside in jails, homeless shelters, or other settings, who are seriously mentally ill.
1. Inpatient facilities shall identify individuals in their respective facilities who are seriously mentally ill.
2. An individual identified under this subsection shall be referred in writing to the appropriate regional authority for a determination of eligibility as provided in this Article.

B. An individual desiring behavioral health services or community services under this Article may apply to the appropriate regional authority for a determination of eligibility. Application may be made by the individual or on the individual's behalf by the person's guardian, designated representative, or other appropriate individuals such as a family member or staff of a mental health agency. Individuals may apply for behavioral health services or community services regardless of whether they reside in the community, an inpatient facility, a county jail, a homeless shelter, or any other location within the state of Arizona.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-303. Eligibility Determination and Initial Assessment

A. Upon receipt of a request or referral for a determination of whether an individual is eligible for services under this Chapter, a regional authority shall schedule an appointment for an initial meeting with the applicant by a qualified clinician, to occur no later than seven days after the regional authority receives the request or referral.

B. During the initial meeting with an applicant by a qualified clinician, the qualified clinician shall:
1. Obtain consent to an assessment of the applicant from the applicant or, if applicable, the applicant's guardian;
2. Provide to the applicant and, if applicable, the applicant's guardian, the information required in R9-21-301(D)(2), a client rights brochure, and the notice required by R9-21-401(B);
3. Determine whether the applicant is competent, according to R9-21-206;
4. If, during the initial meeting with an applicant by a qualified clinician, the qualified clinician is unable to obtain sufficient information to determine whether the applicant is eligible for services under this Chapter:
   a. Obtain authorization from the applicant or, if applicable, the applicant's guardian, for release of information, if applicable;
   b. Request the additional information the qualified clinician needs in order to make a determination of whether the applicant is eligible for services under this Chapter; and
5. Initiate an assessment according to R9-21-305.

C. The qualified clinician in subsection (B) shall obtain information necessary to make an eligibility determination, including:
1. Identifying data and residence, including a social security number if available;
2. The reasons for the request or referral for services;
3. The individual's psychiatric diagnosis;
4. The individual's present level of functioning, based upon the criteria set forth in the definition of "seriously mentally ill";
5. The individual's history of mental health treatment;
6. The individual's abilities, needs, and preferences for services; and
7. A preliminary determination as to the individual's need for special assistance.

D. If at any time during the course of the eligibility process the qualified clinician determines that the individual has a current case manager, a current assessment, or an ISP, the clinician shall notify the client's case manager and terminate the eligibility process.

E. To be eligible for behavioral health services or community services according to this Chapter the individual must be:
1. A resident of the state of Arizona, and
2. Seriously mentally ill.

F. The qualified clinician in subsection (B) shall determine whether an applicant is eligible for services under this Chapter and provide written notice of the SMI eligibility determination to the applicant or, if applicable, the applicant's guardian according to the following time-frames:
1. If the qualified clinician obtains sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this

Chapter, within three days of the initial meeting with the applicant by the qualified clinician;

2. If the qualified clinician does not obtain sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, at the earliest of:
   a. Within three days of obtaining sufficient information to determine whether the applicant is eligible for services under this Chapter, or
   b. The time provided according to R9-21-301(E).

G. At the time a qualified clinician provides an applicant with written notice of an SMI eligibility determination according to subsection (F), the qualified clinician shall:

1. Provide written notice to the applicant:
   a. That the applicant has the right to appeal the SMI eligibility determination according to R9-21-401, including the right to an administrative hearing according to A.R.S. § 41-1092.03; and
   b. That, if the applicant is not eligible for services according to this Chapter, the applicant may reapply at any time; and
2. If the applicant is eligible for services under this Chapter:
   a. Serve as the client's case manager or arrange for the provision of case management services for the client; and
   b. Initiate with the client the development of a clinical team that may include:
      i. Behavioral health professionals,
      ii. Professionals other than behavioral health professionals,
      iii. Behavioral health technicians,
      iv. Family members,
      v. Paraprofessionals, and
      vi. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.

H. Nothing in this rule shall be construed to require the qualified clinician to make the determination of whether the applicant is eligible for services under the Arizona Health Care Cost Containment System Administration (AHCCCSA) according to A.R.S. Title 36, Chapter 29.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-304. Interim and Emergency Services

A. At an applicant's first visit with a qualified clinician and after a determination of eligibility the qualified clinician shall:

1. Determine whether the applicant or client needs interim services prior to the development and acceptance of the ISP;
2. If the applicant or client needs interim services, identify the interim services that are consistent with the applicant's or client's preferences and needs and the findings in the assessment;
3. Arrange for the provision of the interim services identified by the qualified clinician; and
4. Document in the client's record the interim services that shall be provided to the applicant or client.

B. If a qualified clinician determines that an emergency exists necessitating immediate intervention, emergency or crisis services shall be provided immediately.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-305. Assessments

A. The following individuals may participate in and contribute to the assessment of a client:

1. The client;
2. The qualified clinician in R9-21-303(B);
3. The client's case manager;
4. Each individual on the client's clinical team, including:
   a. Behavioral health professionals,
   b. Professionals other than behavioral health professionals,
   c. Behavioral health technicians,
   d. Family members,
   e. Paraprofessionals, and
   f. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.

B. The individuals contributing to the assessment of a client shall not consider the availability of services, but shall consider the client's circumstances and evaluate all available information including.

1. The information obtained during the initial meeting with the client by a qualified clinician according to R9-21-303(B);
2. Written information such as the client's clinical history, records, tests, and other evaluations;
3. Information from family, friends, and other individuals.

C. An assessment shall include:

1. An evaluation of the client's:
   a. Presenting concerns;
   b. Behavioral health treatment;
   c. Medical conditions and treatment;
   d. Sexual behavior and, if applicable, sexual abuse;
   e. Substance abuse, if applicable;
   f. Living environment;
   g. Educational and vocational training;
   h. Employment;
   i. Interpersonal, social, and cultural skills;
   j. Developmental history;
   k. Criminal justice history;
   l. Public and private resources;
   m. Legal status and apparent capacity;
   n. Need for special assistance; and
   o. Language and communication capabilities;
2. A risk assessment of the client;
3. A mental status examination of the client;
4. A summary, impressions, and observations;
5. Recommendations for next steps;
6. Diagnostic impressions of the qualified clinician; and

7. Other information determined to be relevant.

D. Within 45 days of a request or referral for an SMI eligibility determination, a qualified clinician shall prepare an assessment report based on the information obtained according to R9-21-303 and this Section, including:
1. The development of a long-term view by the client with assistance from the clinical team that establishes a method of integration for living, employment and social conditions that the client wishes to achieve over the next three years;
2. A summary of the information gathered during the eligibility and assessment processes;
3. An identification of the client's legal status, resources, and assessed strengths and actual needs, regardless of the availability of services to meet that need, in each area of assessment identified in subsection (C) above;
4. An analysis of the major findings of the mental health assessment, including a description of the nature and severity of any illness and a diagnosis in terms set forth in the DSM;
5. The client's preferences regarding services to be provided;
6. A description of any additional interim services which are required and plans for the referral of the client to additional interim services or the continuation of interim services already provided;
7. An identification of further evaluations which the clinical team deem necessary to determine the services appropriate to the client's needs;
8. An identification of information that could not be obtained due to the client's circumstances or unavailability; and
9. A functional assessment of the client's current status in terms of independent living, employment (or retirement), and social integration and analysis of the support or skills, if any, necessary to achieve the client's long-term view.

E. The qualified clinician shall arrange for any further evaluations recommended by the clinical team. If the client needs assessment in an area beyond the ability or expertise of the clinical team, such assessment shall be conducted by professionals with appropriate credentials, with the client's consent. The need for further evaluations shall not unreasonably delay the preparation of the ISP.

F. If a qualified clinician determines that the client is a client who needs special assistance, the case manager shall:
1. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committees of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
2. If the client does not have a guardian, identify a friend, relative or other person who is willing to serve as a designated representative of the client.

G. Upon completion of the assessment report, copies shall be sent to the client, the designated representative, if any, the guardian, and all service providers who have been identified by the case manager or regional authority to serve the client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-306. Identification of Potential Service Providers

A. As soon as needs of the client for particular services are identified through the eligibility determination, assessment, or further evaluation processes, the clinical team in conjunction with the client shall begin considering and choosing potential service providers to participate in the development of the client's ISP.
1. Within five days of the completion of the assessment report, the clinical team and the client shall complete the identification of service providers most appropriate to meet the client's needs.
2. The case manager shall promptly contact the identified providers to determine their ability to serve the client.
3. Within 10 days of the completion of the assessment report, the case manager shall request identified providers able to serve the client to participate in the development of the client's Individual Service Plan. All identified providers shall be provided notice of the time and place of the ISP meeting.

B. The clinical team, in conjunction with the client, shall determine which provider(s) are the most appropriate to serve the client. The determination of appropriateness shall consider:
1. The client's preferences for the type, intensity, and location of services;
2. The capacity and experience of the provider in meeting the client's assessed needs;
3. The proximity of the provider to the client's family and home community;
4. The availability and quality of services offered by the provider; and
5. Other factors deemed relevant by the case manager and clinical team.

C. The clinical team shall provide sufficient information to the identified service providers to allow them to understand the client's long-term view, strengths, needs, and required services and to take an active role in the ISP meeting.

D. All mental health agencies currently providing services to the client shall bring to the ISP meeting a written description of the nature, type, and frequency of services provided or to be provided by the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-307. The Individual Service Plan

A. General provisions.
1. An individual service plan (ISP) shall be developed by the clinical team and each client.
2. The ISP shall include the most appropriate and least restrictive services, consistent with the client's needs and preferences, as identified in the assessment conducted according to R9-21-305, and without regard to the availability of services or resources.

3. The ISP shall identify those services which maximize the client's strengths, independence, and integration into the community.
4. Generic services available to the general public should be utilized, to the maximum extent possible, when adequate to meet the client's needs and if access can be arranged by the case manager or client.
5. If all needed services are not available, a plan for alternative services shall detail those services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs, and least restrictive of the client's freedom.
6. The clinical team shall solicit and actively encourage the participation of the client and guardian.
7. The clinical team shall inform the client of the right to have a designated representative throughout the ISP process and to invite family members or other persons who could contribute to the development of the ISP. The case manager shall seek to obtain a representative for clients who need special assistance or otherwise have limited capacity to articulate their own preferences and to protect their own interests in the ISP process and shall advise the relevant human rights committee that the client has been determined to need special assistance.
8. The ISP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
9. The ISP shall incorporate a specific description of the client objectives, services, and interventions for each mental health agency which will provide services to the client. Each existing service provider will bring to the ISP meeting a detailed written description of the objectives and services currently in effect for the client.
10. For residents of an inpatient facility, the facility's treatment and discharge plan shall be developed according to R9-21-312 and shall be incorporated in the ISP.
11. Prior to the planned discharge of a new client from an inpatient facility, the clinical team shall develop an ISP which describes the community services, including alternative housing and residential supports, that will be provided when the client leaves the facility.
12. The ISP shall be written in language which can be easily understood by a lay person.
13. In developing the ISP, the case manager shall facilitate resolution of differences among service providers and, if resolution is not achieved, shall refer the matter to the regional authority, which shall resolve the matter in accordance with the Administration's policy.

B. The individual service plan meeting.

1. Within 20 days of the completion of the assessment report, the case manager shall convene an ISP meeting at a convenient time and place for the client, guardian, clinical team, and potential service providers.
2. The case manager shall arrange for the client's transportation, if needed, to the ISP meeting.
3. The case manager shall notify in writing the following persons of the time, date and location of the ISP meeting at least 10 days prior:
   a. The client, any designated representative and guardian, including an invitation to submit relevant information in writing if their attendance is impossible;
   b. Clinicians involved in the assessment or further evaluation;
   c. All current and potential service providers;
   d. All members of the client's clinical team;
   e. Family members, with the client's permission;
   f. Other persons familiar with the client whose presence at the meeting is requested by the client;
   g. Any other person whose participation is not objected to by the client and who, in the judgment of the case manager, will contribute to the ISP.
4. The case manager shall chair the ISP meeting which shall include a discussion of:
   a. The client's supports or skills necessary to achieve the client's long-term view in each of the areas listed in R9-21-305(B);
   b. The findings and conclusions obtained during the assessment, further evaluations, including a list of further evaluations to be completed, and any interim services provided;
   c. Any existing ITDP according to R9-21-312;
   d. The client's preferences regarding services;
   e. Recommended long-term or alternative services;
   f. Current or proposed service providers, including the need to have service providers with staff who have language and communications skills other than English if necessary to communicate with the client;
   g. Recommended dates for commencement of each service or date each service commenced;
   h. The methods and persons to ensure that services are provided as set forth in the ISP, adequately coordinated, and regularly monitored for effectiveness;
   i. The procedure for completion and implementation of the ISP process, including the procedures for accepting, rejecting, or appealing the ISP; and
   j. The procedure for clients or service providers to request changes in the ISP.

C. The individual service plan shall include:

1. A description of the client's long-term view and the client's preferences, strengths, and needs in all relevant areas listed in R9-21-305(C), including present functioning level and medical condition, with documentation of any chronic medical condition which requires regular monitoring or intervention.
2. A description of the most appropriate and least restrictive services consistent with the client's needs and without reference to existing resources.
3. A statement of whether the client requires service providers with staff who are competent in any language other than English in order to communicate with the client.
4. Target dates for commencement of each service or date each service commenced and their anticipated duration.
5. Long range goals for each service which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible for the client, consistent with the client's preference, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and adopts.
6. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts.
7. Expected dates of completion for each objective;
8. Persons and service providers responsible for each objective.
9. Identification of each generic or service provider responsible for providing the specific service required to meet

each of the client's needs, including the name and address and telephone number of the provider and the location where the service will be provided.

10. A detailed description of the client objectives and services for each mental health agency which will provide services to the client.
11. Identification of any need for alternative housing or residential setting, including the support and monitoring to be provided after any change in housing or residential setting as provided in R9-21-310(D).
12. Based upon assessments and other available information, a determination of:
    a. The client's capacity to:
        i. Make competent decisions on matters such as medical and mental health treatment, finances, and releasing confidential information;
        ii. Participate in the development of the ISP; and
        iii. Independently exercise the client's rights under this Chapter.
    b. The client's need for guardianship or other protective services or assistance.
    c. The client's need for special assistance.
13. A list of the assessments which were not completed due to the client's current mental or physical condition or due to the clinical team's inability to access records together with a statement of the causes and plans to obtain these assessments.
14. A description of the methods and persons responsible for ensuring that services are:
    a. Provided as set forth in the ISP;
    b. Adequately coordinated; and
    c. Regularly monitored for effectiveness.
15. A statement of the right of the client, designated representative, or guardian to accept or reject the ISP, request other services, or appeal the ISP or any aspect of the ISP.
16. A statement that the client's acceptance of the ISP constitutes consent to the services enumerated in the ISP.

D. Preparation and distribution of the individual service plan.

1. Within seven days of the ISP meeting, but no later than 90 days from the date of a referral or request for an SMI eligibility determination, the case manager shall prepare and distribute the ISP as provided herein.
2. The case manager or other clinical team member shall personally deliver to and review the ISP with the client.
3. The ISP shall be mailed or otherwise distributed to the following persons:
    a. The client's designated representative and/or guardian;
    b. The members of the clinical team; and
    c. All existing or potential service providers.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-308. Acceptance or Rejection of the Individual Service Plan

A. Within seven days of the distribution of the ISP, the case manager shall contact the client concerning acceptance or rejection of all or any portion of the ISP, or request for other services, if there has not been acceptance, rejection or a request prior to that date.

B. If the client or guardian does not object to the ISP within 30 days of receipt of the plan, the client shall be deemed to have accepted the ISP.

C. If the client or guardian rejects some or all of the services identified in the ISP, or requests other services, the case manager shall provide written notice to the client or guardian of the right to immediately appeal the ISP according to R9-21-401 or to meet with the clinical team within seven days of the rejection to discuss the plan and suggest modifications. The case manager shall arrange the meeting at a convenient time and place for the client, any designated representative and/or guardian, and the clinical team.

D. If the client's proposed modifications are adopted by the clinical team, the case manager shall arrange for approval of the modifications by all service providers.

E. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client or guardian of the right to appeal the ISP.

F. A client or guardian who rejects the ISP may accept some or all of the identified services pending the outcome of the meeting with the clinical team or an appeal.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-309. Selection of Service Providers

A. Within seven days of the distribution of the ISP to the service providers identified in the ISP, the case manager, after consultation with the clinical team and the provider, shall determine whether each of these providers are capable of serving the client.

1. A contracted service provider shall not refuse to serve a client except for good cause related to the inability of the service provider to safely and professionally meet the client's needs as identified in the ISP.
2. If a contracted service provider believes it is incapable of meeting the client's needs or of implementing the ISP, the provider shall inform the case manager in writing within five days of receipt of the ISP. A contracted service provider shall specify the reasons for its conclusion.

B. If the clinical team determines that a housing, residential or vocational service provider identified in the ISP is not capable of serving the client, the case manager shall, with the approval of the clinical team, identify another provider who is qualified to provide the services identified in the client's ISP, introduce the client to the new service provider, and modify the ISP as needed.

C. If the clinical team determines that an identified provider, other than a housing, residential or vocational service provider, is not capable of serving a client, the case manager shall, with the approval of the clinical team, identify another provider that is qualified to provide the services identified in the client's

ISP. The case manager shall promptly distribute the ISP to the alternative service provider.

D. All selected service providers shall sign the ISP and implement the identified services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-310. Implementation of the Individual Service Plan

A. Upon acceptance of the ISP by the client or as defined in a court order, services shall be initiated in accordance with the timetable identified in the ISP.

B. If all or a portion of the ISP is rejected by the client or guardian, the plan shall not be implemented and services shall not be provided unless the client or guardian consents to specific services.

C. For each client who is identified as needing alternative housing, a new residential setting, or a residential support service, the case manager shall inform the client of the need for an alternative living arrangement and shall use the case manager's best efforts to obtain appropriate housing or residential supports. These efforts may include showing the client the house or apartment in which the client could reside, introducing the client to other residents of the residential setting, as appropriate, and permitting the client to live in the alternative setting on a trial basis. All clients shall be informed that they may elect to move at any time in the future subject to the terms of any lease, mortgage, contract, or other legal agreement between the client and the housing provider.

D. For at least the first two months after a client moves to a new residential setting, the case manager shall coordinate and monitor support services, as identified in the client's ISP, in order to foster the maintenance of the client's key relationships with others, to provide necessary orientation, and to ensure a smooth and successful transition into the new setting.

E. All contracts with service providers shall include:

1. A provision that the service provider shall abide by the rules contained in this Chapter and shall not alter, terminate, or otherwise interrupt services required under the ISP except parts of the ISP that have been modified according to R9-21-314;
2. A provision that the service provider shall cooperate with the Administration in collecting data necessary to determine if the Administration is meeting its obligations under this Chapter and A.R.S. Title 36, Chapter 5, Article 10; and
3. A provision that the service provider agrees to maintain current client records that document progress toward achievement of ISP goals and objectives and that meet applicable requirements of law, contract, and professional standards.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-311. Alternative Services

A. If the services identified in the ISP are not currently available, the clinical team shall develop an alternative plan for alternative services, based upon the client's strengths, needs, and preferences as set forth in the assessment conducted according to R9-21-305. The plan for alternative services shall be developed after the preparation of the ISP.

B. The plan for alternative services shall be developed according to the same procedures for the preparation of an ISP and may be developed at the same meeting with the ISP if the clinical team is aware that appropriate services are not currently available. If at an ISP meeting the clinical team does not know whether the appropriate services are available, the clinical team shall use diligent efforts to locate the identified services. If appropriate services are determined to be unavailable, the ISP meeting shall be reconvened to develop an ISP for alternative services.

C. The plan for alternative services shall identify those available mental health and generic services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs and least restrictive of the client's freedom.

D. The plan for alternative services shall contain a list of appropriate but unavailable services and the projected date for the initiation of each service.

E. If the clinical team determines that a recommended service is unavailable or does not exist, it shall forward a description of that service to the director of the regional authority. The director shall:

1. Use best efforts to locate the needed service through existing services or reallocated resources;
2. Forward a description of the unmet service need to the Administration, if the appropriate service cannot be located or developed through existing services or reallocated resources; and
3. maintain a list of unmet service needs.

F. The Administration shall use information concerning unmet service needs to provide the appropriate service through existing services or reallocated resources or, if necessary, to plan for the development of the needed services.

G. Nothing in this rule shall effect or modify any provision of Arizona law with respect to a client's right to appropriate services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-312. Inpatient Treatment and Discharge Plan

A. General provisions.

1. Every client of an inpatient facility shall have an Inpatient Treatment and Discharge Plan (ITDP).
2. An ITDP shall be developed by the inpatient facility's treatment team, the case manager and other members of the clinical team, as appropriate.

3. The ITDP shall include the most appropriate and least restrictive services available at the inpatient facility, as well as a plan for the client's discharge to the community.
4. The ITDP shall identify those treatment interventions and services which maximize the client's strengths, independence, and integration into the community.
5. The ITDP shall be developed with the fullest possible participation of the client and any designated representative and/or guardian.
6. The ITDP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
7. The ITDP shall be written in language which can be easily understood by a lay person.
8. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the appropriate discharge of a client from an inpatient facility.

B. The individual treatment and discharge plan meeting.

1. The case manager shall encourage the client to have a designated representative assist the client at the meeting and to have other persons, including family members, attend the meeting. The case manager shall ensure that the human rights advocate is notified of the time and date of the ITDP for clients who need special assistance.
2. The following persons shall be invited to attend the ITDP meeting:
   a. The client;
   b. Any designated representative and/or guardian;
   c. Family members, with the client's permission;
   d. Members of the client's inpatient facility treatment team;
   e. The case manager and other members of the clinical team, as appropriate;
   f. Other persons familiar with the client whose presence at the meeting is requested by the client; and
   g. Any other person whose participation is not objected to by the client and who will, in the judgment of the case manager, contribute to the ITDP meeting.
3. The ITDP meeting shall include a discussion of:
   a. A review of the ISP's long-term view;
   b. If necessary, a new functional assessment of the supports or skills necessary to achieve the client's long-term view;
   c. The client's needs in terms of assessed strengths and needs;
   d. The client's preferences regarding services;
   e. Existing services if any;
   f. The procedure for completion and implementation of the ITDP process, including the procedures for accepting, rejecting, or appealing the ITDP;
   g. The procedure for clients or the inpatient facility to request changes in the ITDP; and
   h. The methods to ensure that services are provided as set forth in the ITDP and regularly monitored for effectiveness.

C. Inpatient treatment and discharge plan.

1. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall develop a preliminary ITDP within three days, and a full ITDP within seven days thereafter, of the client's admission. Where a client's anticipated stay is less than seven days, an acute inpatient facility shall develop a preliminary ITDP within one day and a full ITDP within three days of a client's admission.
2. The ITDP shall be consistent with the goals, objectives, and services set forth in the client's ISP and shall be incorporated into the ISP.
3. The ITDP shall include:
   a. The client's preferences, strengths, and needs;
   b. A description of appropriate services to meet the client's needs;
   c. For non-acute facilities, long-range goals which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
   d. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
   e. Expected dates of completion for each objective;
   f. Persons responsible for each objective;
   g. The person responsible for ensuring that services are actually provided and are regularly monitored; and
   h. The right of the client or guardian to accept or reject the ITDP, request other services, or appeal the ITDP or any aspect of the ITDP.

D. Preparation and distribution of the ITDP.

1. Within three days of the ITDP meeting, the treatment team coordinator shall prepare and distribute the ITDP.
2. The ITDP shall be personally presented and explained to the client by the case manager.
3. The ITDP shall be mailed or otherwise distributed to the following persons:
   a. The client's designated representative and guardian, if any;
   b. The case manager and members of the clinical team; and
   c. The members of the inpatient facility's treatment team.

E. Acceptance or rejection of the ITDP.

1. Within two days of the date when the ITDP was distributed, the client shall be contacted by the case manager concerning acceptance or rejection of the ITDP, if there has not been acceptance or rejection prior to that date.
2. If the client or guardian does not object to the ITDP within 10 days of the date when the ITDP was distributed, the client shall be deemed to have accepted the ITDP.
3. If the client or guardian rejects some or all of the treatment interventions or services identified in the ITDP or requests other services, the case manager shall provide written notice to the client of the right to meet with the treatment team coordinator within five days of the rejection to discuss the plan and to suggest modifications, or to immediately appeal the plan according to R9-21-401.
4. If modifications are agreed to by the treatment team coordinator and the client or guardian, the treatment team coordinator shall arrange for approval of the modifications by all members of the inpatient facility's treatment team, the case manager, and members of the clinical team, as appropriate.

5. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client and guardian of the right to appeal according to R9-21-401. The client or guardian may appeal findings or recommendations in the ITDP within 30 days of receipt of the plan.
6. A client or guardian who rejects the ITDP may accept some or all of the identified treatment interventions or services pending the outcome of the meeting with the treatment team coordinator or an appeal.

F. The updated ITDP. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall review the ITDP as frequently as necessary, but at least once within the first 30 days of completing the plan, every 60 days thereafter during the first year, and every 90 days thereafter during any subsequent years that the client remains a resident of the facility.

G. Incorporation into the individual service plan.

1. If the clinical team determines that the ITDP is appropriate to meet the client's needs, least restrictive of the client's freedom, and consistent with the ISP, it shall approve the ITDP by incorporating it into the ISP. If the clinical team disapproves the ITDP, it shall convene an ISP meeting, which includes the inpatient facility treatment team, to prepare a revised ITDP.
2. The clinical team, with the assistance of the inpatient facility's treatment team, shall be responsible for implementing the plan for the client's discharge.
3. The case manager will provide notice to those providers identified in the client's ISP three days prior to the client's actual discharge, except that the failure to provide such notice shall not delay discharge.
4. The case manager shall meet with the client within five days of the client's discharge to ensure that the ISP is being implemented.
5. The case manager shall review the ISP with the clinical team within 30 days of the discharge to determine whether any modifications are appropriate, consistent with the standards and requirements set forth in R9-21-314.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-313. Periodic Review of Individual Service Plans

A. General provisions.

1. Where an ISP includes residential, vocational, or other primary service providers that do not currently serve the client, the first ISP review shall be held within 30 days from the date on which all such providers have initiated services to client. Each service provider shall bring to the review a detailed description of the objectives and services currently in effect for the client.
2. Where the ISP includes only primary service providers that currently serve the client, the first ISP review shall be held within six months of the date the ISP is accepted by the client or the date on which any appeal is concluded.
3. Thereafter, ISP reviews shall be conducted at least every six months and more frequently as needed. The ISP review shall be chaired by the case manager.
4. The purpose of the ISP review is to ensure that services continue to be, to the maximum extent possible, appropriate to the client's needs and least restrictive of the client's freedom.
5. The review shall be conducted with the fullest possible participation of the client and any designated representative and/or guardian.

B. The ISP review.

1. At least 10 days prior to the ISP review meeting, the case manager shall invite, in writing, the following persons to attend the meeting:
   a. The client and any designated representative and/or guardian;
   b. Family members, with the permission of the client;
   c. Members of the client's clinical team;
   d. Representatives of each of the client's service providers;
   e. Any other person familiar with the client whose participation is requested by the client; and
   f. Any other person whose participation is not refused by the client and who, in the judgment of the case manager, will contribute to the ISP review.
2. The ISP review shall, to the extent possible given the circumstances of the client and the availability of information, consider:
   a. Whether there has been any change in the clinical, social, training, medical, vocational, educational and personal needs of the client;
   b. Whether the client needs any further assessment or evaluations;
   c. Whether the services being provided to the client continue to be appropriate to meet the client's needs, least restrictive of the client's freedom, consistent with the client's preferences, and as integrated as possible in the client's home community;
   d. Whether there has been progress towards attainment of the long-term view, and each of the goals and objectives stated in the ISP;
   e. Whether to reaffirm, modify or delete each goal and objective, together with the reasons for these actions;
   f. Whether there has been any change in the legal status of the client, in the necessity or advisability of having a guardian or conservator appointed or removed, or in the client's need for special assistance;
   g. Whether any change in the client's circumstances should result in a modification of the client's priority of need for services not currently provided; and
   h. Whether there has been any change in the availability of services formerly determined to be needed but not then available.
3. The client, any designated representative and/or guardian, and clinical team will review each service provider's detailed description of current objectives and services to determine whether it is consistent with client's needs, least restrictive of the client's freedom, and designed to maximize the client's independence and integration into the community.
   a. If the detailed description is approved and accepted by the client, any designated representative and/or

guardian, and the clinical team, it shall be incorporated into the updated ISP.

b. If the description of services is rejected, it shall be revised with the assistance of the service provider and, as revised, incorporated into the updated ISP.

C. The updated ISP.

1. Within seven days of the ISP review meeting, the case manager shall prepare an updated ISP which includes all of the elements set forth in R9-21-307(C).
2. The case manager shall personally meet with the client or guardian to explain the updated ISP. The updated ISP shall be mailed or otherwise distributed to the other participants of the review meeting.
3. The updated ISP is subject to the client acceptance, rejection, and requests for other service provisions of R9-21-308 and the appeal provisions of R9-21-401.
4. The updated ISP shall be implemented consistent with the provisions of R9-21-310.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-314. Modification or Termination of Plans

A. Requests for modifications or termination of an ISP or any portion of an ISP may be initiated at the ISP review or at any other time by:

1. The client;
2. Any designated representative and/or guardian;
3. A service provider; or
4. Any member of the clinical team.

B. A request for modification or termination of an ISP shall be directed to the case manager.

C. The case manager shall give the client, the client's guardian and designated representative, appropriate service providers, and the client's clinical team written notice of any request for modification or termination of the ISP.

D. An ISP may be modified in order to more appropriately meet the client's needs, goals, and objectives. An ISP shall be modified where:

1. The client withdraws consent to the ISP or any portion of the ISP;
2. The client consents to services recommended as more suitable but previously refused by the client;
3. The needs of the client have changed due to progress or lack of progress in meeting the client's goals and objectives;
4. The proposed change will permit the client to receive services which are more consistent with the client's needs, less restrictive of the client's freedom, more integrated in the community, or more likely to maximize the client's ability to live independently;
5. The client wants to change the long-term view and the focus of the ISP or no longer needs a service or services; or
6. The client is no longer eligible for services according to R9-21-303.

E. The clinical team shall:

1. Be notified by a service provider of any proposed termination or modification of services in the ISP as soon as possible and always prior to its implementation;
2. Promptly inform the client and any designated representative and/or guardian of the requested modification and seek the client's consent to implement such modification or termination; and
3. Within 20 days of any request for modification or termination of an ISP, approve the request only if the request meets the requirements of subsection (D).
4. Provide written notice of the right to appeal to the client and any designated representative and guardian in accordance with R9-21-401(B) whenever service to the client is to be terminated, suspended or reduced.

F. The case manager shall:

1. Incorporate the approved modification in the current ISP or prepare a revised ISP, as appropriate.
2. Within five days of any approval by the clinical team, distribute the modified or revised ISP to the client, any designated representative and/or guardian, the members of the clinical team, and all service providers.
3. Meet with the client or guardian to explain the modification or revision and the client's right to appeal according to R9-21-401.

G. If the client or any designated representative and/or guardian does not reject or appeal the termination or modification within 30 days of the date the modified ISP is distributed, the client shall be deemed to have accepted the termination or modification.

H. The client for whom a modification or termination is proposed or any designated representative and/or guardian may appeal a modification or termination according to R9-21-401.

I. If the clinical team denies the client's or guardian's request to modify or terminate an ISP, the client or the designated representative and/or guardian may appeal the denial according to R9-21-401.

J. No modification or termination of an ISP shall be made without the acceptance of the client or any designated representative and/or guardian, unless a qualified clinician determines that the modification or termination is required to avoid a serious or immediate threat to the health or safety of the client or others.

1. Except in an emergency, no requested termination of a client from a particular service or provider may be considered unless the standards and procedures set forth in R9-21-210 and the provisions of this rule are satisfied.
2. The client may not be transferred from one program or location to another while an appeal is pending.

K. If a qualified clinician determines that the client is no longer eligible for services according to R9-21-303, the qualified clinician shall make a determination of non-eligibility, move to terminate services under the ISP and this rule, and notify in writing the client of the non-eligibility determination and of the right to appeal such determination, in accordance with R9-21-401. When appropriate, referral and provision for further treatment shall be made by the case manager or clinical team.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993

(Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-315. Renumbered

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered to R9-21-401 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-401. Appeals

A. A client or an applicant may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made the determination.

1. Disagreements among employees of the Administration, the health plan, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using the Administration's guidelines, rather than this Article.
2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Administration.
3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-104.
4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification to or termination of a behavioral health service according to this Section, the client's non-Title IXX services shall continue while the appeal is pending unless:
   a. A qualified clinician, and, if applicable, the Department of Economic Security, determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
   b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.

B. Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:

1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
2. The method by which an appeal and an administrative hearing may be obtained;
3. That the client may represent himself or use legal counsel or other appropriate representative;
4. The services available to assist the client from the Office of Human Rights, Independent Oversight Committees, State Protection and Advocacy System, and other peer support and advocacy services;
5. What action the mental health agency or health plan intends to take;
6. The reasons for the intended action;
7. The specific rules or laws that support such action; and
8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.

C. The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:

1. Decisions regarding the individual's eligibility for behavioral health services;
2. The sufficiency or appropriateness of the assessment or any further evaluation;
3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
4. The recommended services identified in the assessment report, ISP, or ITDP;
5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
6. The access to or prompt provision of services provided under Title XIX;
7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
9. The application of the procedures and timetables as set forth in this Chapter for developing the ISP or ITDP;
10. The implementation of the ISP or ITDP;
11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client; or
12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
13. Denial of payment for a client; and
14. Failure of the health plan or the Administration to act within the time frames for appeal established in this Chapter.

D. Initiation of the appeal.

1. An appeal may be initiated by the client or by any of the following persons on behalf of a client or applicant requesting behavioral health services or community services:
   a. The client's or applicant's guardian,
   b. The client's or applicant's designated representative, or
   c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;
2. An appeal is initiated by notifying the health plan of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the

applicant or client and designated representative if one is provided.

3. An appeal shall be initiated within 60 days of the decision, report, plan, or action being appealed. However, the health plan shall accept a late appeal for good cause. If the health plan refuses to accept a late appeal or determines that the issue is not appealable under subsection (C) of this Article, health plan shall notify the individual or client in writing, with a statement of reasons for the decision. Within 10 days of the notification, the client or applicant may request review of that decision by the Administration, which shall act within 15 days of receipt of the request for review. The decision of the Administration shall be final.
4. Within five days of receipt of an appeal, the health plan shall inform the client in writing that the appeal has been received and of the procedures that shall be followed during the appeal.

E. Informal conference with the health plan.

1. Within seven days of receipt of the notice of appeal, the health plan shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
   a. The health plan shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days before the conference.
   b. Individuals may participate in the conference by telephone.
2. The health plan shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the health plan shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this Section.
4. If the informal conference with the health plan does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting a waiver of the informal conference with the Administration.
5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration according to subsection (E)(4) or, if the informal conference with the health plan does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the health plan shall, at the informal conference:
   a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
   b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the health plan to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
   c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate Independent Oversight Committee in the Office of Human Rights.
6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the health plan file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the health plan shall file the request within three days of the informal conference.
7. If resolution satisfactory to the client or guardian is achieved, the health plan shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.

F. Informal conference with the Administration.

1. Within three days of the conclusion of an informal conference with the health plan according to subsection (E)(4), the health plan shall notify the Administration and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
2. Within 15 days of the notification from the health plan, the Administration shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
   a. The Administration shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
   b. Individuals may participate in the conference by telephone.
   c. If a client is unrepresented at the conference but needs/requests assistance, or if for any other reason the Administration determines the appointment of a representative to be in the client's best interest, the Administration may designate a human rights advocate or other person to assist the client in the appeal.
3. To the extent that resolution satisfactory to the client or guardian is not achieved, the Administration shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
4. If resolution satisfactory to the client or guardian is achieved, the Administration shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this Section.

6. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
   a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
   b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
   c. For all clients including clients who needs special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and make the notice available to the appropriate Independent Oversight Committee.
7. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within three days of the informal conference according to subsection (G).

G. The state fair hearing.

1. Within three days of the informal conference with the Administration, if the conference failed to resolve the appeal, or within five days of the date the conference was waived, the Administration shall forward a request to schedule a state fair hearing.
2. Within five days of the notification, the Administration shall send a written notice of state fair hearing to all parties, informing them of the time and place of the hearing, the name, address, and telephone number of the Administrative Law Judge, and the issues to be resolved. The notice shall also be sent to the appropriate Independent Oversight Committee in the Office of Human Rights for all clients who need special assistance.
3. A state fair hearing shall be held on the appeal in a manner consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.
4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.
5. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31, Rules of the Supreme Court.
6. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The Administration shall have the right to appear to present legal argument.
7. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the Administration, health plan, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.
8. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.

H. Expedited appeal.

1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
2. An expedited appeal shall be conducted in accordance with the provisions of this Section, except as provided for in this subsection.
3. Within one day of receipt of an expedited appeal, the health plan shall inform the client in writing that the appeal has been received.
4. The health plan shall accept an expedited appeal on issues related to crisis or emergency services. The health plan shall also accept an expedited appeal for good cause. If the regional authority refuses to expedite the appeal based on a determination that good cause does not exist, the health plan shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this Section. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the Administration, who shall act within one day. The decision of the Administration shall be final.
5. If the health plan accepts the appeal for expedited consideration, the health plan shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The health plan shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
6. If the informal conference with the health plan does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting waiver of the informal conference with the Administration.
7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration or, if the informal conference with the health plan does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the health plan shall, at the informal conference:
   a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
   b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the health plan to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.

c. Send a copy of the notice in subsection (H)(7)(a) to the Office of Human Rights.

8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the health plan file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
9. Within one day of the conclusion of an informal conference with the health plan, the health plan shall notify the Administration if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the Administration or the issues in dispute are related to the client's eligibility for behavioral health services.
10. Within two days of the notification from the health plan, the Administration shall hold the informal conference pursuant to subsection (F).
11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
    a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    c. For a client who needs special assistance, send a copy of the notice in subsection (H)(11)(a) to the Office of Human Rights.
12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
13. Within one day of the informal conference with the Administration, if the conference failed to resolve the appeal, or within two days of the date the conference was waived, the Administration shall forward a request to schedule a state fair hearing.
14. Within one day of notification, the Administration shall send a written notice of an expedited state fair hearing in accordance with subsection (G)(2) and A.R.S. 41-1092, et seq.
15. An expedited state fair hearing shall be held on the appeal in accordance with subsection (G)(3) and A.R.S. 41-1092, et seq.

I. Standard and burden of proof.
1. The standard of proof on all issues shall be by a preponderance of the evidence.
2. The burden of proof on the issue of the need for or appropriateness of behavioral health services or community services shall be on the person appealing.
3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.

J. Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the health plan shall implement the final decision and shall notify the client, any designated representative and/or guardian, and Administration of such action.

K. Appeal log.
1. The Administration and health plan shall maintain logs of appeals filed under this Section.
2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
3. With respect to each entry, the logs shall contain:
    a. A unique docket number or matter number;
    b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
    c. The date of the filing of appeal;
    d. The date of the initial decision appealed from;
    e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
    f. A substantive but concise description of the final decision and the action taken by the agency director and the date the action was taken.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-401 renumbered to R9-21-402; new Section R9-21-401 renumbered from R9-21-315 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-402. General

A. It is the policy of the Administration to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the Administration. The purpose of R9-21-402 through R9-21-410 is to implement that policy. All investigations according to R9-21-402 through R9-21-410 shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. R9-21-402 through R9-21-410 do not obviate the need for systematically reporting, where appropriate, accidents and injuries involving clients.

B. This grievance and investigation procedure applies to any allegation that a rights violation or a condition requiring investigation, as defined in R9-21-101, has occurred or currently exists.
1. A grievance may be filed by a client, guardian, human rights advocate, Independent Oversight Committee, State Protection and Advocacy System, designated representa-

tive, or any other concerned person when a violation of the client's rights or of the rights of several clients has occurred.

2. A request for an investigation may be filed by any person whenever a condition requiring investigation occurs or has occurred.
3. Allegations about the need for or appropriateness of behavioral health services or community services should be addressed according to the Individual Service Planning Sections R9-21-301 through R9-21-314 and according to R9-21-401, as applicable.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-402 renumbered to R9-21-403; new Section R9-21-402 renumbered from R9-21-401 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-403. Initiating a Grievance or Investigation

A. Any individual may file a grievance regarding an abridgement by a mental health agency of one or more of a client's rights in Article 2 of this Chapter.

B. Any individual may request an investigation regarding a condition requiring investigation.

C. An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:

1. A service provider,
2. A health plan,
3. An inpatient facility, or
4. The Administration.

D. A service provider or health plan shall file a grievance if it:

1. Receives a non-frivolous allegation that:
   a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
   b. A condition requiring investigation exists; or
2. Has reason to believe that there exists or has occurred a condition requiring investigation in a mental health agency or program.

E. The Administration shall request an investigation if:

1. The Administration determines that it would be in the best interests of a client, the Administration, or the public; or
2. The Administration receives a non-frivolous allegation or has reason to believe that:
   a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
   b. A condition requiring investigation exists.

F. To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to a mental health agency who shall forward the grievance to the appropriate person as identified in R9-21-404. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.

G. Any grievance or request for investigation shall be accurately and completely reduced to writing on an Administration-provided grievance or request for investigation form by:

1. The individual filing the grievance or request for investigation, or
2. The mental health agency to whom the grievance or request for investigation is made.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-403 renumbered to R9-21-404; new Section R9-21-403 renumbered from R9-21-402 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigation

A. Allegations involving rights violations, except those involving physical abuse, sexual abuse, or sexual misconduct of a mental health agency, or as a result of an employee of a mental health agency, shall be addressed to and initially decided by the appropriate health plan.

1. If the mental health agency is operated exclusively by a governmental entity, then the allegation shall be addressed to and initially decided by the agency.
2. Allegations of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.

B. Allegations involving conditions requiring investigation shall be addressed to and initially decided by the appropriate health plan.

1. If the mental health agency is operated exclusively by a governmental entity, the allegation shall be addressed to and initially decided by that agency.
2. Allegations of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.

C. Within five days of receipt by a mental health agency of a grievance or request for investigation:

1. The mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
2. If the mental health agency is operated exclusively by a governmental entity, the mental health agency shall provide a copy of the grievance to the appropriate health plan; and
3. If the client is in need of special assistance, the mental health agency shall immediately send a copy of the grievance or request to the Office of Human Rights and the Independent Oversight Committee with jurisdiction over the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-404 renumbered to R9-21-405; new Section R9-21-404 renumbered from R9-21-403 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-405. Preliminary Disposition

A. The agency director before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.

B. Summary disposition.

1. A mental health agency or the Administration may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
2. A mental health agency or the Administration who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance for resolution through the Individual Service Plan process or the appeal process in R9-21-401.

C. Disposition without investigation.

1. Within seven days of receipt of a grievance or request for an investigation, a mental health agency or the Administration may promptly resolve a grievance or request without conducting a full investigation, where the matter:
   a. Involves no dispute as to the facts;
   b. Is patently frivolous; or
   c. Is resolved fairly and efficiently within seven days without a formal investigation.
2. Within seven days of receipt of the grievance or request described in subsection (C)(1), the mental health agency or the Administration shall prepare a written, dated decision.
   a. The decision shall explain the essential facts, why the mental health agency or the Administration believes that the matter is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
   b. The mental health agency or the Administration shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision on the appeal, the mental health agency or the Administration shall promptly take appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.

D. Matters requiring investigation.

1. If the matter complained of cannot be resolved without a formal investigation according to the criteria set forth in subsection (C)(1), within seven days of receipt of the grievance or request the mental health agency or the Administration shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the mental health agency or the Administration, is capable of proceeding with the investigation in an objective manner but who shall not be:
   a. Any of the persons directly involved in the rights violation or condition requiring investigation; or
   b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.
2. Immediately upon the appointment of an investigator, the mental health agency or the Administration shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.

E. If a client is a client who needs special assistance, the mental health agency or the Administration shall immediately send a copy of the grievance or request to the Office of Human Rights and the Independent Oversight Committee with jurisdiction over the agency and shall send a copy of all decisions required by this Chapter made by the mental health agency or the Administration regarding the grievance or request to the Office of Human Rights and the Independent Oversight Committee with jurisdiction over the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-405 renumbered to R9-21-406; new Section R9-21-405 renumbered from R9-21-404 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-406. Conduct of Investigation

A. Within 10 days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts that form the grounds for the grievance or request, unless the grievance or request has been initiated by a mental health agency or the Administration according to R9-21-403(D) or (E).

1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:
   a. The client may be represented by a designated representative of the client's own choice. The investigator

shall also advise the client of the availability of assistance from the State Protection and Advocacy System, the Office of Human Rights, and the relevant Independent Oversight Committee.

b. The client may make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.

c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.

2. Where the grievance has been initiated by the mental health agency or the Administration, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.

B. Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter and, in scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:

1. The individual may make a recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
2. An employee of an inpatient facility, service provider, health plan or the Administration has an obligation to cooperate in the investigation.
3. Failure of an employee to cooperate may result in appropriate disciplinary action.

C. The investigator shall gather relevant and appropriate information, including interviewing additional witnesses, requesting and reviewing documents, and examining other evidence or locations.

D. Within 10 days of completing all interviews with the parties but not later than 30 days from the date of the appointment, the investigator shall prepare a written, dated report briefly describing the investigation and containing findings of fact, conclusions, and recommendations

E. Within five days of receiving the investigator's report, the agency director shall review the report and the case record and prepare a written, dated decision which shall either:

1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director; and send:
   a. A copy of the decision to:
      i. The investigator;
      ii. The individual who filed the grievance or request for investigation;
      iii. The individual who is the subject of the grievance or request for investigation, if applicable;
      iv. The Office of Human Rights; and
      v. The appropriate Independent Oversight Committee.
   b. A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
      i. If the decision is from an agency director, the client's right to appeal to the Administration according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
      ii. If the decision is from the Administration, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director within 10 days. Upon receipt of the report, the agency director shall proceed as provided in subsection (E)(l).

F. Actions that an agency director may take according to subsection (E)(1) include:

1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation;
2. Developing or modifying a mental health agency's policies and procedures;
3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
4. Imposing sanctions, including monetary penalties, according to terms of a contract, if applicable.

G. After the expiration of the appeal period set forth in R9-21-407, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the Independent Oversight Committee if the client is in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-406 renumbered to R9-21-407; new Section R9-21-406 renumbered from R9-21-405 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-407. Administrative Appeal

A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with the Administration. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director who shall forward the full case record to the Administration.

B. The Administration shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15 days of the filing of the appeal, the Administration shall prepare a written, dated decision which shall either:

1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or
2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the Administration within 10 days. Upon receipt of the report and decision, the Administration shall render a final decision, consistent with the procedures set forth in subsection (B)(1).
3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by the Administration to which the represented party is invited.
4. The Administration shall send copies of the decision to:
   a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
   b. The agency director; and
   c. The Office of Human Rights and the applicable Independent Oversight Committee for all clients, including clients who are in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-407 renumbered to R9-21-408; new Section R9-21-407 renumbered from R9-21-406 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-408. Further Appeal to Administrative Hearing

A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the Director's decision of the Administration may request a state fair hearing before an Administrative Law Judge.

1. Within 30 days of the date of the Director's decision, the appealing party shall file with the Administration a notice requesting a state fair hearing.
2. Upon receipt of the notice, the Administration shall send a copy to the parties, and to the Office of Human Rights and the Independent Oversight Committee for clients who are in need of special assistance.

B. The hearing shall be conducted consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.

1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31, Rules of the Supreme Court. If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.
2. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent an unwarranted invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.
3. The Administration shall explain the Director's decision to the client at the client's request, together with the right to seek rehearing and judicial review.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-408 renumbered from R9-21-407 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-409. Notice and Records

A. Notice to clients. All clients shall be informed of their right to file a grievance or request for investigation under this Article.

1. Notice of this grievance and investigation process shall be included in the information posted or otherwise provided to every current and new client and employee. Special efforts shall be made to inform current and new residents of mental health facilities of this process and of the right to file a grievance or request for investigation;
2. A copy of a brief memorandum explaining these rules shall be given to every current and new resident of a inpatient facility;
3. Such memorandum and blank copies of the forms for filing a grievance, request for investigation, and appeal shall be posted in a prominent place in plain sight on every unit of an inpatient facility or in a program operated by a service provider; and
4. Such memoranda, forms and copies of these rules shall be available at each inpatient facility, health plan and service provider upon request by any person at any time.

B. Notice and oversight by the Office of Human Rights and Independent Oversight Committees.

1. Upon receipt of any grievance or request for investigation involving a client, including a client who is in need of special assistance, the agency director shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional Independent Oversight Committee.
2. Upon receipt of such a grievance from the agency director, at the request of a client, or on its own initiative, the

Office of Human Rights and/or the appropriate Independent Oversight Committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.

3. Whenever the Independent Oversight Committee has reason to believe that a rights violation involving abuse or a dangerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice and a release signed by the member, or designated representative, giving permission for the IOC to join, sent to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.
4. The Office of Human Rights shall assist clients in resolving grievances according to R9-21-104.

C. Notification of other persons.

1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
2. A mental health agency shall immediately notify the Administration when:
   a. A client brings criminal charges against an employee;
   b. An employee brings criminal charges against a client;
   c. An employee or client is indicted or convicted because of any action required to be investigated by this Article;
   d. A client of an inpatient facility, a mental health agency, or a service provider dies. The agency director shall report such death according to the Administration's policy on the reporting and investigation of deaths;
   e. A client of an inpatient facility, a mental health agency, or a service provider allegedly is physically or sexually abused.
3. The investigation by the Administration provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.

D. Case records.

1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the Administration, ASH, health plan or service provider under contract or subcontract with the Administration. The record shall include the grievance or request, the docket number or matter number assigned, the names of all persons interviewed and the dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.
2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official who hears or decides the appeal.

E. Public logs.

1. The Administration and health plan shall maintain logs of deaths and non-frivolous grievances or requests for investigation for inpatient facilities, agencies, service providers, and mental health agencies which it operates, funds, or supervises.
2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
3. With respect to each grievance or request for investigation, the Administration's log shall contain:
   a. A unique docket number or matter number;
   b. A substantive but concise description of the grievance or request for investigation;
   c. The date of the filing of grievance;
   d. The date of the initial decision or appointment of investigator;
   e. The date of the filing of the investigator's final report;
   f. A substantive but concise description of the investigator's final report;
   g. The date of all subsequent decisions, appeals, or other relevant events; and
   h. A substantive but concise description of the final decision and the action taken by the mental health agency or the Administration.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-410. Miscellaneous

A. Disqualification of official. The agency director, investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify himself from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written, dated memorandum explaining the reasons for the decision to the Administration, as appropriate, who shall, within 10 days of receipt of the memorandum make a determination upon the appropriateness of the disqualification and notify.

B. Request for extension of time.
1. The investigator or any other official of a mental health agency acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the health plan.
2. The investigator or any other official of an inpatient facility operated exclusively by an governmental entity acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the CEO of the entity or his designee.
3. The investigator or any other official of the Administration acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the Administration or designee.
4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
5. A request for extension shall be in writing, with copies to all parties. The request shall explain why an extension is needed and propose a new time limit which does not unreasonably postpone a final resolution of the matter.
6. Such request shall be submitted to and acted upon prior to the expiration of the original time limit. Failure of the relevant official to act within the time allowed shall constitute a denial of the request for an extension.

C. Procedural irregularities.
1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing a written protest with the Administration.
2. Within 10 days of the filing of such a protest, the Administration shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator and the appointment of a substitute.

D. Special Investigation.
1. The Administration may at any time order that a special investigator review and report the facts of a grievance or condition requiring investigation, including a death or other matter.
2. The special investigator and the Administration shall comply with the time limits and other procedures for an investigation set forth in this Article.
3. Any final decision issued by the Administration based on such an investigation under this Section is appealable as provided in R9-21-408.
4. Nothing in this Article shall prevent the Administration from conducting an investigation independent of this Chapter.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

ARTICLE 5. COURT-ORDERED EVALUATION AND TREATMENT

R9-21-501. Court-ordered Evaluation

A. An application for court-ordered evaluation shall, according to A.R.S. § 36-521, be made on AHCCCS form MH-100, Titled "Application for Involuntary Evaluation," set forth in Exhibit A.

B. Any mental health agency or service provider that receives an application for court-ordered evaluation shall immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation, provided for in A.R.S. Title 36, Chapter 5, Article 4, to:
1. A health plan; or
2. If a county has not contracted with a health plan for pre-petition screening and petitioning for court-ordered evaluation, the county.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-501 renumbered from R9-21-502 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit A. Application for Involuntary Evaluation

APPLICATION FOR INVOLUNTARY EVALUATION
(Pursuant to A.R.S. § 36-520)

STATE OF ARIZONA)
)
COUNTY OF)

To the _____
(Regional or Screening Authority)

1. The undersigned applicant requests that the above agency conduct a pre-petition screening of the person named herein.
2. The undersigned applicant alleges that there is now in the County a person whose name and address are:

_____ _____
(Name) (Address)

and that s/he believes that the person has a mental disorder and as a result of said mental disorder, is:

☐ a danger to self; ☐ a danger to others;
☐ gravely disabled; ☐ persistently or acutely disabled

and is:

☐ unwilling to undergo voluntary evaluation, as evidenced by the following facts: _____
_____
_____
_____

☐ unable to undergo voluntary evaluation, as demonstrated by the following facts: _____
_____
_____
_____

and who is believed to be in need of supervision, care, and treatment because of the following facts: _____
_____
_____

3. The conclusion that the person has a mental disorder is based on the following facts: _____
_____
_____
_____

4. The conclusion that the person is dangerous or disabled is based on the following facts: _____
_____
_____

PERSONAL DATA OF PROPOSED PATIENT:

Age Date of BirthSex Race
WeightHeightHair ColorEye Color
Marital StatusNumber of Children
Social Security No.Religion
Distinguishing Marks _____
Occupation _____
Present Location _____
Dates and Places of Previous Hospitalization _____
How Long in ArizonaState Last From
Veteran?C-No.Education

NAME, ADDRESS AND TELEPHONE NUMBER OF:

1) Guardian
2) Spouse
3) Next of Kin
4) Significant Other Persons _____

_____ _____

DATE SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant

Relationship to Proposed Patient

Applicant's Address

Applicant's Telephone

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____

_____

Notary Public

My Commission Expires:

_____

ADHS/BHS Form MH-100 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit A repealed, new Exhibit A adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit B. Petition for Court-ordered Evaluation

PETITION FOR COURT-ORDERED EVALUATION

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____

In the Matter of	)	
	)	MH _____
	)	
	)	PETITION FOR COURT-
	)	ORDERED EVALUATION
	)	(Pursuant to A.R.S. § 36-523)
	)	
re: Mental Health Services)		
_____	)	

STATE OF ARIZONA	)	
	)	
COUNTY OF	)	

Petitioner, _____
(Medical Director)
being first duly sworn/affirmed, alleges that:

1. There is now in this County a person whose name and address are as follows:

_____ _____
(Name) (Address)

2. The person may presently be found at: _____

3. There is reasonable cause to believe that the person has a mental disorder and is as a result:
   - ☐ A danger to self; ☐ A danger to others;
   - ☐ Gravely disabled; ☐ Persistently or acutely disabled and is:

4. The person is unwilling to undergo voluntary evaluation, as evidenced by the following facts: _____

5. The person is unable to undergo voluntary evaluation, as demonstrated by the following reasons: _____

6. The person is believed to be in need of supervision, care, and treatment because of the following facts: _____

7. The conclusion that the person has a mental disorder is based on the following facts: _____

8. The conclusion that the person is dangerous or disabled is based on the following facts: _____

9. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following facts:

10. Applicant information: _____
    Name of Applicant: _____

Address of Applicant: _____

Relationship to or Interest in the Proposed Patient: _____

_____

11. In the opinion of the Petitioner, the person is ____ is not ____ in such a condition that, without immediate or continuing hospitalization, s/he is likely to suffer serious physical harm or inflict serious physical harm upon another person.
12. In the opinion of the Petitioner, evaluation should ____ should not ____ take place on an outpatient basis, based upon the following reasons: _____

_____

_____

PETITIONER REQUESTS THAT THE COURT:

Issue an Order requiring the person to be given an ____ Inpatient ____ Outpatient evaluation.

_____

DATE Signature Of Petitioner

_____

Printed or Typed Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____.

Notary Public

My Commission Expires:

ADHS/BHS Form MH-105 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit B repealed, new Exhibit B adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-502. Emergency Admission for Evaluation

A. An application for emergency evaluation pursuant to A.R.S. § 36-524 may be made to any evaluation agency licensed and approved by the Administration to provide such services on AHCCCS form MH-104, Titled "Application for Emergency Admission for Evaluation," set forth in Exhibit C.

B. Prior to admission of an individual under this Section, the evaluation agency shall notify the appropriate health plan of the potential admission so that the health plan may first:

1. Offer and provide services or treatment to the individual as an alternative to admission; or
2. Authorize admission of the individual.

C. If the evaluation agency does not provide notice pursuant to subsection (B), the health plan shall not be obligated to pay for the services provided.

D. Only a mental health agency licensed by the Administration to provide emergency services according to A.R.S. Title 36, Chapter 4 may provide court-ordered emergency admission services under A.R.S. Title 36, Chapter 5, Article 4.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-502 renumbered to R9-21-501; new Section R9-21-502 renumbered from R9-21-503 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit C. Application for Emergency Admission for Evaluation

APPLICATION FOR EMERGENCY ADMISSION FOR EVALUATION
(Pursuant to A.R.S. § 36-524)

STATE OF ARIZONA)
) ss
COUNTY OF)
)

The undersigned applicant, being first duly sworn/affirmed, hereby requests that
(Evaluation Agency)
admit the person named herein for evaluation.

1. The undersigned applicant alleges that there is now in the County a person whose name and address are:

_____ _____
(Name) (Address)

and that s/he believes that the person has a mental disorder and, as a result of said mental disorder, is:

☐ A danger to self; ☐ A danger to others; ☐ Persistently or Acutely Disabled; Gravely Disabled;

and that, during the time necessary to complete pre-petition screening under A.R.S. §§ 36-520 and 36-521, the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm upon another person.

2. The conclusion that the person has a mental disorder is based on the following facts:

_____
_____
_____ _

3. The specific nature of the danger posed by this person is:

4. A summary of the personal observations upon which this statement is based is as follows:

_____

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

PERSONAL DATA OF PROPOSED PATIENT:

Age Date of BirthSex Race
WeightHeightHair ColorEye Color
Marital StatusNumber of Children
Social Security No.Religion
Distinguishing Marks _____
Occupation _____
Present Location _____
Dates and Places of Previous Hospitalization _____
How Long in ArizonaState Last From
Veteran?C-No.Education

NAME, ADDRESS AND TELEPHONE NUMBER OF:

1) Guardian _____

2) Spouse _____

3) Next of Kin _____

4) Significant Other Persons _____

_____

DATE SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant _____

Relationship to Proposed Patient _____

Applicant's Address _____

Applicant's Telephone _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

_____
Notary Public

My Commission Expires:

_____

ADHS/BHS Form MH-104 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit C repealed, new Exhibit C adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-503 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by emergency rulemaking at 28 A.A.R. 3848 (December 16, 2022), with an immediate effective date of November 28, 2022, for 180 days (Supp. 22-4). Emergency to expire May 27, 2023; amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-503. Voluntary Admission for Evaluation

A. An application for voluntary evaluation pursuant to A.R.S. § 36-522 shall be submitted on AHCCCS form MH-103, Titled "Application for Voluntary Evaluation," set forth in Exhibit D to a mental health agency.

B. If a health plan receives an application according to subsection (A), the health plan shall provide for such evaluation under A.R.S. § 36-522 for any individual who:
1. Voluntarily makes application as provided in subsection (A);
2. Gives informed consent; and
3. Has not been adjudicated as an incapacitated person pursuant to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5.

C. Any mental health agency, which is not a health plan under R9-21-501, that receives an application for voluntary evaluation shall immediately refer the individual to:
1. The county responsible for voluntary evaluations; or
2. If the county has contracted with a health plan for voluntary evaluations, the appropriate health plan.

D. Any mental health agency providing voluntary evaluation services pursuant to this Article shall place in the medical record of the individual to be evaluated the following:
1. A completed copy of the application for voluntary treatment;
2. A completed informed consent form pursuant to R9-21-511; and
3. A written statement of the individual's present mental condition.

E. Voluntary evaluation shall proceed only after the individual to be evaluated has given informed consent on AHCCCS form MH-103 and received information that the patient-physician privilege does not apply and that the evaluation may result in a petition for the individual to undergo court-ordered treatment or for guardianship in the method prescribed by A.R.S. § 36-522.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-503 renumbered to R9-21-502; new Section R9-21-503 renumbered from R9-21-504 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit D. Application for Voluntary Evaluation

APPLICATION FOR VOLUNTARY EVALUATION
(Pursuant to A.R.S. § 36-522)

The undersigned hereby requests a mental health evaluation to be performed by psychiatrists, psychologists, and social workers at

_____
(Regional Authority)

on the following terms:

INPATIENT. I agree to remain as an inpatient in the above agency for a period of not more than 72 hours. I understand that, at the end of that period, the agency must release me or file a Petition for Court-Ordered Treatment, in which case I may be held until the court holds a hearing, which shall be no longer than six days from the date of filing the petition, excluding weekends and holidays. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

OUTPATIENT. I agree to keep all scheduled appointments required for a complete evaluation, to the best of my ability. I understand that if I fail to appear, a Petition for Court-Ordered Evaluation or Treatment may be filed, in which case I may be detained and required to undergo involuntary evaluation and treatment. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

_____ I understand that the physician-patient privilege does not apply, and information I give during this evaluation may be used in court in a civil hearing for court-ordered treatment.

_____ I understand that this evaluation may lead to a court hearing to determine if I need further treatment and that such treatment, or an investigation into the need for a guardianship, may be ordered by a court.

_____ I understand that an application for my examination has been filed and I choose to be evaluated voluntarily rather than by court order.

_____ I understand that my evaluation must take place within five days of my application.

_____ I understand that I have a right to require the person who has applied for my evaluation to present evidence of the need for such evaluation to a court of law for approval or disapproval and I waive my right to require prior court review of the application.

_____ I understand that I have a right, upon written request, to be discharged within 24 hours of that request (excluding weekends and holidays) unless the medical director of the evaluation agency files a petition for court-ordered evaluation.

Presented By

Signature of Applicant

Printed or Typed Name of Applicant

Date

ADHS/BHS Form MH-103 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit D repealed, new Exhibit D adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-504 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-504. Court-ordered Treatment

A. The health plan shall perform, either directly or by contract, all treatment required by A.R.S. Title 36, Chapter 5, Article 5 and this Article. In order to perform these functions, the health plan or its contractor must be licensed by the Department of Health Services.

B. A mental health agency may provide court-ordered treatment pursuant to A.R.S. Title 36, Chapter 5, Article 5, other than through contract with the health plan, provided that:
1. The mental health agency is licensed by the Department to provide the court-ordered treatment;
2. The mental health agency complies with all applicable requirements under A.R.S. Title 36, Chapter 5, Article 5; and
3. The individual ordered to undergo treatment is not a client of the health plan.

C. Upon a determination that an individual is a danger to self or others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the medical director of the agency that provided the court-ordered evaluation shall file the appropriate affidavits on AHCCCS form MH-112, set forth in Exhibit E, with the court, together with one of the following petitions:
1. A petition for court-ordered treatment for an individual alleged to be gravely disabled, which shall be filed on AHCCCS form MH-110, set forth in Exhibit F.
2. A petition for court-ordered treatment for an individual alleged to be a danger to self or others, which shall be filed on AHCCCS form MH-110, set forth in Exhibit F.
3. A petition for court-ordered treatment for an individual alleged to be persistently or acutely disabled, which shall be filed on AHCCCS form MH-110, set forth in Exhibit F.

D. Any mental health agency filing a petition for court-ordered treatment of a client pursuant to subsection (A) shall do so in consultation with the client and the client's clinical team prior to filing the petition.

E. With respect to inpatient and outpatient treatment, the petition filed with the court shall request that the individual be committed to the care and supervision of the health plan, if the individual is a client, or to an appropriate mental health treatment agency, if the individual is not a client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-504 renumbered to R9-21-503; new Section R9-21-504 renumbered from R9-21-505 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit E. Affidavit

AFFIDAVIT

STATE OF ARIZONA)
) ss
COUNTY OF)
)

_____, being first duly sworn, deposes and says:

1. That affiant is a physician and is experienced in psychiatric matters;
2. That affiant has examined _____ and studied information about said person;
3. That affiant finds the person to be suffering from a mental disorder diagnosed as _____
(Probable Diagnosis)
and is, as a result thereof,
(DSM Code)
☐ A danger to self ☐ A danger to others
☐ Gravely disabled ☐ Persistently or acutely disabled

4. The conclusion that the person has a mental disorder is based on the following facts:
A. Psychiatric Examination _____

B. Mental Status:
Emotional Process: _____

Thought: _____

Cognition:

Memory: _____

5. The conclusion that the person is dangerous or disabled is based on the following: _____

6. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following:

_____

Physician's Signature

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

_____

Notary Public

My Commission Expires: _____

ADHS/BHS Form MH-112 (9/93)

PERSISTENTLY OR ACUTELY DISABLED (EXHIBIT E, ADDENDUM NO. 1)

RE: _____

IF PERSISTENTLY OR ACUTELY DISABLED:

1. Does the person have a severe mental disorder that, if not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality?
   Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

2. Does the severe mental disorder substantially impair the person's capacity to make an informed decision regarding treatment?
   Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

2a. Does this impairment cause the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment, and understanding and expressing an understanding of the alternatives to the particular treatment offered?
   Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

2b. Were the advantages and disadvantages of accepting treatment explained to the person?

Yes _____ No _____

2c. Were the alternatives to treatment and the advantages and disadvantages of such alternatives explained to the person?
Yes _____ No _____

2d.Explain the specific reasons why the person is incapable of understanding and expressing an understanding of the explanations described in 2a, 2b, and 2c:_____

3. Is there a reasonable prospect that the severe mental disorder is treatable by outpatient, inpatient, or combined inpatient and outpatient treatment?
Yes _____ No _____

If yes, please provide the facts that support this conclusion:_____

ADHS/BHS Form MH-112 Addendum No. 1 (9/93)

GRAVELY DISABLED (EXHIBIT E, ADDENDUM NO. 2)

RE: _____

IF GRAVELY DISABLED:

1. Is the person's condition evidenced by behavior in which s/he, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because s/he would be unable to provide for his/her basic physical needs without hospitalization?
Yes _____ No _____

2. If Yes, explain how his/her mental disability affects his/her ability to do the following and how any inability might harm him/her. Provide examples, if available, to support your conclusion:

a. Provide for food:_____

b. Provide for clothing and maintain hygiene: _____

c. Provide for shelter: _____

d. Obtain and maintain steady employment: _____

e. Respond in an emergency: _____

f. Care for present or future medical problems: _____

g. Manage money: _____

h. Other:

ADHS/BHS Form MH-112 Addendum No. 2 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit E repealed, new Exhibit E with Addenda 1 and 2 adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit F. Petition for Court-ordered Treatment

PETITION FOR COURT-ORDERED TREATMENT
Gravely Disabled Person

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF

In the Matter of	)	
	)	MH
	)	
	)	PETITION FOR COURT-
	)	ORDERED TREATMENT
	)	(Pursuant to A.R.S. § 36-533)
re: Mental Health Services	)	Danger to Self/Others or
	)	Persistently or Acutely Disabled or
_____	)	Gravely Disabled

STATE OF ARIZONA)
) ss
COUNTY OF _____)
_____)

Petitioner _____, being first duly sworn/affirmed, alleges that:
(Medical Director)

1. _____ is, as a result of a mental disorder:
   - ☐ danger to self ☐ danger to others
   - ☐ persistently or acutely disabled
   - ☐ gravely disabled

   and in need of treatment.

2. The court-ordered treatment alternatives that are appropriate and available are:
   - ☐ outpatient treatment [A.R.S. § 36-540(A)(1)].
   - ☐ combined inpatient and outpatient treatment [A.R.S. § 36-540(A)(2)].
   - ☐ inpatient treatment [A.R.S. § 36-540(A)(3)] at.

3. The person is unwilling or is unable to accept treatment voluntarily.

4. A summary of the facts supporting the above allegations is in the attached reports of examining physicians.

5. The person is residing or present in this county, or is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. § 12-1702 et seq.

6. The person is entitled to notice of hearing of the petition and may be found at _____
(location)
_____

7. Petitioner believes the person requires a:
_____ Title 14 guardian; _____ Conservator; _____ Title 36 guardian
and requests the Court to order an investigation and report to be made to the Court regarding this need. Said need exists because: _____
_____
_____
_____

8. Petitioner believes the proposed person needs the immediate services of a temporary _____ guardian _____ conservator and requests that the Court appoint the same because: _____
_____
_____

9. Petitioner believes that _____ address: _____, is the person's guardian/conservator, who should receive notice of any hearing.

10. A copy of this Petition has been mailed to the Public Fiduciary of _____ County and (other guardian, if any)_____

PETITIONER requests that the Court:

1. Set a date for a hearing; and
2. After notice and hearing find that the person is suffering from a mental disorder the result of which renders him/her dangerous to self or others, persistently or acutely disabled, or gravely disabled and order a period of treatment, all as set forth in paragraphs (1) and (2) above.
3. Check if applicable;
   - ☐ Order an independent investigation and report to the Court regarding the need for a Title 14 guardian or conservator or Title 36 guardian.
   - ☐ Appoint the following-named person as temporary guardian and/or conservator of the person, who Petitioner believes to be a fit and proper person to serve in that capacity:

_____ _____

(Proposed Temporary Guardian/Conservator) (Relation to Patient)

_____

(Address of Proposed Temporary Guardian/Conservator)

   - ☐ Impose the duties of a Title 36 guardian upon the person's A.R.S. Title 14 guardian who is _____

_____

_____ _____

DATE Signature of Petitioner

Medical Director

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

NOTARY PUBLIC OR DEPUTY CLERK OF THE SUPERIOR COURT

My Commission Expires:

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit F repealed, new Exhibit F adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-505. Coordination of Court-ordered Treatment Plans with ISPs and ITDPs

A. All inpatient and outpatient treatment plans prepared for clients according to A.R.S. §§ 36-533, 36-540 and 36-540.01, and any modifications to the treatment plans, shall be developed and implemented according to the individual service planning procedures in Article 3 of this Chapter, including the right of the client to request different services and to appeal the treatment plan.

B. If a client's ISP or ITDP is inconsistent with an inpatient or outpatient treatment plan ordered by the court, the mental health agency or health plan, whichever is appropriate, shall recommend to the court that the court-ordered plan be amended so that it is consistent with the client's ISP or ITDP.

C. If, during the period a client is on outpatient status, an emergency occurs that satisfies the standards for emergency admission under A.R.S. §§ 36-524 and 36-526, and that requires immediate revocation or modification of an outpatient order, a modification may be submitted to the court in consultation with the client's clinical team without complying with the individual service planning procedures, provided that the client and clinical team subsequently review any such modification according to the individual service planning procedures in Article 3 of this Chapter.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-505 renumbered to R9-21-504; new Section R9-21-505 renumbered from R9-21-506 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-506. Review of Court-ordered Individual

A. The mental health treatment agency that provides care for an individual ordered by a court to undergo treatment shall:
1. Assure that an examination and review of a court-ordered individual is accomplished in an effective and timely fashion, but not less than 30 days prior to expiration of any treatment portion of the order.
2. Require written documentation of the examination and review.
3. Maintain a special record that shall include:
   a. The expiration date of any treatment portion of the court-ordered treatment; and
   b. The date by which the review and examination must be initiated.
4. Establish specific dates by which the review and examination will be accomplished.
5. Conduct the review and examination by the specified dates.

B. In addition to subsection (A), the examination and review process for court-ordered clients shall, at a minimum, include the following:
1. The client's clinical team shall hold an ISP meeting pursuant to R9-21-307, not less than 30 days prior to the expiration of any treatment portion of the court order, which shall include the treatment team of the treatment agency providing behavioral health services under the court order. The ISP meeting shall include a determination by the clinical team of:
   a. Whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
   b. That no alternatives to court-ordered treatment are appropriate; and
   c. Whether court-ordered treatment should continue.
2. If, upon conclusion of the ISP meeting, the clinical team determines that the client:
   a. Continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
   b. That no alternatives to court-ordered treatment are appropriate; and
   c. That court-ordered treatment should continue, the medical director of the mental health treatment agency providing care for the client committed by court order shall appoint two physicians (one of whom must be a psychiatrist) and the mental health worker assigned to the case to conduct an examination to determine whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
3. After such examination, the examining physicians shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
4. If the medical finding is that the client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavit(s) as provided in R9-21-505.

C. In addition to subsection (A), the examination and review process for non-clients shall, at a minimum, include the following:
1. A person designated by the mental health agency providing treatment shall notify the medical director of the agency in writing of the expiration date 30 days prior to expiration of the court-ordered treatment.
2. The medical director shall within five days notify one or more physicians (at least one of whom must be a psychiatrist) and the mental health worker assigned to the case of the expiration date of the court-ordered treatment and appoint them to determine whether the non-client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
3. After such examination, the examining physician(s) shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
4. If the medical finding is that the non-client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavits as provided in R9-21-505.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-506 renumbered to R9-21-505; new Section R9-21-506 renumbered from R9-21-507 and amended by

exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-507. Transfers of Court-ordered Persons

A. For the purpose of this Section, "non-client" means an individual who have a qualifying serious mental illness but is not currently being evaluated or treated for a mental disorder by or through a health plan.

B. An individual ordered by the court to undergo treatment and without a guardian may be transferred from a mental health agency to another mental health agency, provided that the medical director of the mental health agency initiating the transfer has established that:
1. There is no reason to believe the individual will suffer more serious physical harm or serious illness as a result of the transfer; and
2. The individual is being transferred to a level and kind of treatment more appropriate to the individual's treatment needs and has been accepted for transfer by the medical director of the receiving mental health agency pursuant to subsection (D).

C. The medical director of the mental health agency initiating the transfer shall:
1. Be the medical director of the mental health agency to which the court committed the individual; or
2. Obtain the court's consent to the transfer as necessary.

D. All clients shall be transferred according to the procedures in Article 3 of this Chapter. With regard to non-clients, the medical director of the mental health agency initiating the transfer may not transfer a non-client to, or use the services of, any other mental health agency, unless the medical director of the other mental health agency has agreed to provide such services to a non-client to be transferred, and the Department has licensed and approved the mental health agency to provide those services.

E. The medical director of the mental health agency initiating the transfer shall notify the receiving mental health agency in sufficient time for the intended transfer to be accomplished in an orderly fashion, but not less than three days. This notification shall include:
1. A summary of the individual's needs.
2. A statement that, in the medical director's judgment, the receiving mental health agency can adequately meet the individual's needs.
3. If the individual is a client, a modification of a client's ISP according to R9-21-314, when applicable.
4. Documentation of the court's consent, when applicable.

F. The medical director of the transferring mental health agency shall present a written compilation of the individual's clinical needs and suggestions for future care to the medical director of the receiving mental health agency, who shall accept and approve it before an individual can be transferred according to subsection (B).

G. The transportation of individuals transferred from one mental health agency to another shall be the responsibility of the mental health agency initiating the transfer, irrespective of the allocation of the cost of the transportation defined elsewhere.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-507 renumbered to R9-21-506; new Section R9-21-507 renumbered from R9-21-508 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

R9-21-508. Requests for Notification

A. At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a relative or victim wishing to be notified in the event of a individual being released prior to the expiration of the period of court-ordered treatment shall file a demand, according to A.R.S. § 36-541.01(D), on AHCCCS form MH-127 in Exhibit G.

B. At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a person other than a relative or victim wishing to be notified in the event of an individual being released prior to the expiration of the period of court-ordered treatment shall file a petition and form of order, to A.R.S. § 36-541.01(D) on AHCCCS form MH-128 in Exhibit H.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 530, effective January 29, 2003 (Supp. 03-1). Former Section R9-21-508 renumbered to R9-21-507; new Section R9-21-508 renumbered from R9-21-509 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

Exhibit G. Demand for Notice by Relative or Victim

DEMAND FOR NOTICE BY RELATIVE OR VICTIM
(Pursuant to A.R.S. § 36-541.01)

REGARDING: _____
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. §§ 12-1702 et seq., the undersigned _____ relative _____ victim does hereby demand that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01(D).

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

_____
Signature of Applicant

_____
Printed or Typed Name of Applicant

_____
Date

_____
Address to Mail Notice

_____
Telephone Number of Applicant

ADHS/BHS Form MH-127 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit G repealed and a new Exhibit G adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit H. Petition for Notice

PETITION FOR NOTICE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF _____

In the matter of	)	
	)	MH _____
	)	
	)	PETITION FOR NOTICE
	)	
	)	(Pursuant to A.R.S. § 36-541.01)
re: Mental Health Services	)	
	)	
_____	)	

REGARDING: _____
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, the undersigned, a person other than a relative or victim of the person hereby asserting a legitimate reason for receiving such notice, does hereby petition the Court to require that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, and does hereby provide the following information required by A.R.S. § 36-541.01(D):

Legitimate reason for receiving notice: _____

_____

_____

_____

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

_____
Signature of Person Petitioning

_____
Printed or Typed Name of Petitioner

_____
Date

_____
Address to Send Notice

_____
Telephone Number of Applicant

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

In the Matter of	)	
	)	MH
	)	
	)	ORDER FOR NOTICE
	)	
	)	
re: Mental Health Services	)	
	)	
	)	
	)	

1. The Court having received a demand by _____, a relative or victim of _____, a patient ordered by the Court to undergo treatment for a mental disorder as a danger to others, for written notice from the medical director of _____, the mental health treatment agency providing court-ordered treatment for said patient, of intention to release or discharge said patient prior to the expiration of the period ordered by the Court, as provided for in A.R.S. § 36-541.01, which demand included all information required by A.R.S. § 36-541.01(D);
2. The Court having received a petition by _____, a person other than a relative or victim of _____, a patient ordered by this Court to undergo treatment for a mental disorder as a danger to others, asserting that the petitioner has a legitimate reason for receiving such notice and petitioning the Court to require that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said patient, provide the petitioner with written notice of intention to release or discharge said patient prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, which petition included all information required by A.R.S. § 36-541.01(D); and the Court, after considering said petition, having found that the petitioner has a legitimate reason for receiving prior notice.

THEREFORE IT IS ORDERED that the medical director of _____, a mental health treatment agency, shall not release or discharge the above-named patient from court-ordered inpatient treatment without first giving written notice of the intention to do so, in accordance with A.R.S. § 36-541.01(F), to:

____ The above-named relative of the patient
____ The above-named victim of the patient
____ The above-named petitioner found by the Court to have a legitimate reason for receiving prior notice.

IT IS FURTHER ORDERED that a copy of this Order for Notice shall be delivered to the above-named mental health treatment agency and shall be filed with the patient's clinical record, and if the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

DATED this _____ day of _____, 19 ____

_____
SUPERIOR COURT JUDGE/COMMISSIONER

ADHS/BHS Form MH-128 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit H repealed, new Exhibit H adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-509. Voluntary Admission for Treatment

A. Application for admission for voluntary treatment according to A.R.S. § 36-518 shall be made to a mental health agency on AHCCCS form MH-210, Titled "Application for Voluntary Treatment," in Exhibit I, by any individual who:
1. Voluntarily makes application as provided in subsection (A);
2. Gives informed consent;
3. Has not been adjudicated as an incapacitated person according to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5; and
4. If a minor, is appropriately admitted according to A.R.S. § 36-518.

B. Any mental health agency that is not a health plan under R9-21-501 and that receives an application for voluntary treatment by a client shall immediately refer the client to the appropriate health plan for treatment as provided under this Section, except that in the case of an emergency, a mental health treatment agency licensed by the Department to provide treatment under A.R.S. § 36-518 may accept an application for voluntary treatment and admit the client for treatment as follows:
1. Prior to admission of a client under this Section, the agency shall notify the appropriate health plan of the potential admission and treatment so that the health plan may first:
   a. Provide other services or treatment to the client as an alternative; or
   b. Authorize treatment of the client.
2. If the agency does not provide notice according to subsection (B)(1), the health plan shall not be obligated to pay for the treatment provided.

C. Any mental health agency providing treatment according to A.R.S. § 36-518 shall place in the medical record of the individual to be treated the following:
1. A completed copy of the application for voluntary treatment;
2. A completed informed consent form according to R9-21-511; and
3. A written statement of the individual's present mental condition.

D. If the client admitted under this rule does not have an ISP, the health plan shall prepare one in accordance with Article 3 of this Chapter. If the client already has an ISP, the health plan shall commence a review of the ISP as provided in R9-21-313 and, if necessary, take steps to modify the ISP in accordance with R9-21-314.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-509 renumbered to R9-21-508; new Section R9-21-509 renumbered from R9-21-510 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 29 A.A.R. 898 (April 21, 2023), effective May 30, 2023 (Supp. 23-1).

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Exhibit I. Application for Voluntary Treatment

APPLICATION FOR VOLUNTARY TREATMENT

(Pursuant to A.R.S. § 36-518)

I, _____, hereby request that the
(Person's Name)

_____ place me in a program or agency for mental health treatment.
(Mental Health Agency)

I understand that my capacity to give informed consent to treatment will be determined before I am allowed to voluntarily consent to treatment. My informed consent to treatment will be given on a separate form.

Further, I am aware that I am entitled to:

1. Withdraw or modify my consent to treatment at any time.
2. Receive a booklet explaining my rights under Arizona law and assistance from a human rights advocate if I desire.
3. A fair explanation of the treatment I am to receive and the purposes of that treatment.
4. A description of any material and substantial risk reasonably to be expected as a result of the treatment.
5. An answer to my inquiries concerning treatment.
6. Revoke my consent to treatment at any time.
7. Discharge within 24 hours of my written request (excluding weekends and holidays) unless the medical director of the treatment agency files a petition for court-ordered treatment.

_____
Person's Signature

_____
Date

ADHS/BHS Form MH-210 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit I repealed, new Exhibit I adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-510 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-510. Informed Consent in Voluntary Application for Admission and Treatment

A. Prior to beginning any course of medication or other treatment for an individual who is subject to voluntary admission under A.R.S. §§ 36-518 and 36-522, a mental health agency shall obtain an informed consent to treatment and enter it in the medical record. For all clients, the informed consent shall be obtained according to R9-21-206.01.

B. For clients, the mental health agency shall make reasonable inquiry into an individual's capacity to give informed consent, record these findings, and enter these findings in the client's ISP or record pursuant to Articles 2 and 3 of this Chapter. For non-clients, the agency shall adopt admission procedures that shall include the following:

1. The medical director or the medical director's designee shall make reasonable inquiry into an individual's capacity to give informed consent.
2. The medical director or the medical director's designee shall record his findings regarding the individual's capacity to give and of having given informed consent.
3. That the findings of the medical director or the medical director's designee shall be entered into the individual's record.

C. Informed consent to treatment may be revoked at any time by a reasonably clear statement in writing.

1. An individual shall receive assistance in writing the revocation as necessary.
2. If informed consent to treatment is revoked, treatment shall be promptly discontinued, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal.

D. An informed consent form shall be signed by the individual and shall state that the following information was presented to the individual:

1. A fair explanation of the treatments and their purposes.
2. A description of any material and substantive risk reasonably to be expected.
3. An offer to answer any inquiries concerning the treatments.
4. Notice that the individual is free to revoke informed consent to treatment; and

5. For clients, all information required by R9-21-206.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-510 renumbered to R9-21-509; new Section R9-21-510 renumbered from R9-21-511 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit J. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

Exhibit K. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

R9-21-511. Use of Psychotropic Medication

A. Psychotropic medications may only be ordered for individuals undergoing court-ordered evaluation according to R9-21-204 or R9-21-207.

B. Psychotropic medications may not be ordered for and administered to individuals undergoing court-ordered treatment, except as follows:
1. In an emergency involving the safety of the individual or another, as documented in the individual's medical record;
2. If the individual or guardian gives an informed consent to use the medication;
3. If provision for use of the medications shall be contained in the individual's treatment plan or ISP. At a minimum, the plan shall specify:
   a. A description of the circumstances under which the medication may be used.
   b. A description of the objectives that are expected to be achieved by use of the medication. This description must indicate how the individual's condition would be improved by using the medication and indicate what result would be expected if the medication were not used; or
4. According to R9-21-204 or R9-21-207.

C. The agency shall have the capability to detect drug side effects or toxic reactions that may result from the medications used.

D. The agency shall have written policies and procedures governing the use of psychotropic medication. These policies and procedures shall specify:
1. Protective measures that will ensure the individual's safety and promote the avoidance or mitigation of short and long-term deleterious effects on the individual.
2. Periodic individual care monitoring, i.e., evaluating and updating the treatment plan and reviewing problem areas such as failure of the individual to achieve treatment plan objectives.
3. Recordkeeping requirements.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-511 renumbered to R9-21-510; new Section R9-21-511 renumbered from R9-21-512 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-512. Seclusion and Restraint

Individuals undergoing court-ordered evaluation or court-ordered treatment shall not be placed in seclusion or restraint except as permitted by Article 2 of this Chapter, and specifically R9-21-204.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-512 renumbered to R9-21-511; new Section R9-21-512 renumbered from R9-21-513 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-513. Renumbered

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-512 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

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.

36-546.01. Expedited appeal to the court of appeals

An order for court ordered treatment may be reviewed by appeal to the court of appeals as prescribed in the Arizona rules of civil procedure or by special action. Such appeal or special action shall be entitled to preference.

ARIZONA BOARD OF OCCUPATIONAL THERAPY EXAMINERS
Title 4, Chapter 43

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: October 16, 2023

SUBJECT: **BOARD OF OCCUPATIONAL THERAPY EXAMINERS**
Title 4, Chapter 43, Articles 1-4

Summary

This Five-Year Review Report (5YRR) from the Board of Occupational Therapy Examiners (Board) relates to fifteen (15) rules in Title 4, Chapter 43, Articles 1-4 related to the licensure, regulation, and supervision of occupational therapists and occupational therapist assistants. The rules also relate to hearing procedures before the Board.

In the prior report for these rules, which was approved by the Council in October 2018, the Board proposed to amend eleven (11) rules that it indicated were not clear, concise, understandable, consistent, or enforced as written. Specifically, the prior report indicated that the rules were inconsistent with statutes amended by legislation passed in 2008 and 2013. The Board stated it would submit a rulemaking to the Council by June 2019. However, the Board indicates it did not complete this prior proposed course of action. In fact, Council staff notes that the Board has not completed the prior proposed courses of action in the past two reports. A copy of the Boards prior October 2018 report is included with the final materials for the Council's reference.

Proposed Action

In the current report, the Board is proposing to amend seven (7) rules it indicates are not clear, concise, understandable, consistent, or enforced as written. The Board is proposing to submit a rulemaking to the Council to address these issues by June 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 the economic impact of the 2000 rulemaking was as anticipated for the four rules covered, except that changes are now necessary in R4-43-101, R4-43-402, R4-43-404, and R4-43-405 to account for statutory changes. Overall, the rules have a minimal to moderate economic impact on the licensed professional and the public. The economic impact of the rules on the public is to protect the public from the licensure of persons who may harm them in the course of receiving occupational therapy services.

Stakeholders include the Board, licensed occupational therapists and occupational therapy assistants, 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 believes that with the proposed changes the rules will impose the least burden and costs to the community regulated by the rules. The Board is making every effort to ensure the policies, procedures, paperwork, and compliance costs effectively work for the regulated community, but that they are also efficient, cost effective and necessary to achieving the regulatory objectives for the Board.

4. Has the agency received any written criticisms of the rules over the last five years?

While the Board indicates it has been holding Statutes and Rules Subcommittee Meetings monthly since February 2023 to discuss rule revisions with representation from the public, the Board states it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates the following rules are not clear, concise, and understandable:

- **R4-43-201 (Initial Application):**
    - Current statute and rule requires that applicants submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This is a

point of confusion for many applicants, as they often assume submitting a fingerprint card with ABOTE will result in receipt of a fingerprint clearance card. In a survey conducted in July 2018, 71% of the 1,031 respondents stated that their employer requires a fingerprint clearance card issued by the Arizona Department of Public Safety. In order to streamline the application process while continuing to protect the safety of the public, the Board wishes to change the fingerprint requirement for all applicants. A change to the fingerprint requirements first requires change to statute before changing the rule.

- **R4-43-102 (Fees):**
    - Executive Order 2018-02 required the Board to investigate ways to ease the financial burden of obtaining a license for military members, their spouses, and veterans. The Board would like to offer reduced initial application fees for members of the military, military spouses, and veterans. This would require additions to R4-43-101 to include definitions of military, military spouses, and veterans as well.
- **R4-43-202 (Renewal of License):**
    - Current statute and rule requires that applicants for an initial license submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. However, they are not required to submit fingerprints at regular intervals. There is also much confusion regarding A.R.S. § 32-3208 and the requirements for reporting criminal charges. The Board wishes to change statute and rule to require licensees to maintain a fingerprint clearance card. This will not be a financial burden, as a survey conducted in July 2018, showed that 71% of the 1,031 respondents were required by their employer to hold a fingerprint clearance card issued by the Arizona Department of Public Safety. A change to the fingerprint requirements first requires change to statute before changing the rule.
- **R4-43-203 (Continuing Education for Renewal of License):**
    - Licensees often do not understand that, according to rule, fieldwork supervision is not accepted for continuing education. To maintain consistency with national certification requirements, the Board desires revisions to allow an occupational therapist's supervision of a student's fieldwork to count as continuing education. The Board also wishes to increase the continuing education requirement for occupational therapists to 24 to ensure they are maintaining their knowledge, skills and abilities in the profession, and to add language requiring all licensees to complete a course on the Arizona Board of Occupational Therapy rules and statutes.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Board indicates the following rules are inconsistent with other rules and statutes:

- **R4-43-101 (Definitions):**
    - "Facility of Practice" should include: or where client records are being kept.
    - A revision to remove "Good Moral Character" will be required.

- “Health Care Professional” will require an amendment to align with the American Occupational Therapy Association Model Practice Act.
- “Immediate area” will require revision from “80 feet” to “sight”.
- “Immorality or misconduct that tends to discredit the occupational therapy profession” requires revision to include: “j. Using fraud, misrepresentation, or deception in assisting another person to obtain or attempt to obtain an occupational therapist or occupational therapy assistant license. k. Violating any federal law, state law, administrative rules, or regulations concerning the practice of occupational therapy. l. Violating rules or statutes concerning the training of unlicensed occupational therapy personnel or requiring an unlicensed person to provide occupational therapy services without proper training”.
- “Occupational therapy aide,” “unlicensed personnel,”, and “occupational therapy technician” will require revision to remove “occupational therapy technician” and including the following revision to add occupational therapy assistant: “mean a person who is not licensed as an occupational therapist or occupational therapy assistant, working under the continuous supervision of a licensed occupational therapist or occupational therapy assistant”.
- “Supervision” will be revised to only include the following to align with the American Occupational Therapy Association: “11. "Supervision" means the giving of instructions to and collaboration with the supervising occupational therapist or the occupational therapy assistant that are adequate to ensure the safety of clients during the provision of occupational therapy services and that take into consideration the skill level, competency, experience, work setting demands and client population. A. The methods of supervision are: 1. “Direct supervision” means that the occupational therapy supervisor must be within sight and/or hearing and be available for immediate intervention. 2. “Indirect supervision” means that the collaboration between practitioners occur through communication other than in person including but not limited to email, telephone, fax, or video conferencing. B. The levels of Supervision are: 1. “Continuous supervision” means the supervising occupational therapy practitioner will provide direct supervision at all times. 2. “Close supervision” means that the supervising occupational therapist will provide indirect daily supervision and direct supervision at least 1 time per week in which services are provided. 3. “Periodic Supervision” means that the supervising occupational therapist will provide direct face to face contact every 7 calendar days regarding caseload at the facility of practice or where the client’s records are stored and direct supervision weekly. 4. “Routine Supervision” means that the supervising occupational therapist will provide direct face to face contact regarding caseload once every 2 weeks at the facility of practice or where the clients records are stored and will have occasional (at least 2 times per month) observation of the individuals where he or she is rendering services. 5.” General Supervision” means that the supervising occupational therapist will provide direct face to face contact regarding caseload once every 30 calendar days at the facility of practice or where records are stored and will have minimal (quarterly) observation of the individuals’ performance where he or she is rendering services. C. The levels of

experience are: 1. Entry Level I: A person with less than 90 days of clinical experience or working in a new practice setting and developing new skills. 2. Entry Level II: A person with more than 90 days but less than 1 year of clinical experience and has achieved entry level I skills. 3. Intermediate Level: A person with 1-3 years of clinical experience who has achieved entry level I and II skills. He or she is working on increased skill development, mastery of basic role functions and demonstrates the ability to respond to situations based on previous experiences. 4. Advanced Level: A Person with at least 3 years of clinical experience who has achieved intermediate level skills. He or she is refining specialized skills with the ability to understand complex issues impacting role functions".

- **R4-43-102 (Fees):**
  - Replace the term "Permit" with "License".
  - Including option for online payments
  - Board is assessing an increase in initial/renewal fees in upcoming subcommittee meetings.
- **R4-43-404 (Limited Permit Practice):**
  - SB 1128 passed in 2008, revised in A.R.S. §32-3428 the term Limited Permit to Limited License. A revision will be required for consistency.
- **R4-43-405 (Display of License Certificate):**
  - SB 1105 passed in 2013, revised A.R.S. § 32-3441 by adding the carrying of a wallet sized card as an additional requirement. A revision will be required to add a wallet sized card to the rule for consistency.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Board indicates the rules are effective in achieving their objectives.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Board indicates the following rules are not currently enforced as written:

- **R4-43-201 (Initial Application):**
  - The current rule does not list "valid email address" on the list of information required on the initial application. The new eLicensing system requires email addresses for log in and for communication with applicants. The Board requests the addition of "valid email address" to the list of information required on an initial application.
- **R4-43-202 (Renewal of License):**
  - The current rule does not list "valid email address" on the list of information required on the renewal application. The new eLicensing system requires email addresses for log in and for communication with applicants. The Board requests the addition of "valid email address" to the list of information required on a renewal application.

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

Not applicable. The Board indicates there are no corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Board indicates the rules were adopted prior to July 29, 2010.

11. Conclusion

This 5YRR from the Board relates to fifteen (15) rules in Title 4, Chapter 43, Articles 1-4 related to the licensure, regulation, and supervision of occupational therapists and occupational therapist assistants. The rules also relate to hearing procedures before the Board. In the current report, the Board is proposing to amend seven (7) rules it indicates are not clear, concise, understandable, consistent, or enforced as written. The Board is proposing to submit a rulemaking to the Council to address these issues by June 2024.

Council staff believes the Board has submitted a report that meets the requirements of A.R.S. § 41-1056(A). However, Council staff recommends the Council discuss with the Board its proposed course of action to address the issues identified in the report, particularly inconsistencies between the rules and statutes that have been present since 2008. As noted above, it appears the Board has not completed the prior proposed course of action for the prior two reports.

ARIZONA BOARD OF OCCUPATIONAL THERAPY EXAMINERS
1740 W Adams St Ste 3407, Phoenix, AZ 85007
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(602) 589-8353 Fax: (602) 589-8354

July 28, 2023

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chairwoman
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Five-Year-Review Report Title 4, Chapter 43, Articles 1 through 4

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Board of Occupational Therapy Examiners for Title 4, Chapter 43, Articles 1 through 4 of the Arizona Administrative Code.

No rules have been omitted from review with the intention of letting them expire

The Arizona Board of Occupational Therapy Examiners is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Shaina Ganatra at 602-589-8353 or Shaina.Ganatra@otboard.az.gov.

Sincerely,

Shaina Ganatra
Executive Director

Enclosures

Arizona Board of Occupational Therapy Examiners

Five-Year-Review Report

2023

1. Authorization of the rule by existing statutes

General Statutory Authority:

A.R.S. § 32-3404 - Provides general authority for the rules

Specific Statutory Authority:

Rule	Specific Statutory Authority
R4-43-101	A.R.S. § 32-3401
R4-43-102	A.R.S. § 32-3427
R4-43-103	A.R.S. § 41-1092
R4-43-201	A.R.S. § 32-3423, A.R.S. § 41-1080
R4-43-202	A.R.S. § 32-3426
R4-43-203	A.R.S. § 32-3426
R4-43-204	A.R.S. § 32-3426
R4-43-205	Title 41, Chapter 6, Article 7.1
R4-43-301	Title 41, Chapter 6
R4-43-302	A.R.S. § 41-1092.09
R4-43-401	A.R.S. § 32-3441
R4-43-402	A.R.S. § 32-3441
R4-43-403	A.R.S. § 32-3404
R4-43-404	A.R.S. § 32-3428
R4-43-405	A.R.S. § 32-3404
R4-43-406	A.R.S. § 32-3426

2. The objective of each rule:

Rule	Objective
R4-43-101 Definitions	R4-43-101 was adopted to provide the definitions relating to the policies and procedures of the Board for administering the issuance and renewal of licenses, for receiving, investigating, and resolving complaints, and for responding to the protected and the regulated public regarding the license status of occupational therapy practitioners.
R4-43-102 Fees	R4-43-102 was adopted to provide the regulated public with the various fees for licensure and the forms of acceptable payment.
R4-43-103 Service by the Board	R4-43-103 was adopted to inform licensees on the Board procedures for serving decisions, orders, subpoenas, and/or notices of other processes by personal service or by certified mail.
R4-43-201 Initial Application	R4-43-201 was adopted to provide potential applicants with the steps and requirements necessary to apply for a license as an occupational therapist or an occupational therapy assistant.
R4-43-202 Renewal	R4-43-202 was adopted to provide licensees with the steps and requirements

License	necessary to apply for the renewal of a license as an occupational therapist or an occupational therapy assistant as provided for in ARS § 32-3426 (A)(1).
R4-43-203 Continuing Education for Renewal of License	R4-43-203 was adopted to provide licensees with the steps and requirements necessary to complete continuing education units required in to apply for a renewal license as provided for in ARS § 32-3426 (C).
R4-43-204 Inactive License	R4-43-204 was adopted to provide licensees with a mechanism to inactivate a license and provide licensees with the steps required to reactivate an inactive license.
R4-43-205 Procedures for Processing License Applications	R4-43-205 was adopted to inform applicants of the steps involved and time frames required in processing a license.
R4-43-301 Hearing Procedures	R4-43-301 was adopted to inform licensees and the public of the statutory authorities by which the Board will conduct hearings.
R4-43-302 Rehearing or Review of Decision	R4-43-302 was adopted to inform licensees and the public of the statutory authorities by which the Board will rehear or review a previous decision, provide the process of requesting a rehearing and the reasons why the Board may review a decision.
R4-43-401 Supervision of Occupational Therapy Assistants	R4-43-401 was adopted to inform licensees that only a licensed occupational therapist may supervise an occupational therapy assistant and advise licensees of the required levels of supervision based on the occupational therapy assistants experience level.
R4-43-402 Supervision of Occupational Therapy Aides and Other Unlicensed Personnel.	R4-43-402 was adopted to inform licensees that an occupational therapy aide may not provide occupational therapy services and that an occupational therapy aide shall receive continuous supervision.
R4-43-403 Designation of Title	R4-43-403 was adopted to inform the public of the titles that unlicensed personnel and students shall use.
R4-43-404 Limited Permit Practice	R4-43-404 was adopted to set out the Board's requirements for a limited permit and inform licensees as to who is qualified for a limited permit.
R4-43-405 Display of License Certificate	R4-43-405 was adopted to inform licensees and the public of the requirement to display valid licenses at the treatment facility.
R4-43-406 Change of Name or Address	R4-43-406 was adopted to inform licensees of the requirement to keep name and address changes up-to-date so that the Board can contact them when necessary.

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
N/A	

4. Are the rules consistent with other rules and statutes? **Yes ___ No _X_**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R4-43-101 Definitions	- "Facility of Practice" should include: or where client records are being kept. - A revision to remove "Good Moral Character" will be required. - "Health Care Professional" will require an amendment to align with the American Occupational Therapy Association Model Practice Act. - "Immediate area" will require revision from "80 feet" to "sight". - "Immorality or misconduct that tends to discredit the occupational therapy profession" requires revision to include: "j. Using fraud, misrepresentation, or deception in assisting another person to obtain or attempt to obtain an occupational therapist or occupational therapy assistant license. k. Violating any federal law, state law, administrative rules, or regulations concerning the practice of occupational therapy. l. Violating rules or statutes concerning the training of unlicensed occupational therapy personnel or requiring an unlicensed person to provide occupational therapy services without proper training". - "Occupational therapy aide," "unlicensed personnel,", and "occupational therapy technician" will require revision to remove "occupational therapy technician" and including the following revision to add occupational therapy assistant: "mean a person who is not licensed as an occupational therapist or occupational therapy assistant, working under the continuous supervision of a licensed occupational therapist or occupational therapy assistant". - "Supervision" will be revised to only include the following to align with the American Occupational Therapy Association: "11. "Supervision" means the giving of instructions to and collaboration with the supervising occupational therapist or the occupational therapy assistant that are adequate to ensure the safety of clients during the provision of occupational therapy services and that take into consideration the skill level, competency, experience, work setting demands and client population. A. The methods of supervision are: 1. "Direct supervision" means that the occupational therapy supervisor must be within sight

	and/or hearing and be available for immediate intervention. 2. “Indirect supervision” means that the collaboration between practitioners occur through communication other than in person including but not limited to email, telephone, fax, or video conferencing. B. The levels of Supervision are: 1. “Continuous supervision” means the supervising occupational therapy practitioner will provide direct supervision at all times. 2. “Close supervision” means that the supervising occupational therapist will provide indirect daily supervision and direct supervision at least 1 time per week in which services are provided. 3. “Periodic Supervision” means that the supervising occupational therapist will provide direct face to face contact every 7 calendar days regarding caseload at the facility of practice or where the client’s records are stored and direct supervision weekly. 4. “Routine Supervision” means that the supervising occupational therapist will provide direct face to face contact regarding caseload once every 2 weeks at the facility of practice or where the clients records are stored and will have occasional (at least 2 times per month) observation of the individuals where he or she is rendering services. 5.” General Supervision” means that the supervising occupational therapist will provide direct face to face contact regarding caseload once every 30 calendar days at the facility of practice or where records are stored and will have minimal (quarterly) observation of the individuals’ performance where he or she is rendering services. C. The levels of experience are: 1. Entry Level I: A person with less than 90 days of clinical experience or working in a new practice setting and developing new skills. 2. Entry Level II: A person with more than 90 days but less than 1 year of clinical experience and has achieved entry level I skills. 3. Intermediate Level: A person with 1-3 years of clinical experience who has achieved entry level I and II skills. He or she is working on increased skill development, mastery of basic role functions and demonstrates the ability to respond to situations based on previous experiences. 4. Advanced Level: A Person with at least 3 years of clinical experience who has achieved intermediate level skills. He or she is refining specialized skills with the ability to understand complex issues impacting role functions”. - A revision to add Telehealth language, as follows: “Telehealth: A licensee may provide occupational therapy services to a client utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this Act. (1) “Telehealth Visit” means the provision of occupational therapy services by a licensee to a client using technology where the licensee and client

	are not in the same physical location for the occupational therapy service. (2) A licensee engaged in a telehealth visit shall utilize technology that is secure and compliant with state and federal law. (3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology. (4) Occupational therapy services provided by telehealth can be synchronous or asynchronous. a. "Asynchronous" means using means any transmission to another site for review at a later time that uses a camera or other technology to capture images or data to be recorded. b. "Synchronous" means real-time interactive technology. (5) Supervision of Occupational Therapy Assistants, Aides, and students using telehealth technologies must follow existing state law and guidelines regarding supervision, regardless of the method of supervision".
R4-43-102 Fees	- Replace the term "Permit" with "License". - Including option for online payments - Board is assessing increase in initial/renewal fees in upcoming subcommittee meetings.
R4-43-201 Initial Application	- In subsection (A), strike "7 days" and replace with "60 days". - In subsection (B)(9), remove "American Occupational Therapy Certification Board". - In subsection (C)(3) and (C)(3)(f) remove "good moral character". - In subsection (C)(3)(f) remove "A statement that the health care professional considers the applicant to be of good moral character". - In subsection
R4-43-202 Renewal Application	- Revise to include A.R.S. §32-3208: "A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed."
R4-43-203 Continuing Education for Renewal of License	- In subsection (A), replace "20 clock-hours" to "24 clock-hours". - In subsection (D) (1), add Diversity, Equity, and Inclusion (DEI) training. - In subsection (D), add "5. Publishing: a. A book, for a maximum credit of 12 clock-hours, and submitting a copy of the book; b. An article, for a maximum credit of 6 clock-hours, and submitting a copy of the article; " - In subsection (D) (6), revise to: "6. Presenting a program, workshop, seminar, or

	conference of not less than 1.5 hours in duration for a maximum of 6 clock-hours and submitting a brochure, agenda, or similar printed material describing: (No credit will be granted for repeat presentations.)". - In subsection (D) (7), revise to "7. In-service training related to clinical occupational therapy services excluding safety, fire evacuation, and cardiopulmonary resuscitation (CPR), for a maximum of 6 clock-hours and". - In subsection (D), add: "8. Supervising an occupational therapy student for level I and/or level II fieldwork for a maximum of 6 hours for an OTA and 10 clock hours for an OT. One clock hour for 40 clock hours of supervision per student. A letter of verification or certificate from the school that includes name of the licensee, level of fieldwork, dates of fieldwork and number of students supervised".
R4-43-205 Procedures for Processing License Applications	- Remove "permit".
R4-43-401 Supervision of Occupational Therapy Assistants	- In subsection (C) (1-4), revise: "1. Entry Level I: Close supervision is the minimum level of supervision needed for an occupational therapy assistant with this level of experience. 2. Entry Level II: Periodic supervision is the minimum level of supervision needed for an occupational therapy assistant with this level of experience. 3. Intermediate Level: Routine supervision is the minimum level of supervision needed for an occupational therapy assistant with this level of experience. 4. Advanced Level: General supervision is the minimum level of supervision needed for an occupational therapy assistant with this level of experience".
R4-43-402 Supervision of Occupational Therapy Aides	- Add: "E. Occupational therapy students engage in academic related activities that reflect the collaborative learning outcomes established between the site and the academic program. Student supervision will ensure protection of consumers, opportunities for role modeling of occupational therapy practice that reflects the setting, the client's condition and the students ability. Initially, supervision shall be direct and then decrease to less direct as appropriate for the setting, the severity of the client's condition, and the ability of the student.".
R4-43-403 Designation of Title	- In subsection (1), replace the term "Permit" with "License". - Revise to add: "OTS".

R4-43-404 Limited Permit Practice	- SB 1128 passed in 2008, revised in A.R.S. §32-3428 the term Limited Permit to Limited License. A revision will be required for consistency.
R4-43-405 Display of License Certificate	- SB 1105 passed in 2013, revised A.R.S. § 32-3441 by adding the carrying of a wallet sized card as an additional requirement. A revision will be required to add a wallet sized card and/or digital wallet card to the rule for consistency. - Add: "If a facility is not available for display of the license, the occupational therapist or the occupational therapy assistant must carry a Board-issued wallet-sized license card or digital wallet card during work hours.".

5. Are the rules enforced as written? **Yes __** **No _X_**

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
R4-43-201 Initial Application	- The current rule does not list "valid email address" on the list of information required on the initial application. The new eLicensing system requires email addresses for log in and for communication with applicants. The Board requests the addition of "valid email address" to the list of information required on an initial application.
R4-43-202 Renewal of License	- The current rule does not list "valid email address" on the list of information required on the renewal application. The new eLicensing system requires email addresses for log in and for communication with applicants. The Board requests the addition of "valid email address" to the list of information required on a renewal application.

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
R4-43-201 Initial Application	The previous statute and rule required that applicants submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. However, Senate Bill 1284 from 2021 amended Arizona Revised Statutes 32-3430 related to licensing purposes for the Arizona Board of Occupational Therapy Examiners. Prior to these amendments, the Arizona Board of Occupational Therapy Examiners was authorized to submit fingerprint-based background check requests to the AZ DPS Applicant Processing Team for state and federal criminal history records information pursuant to ARS 41-1750 and Public Law 92-544. The amendments removed the required verbiage for this form of background check and replaced it with verbiage stating that beginning January 1, 2022, licensing applicants would be required to possess a valid fingerprint clearance card. The

	Board wishes to align Rules with § 32-430, in order to streamline the application process while continuing to protect the safety of the public.
R4-43-102 Fees	Executive Order 2018-02 required the Board to investigate ways to ease the financial burden of obtaining a license for military members, their spouses, and veterans. The Board would like to offer reduced initial application fees for members of the military, military spouses, and veterans. This would require additions to R4-43-101 to include definitions of military, military spouses, and veterans as well.
R4-43-202 Renewal of License	The previous statute and rule required that initial applicants submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. However, Senate Bill 1284 from 2021 amended Arizona Revised Statutes 32-3430 related to licensing purposes for the Arizona Board of Occupational Therapy Examiners. Prior to these amendments, the Arizona Board of Occupational Therapy Examiners was authorized to submit fingerprint-based background check requests to the AZ DPS Applicant Processing Team for state and federal criminal history records information pursuant to ARS 41-1750 and Public Law 92-544. The amendments removed the required verbiage for this form of background check and replaced it with verbiage stating that beginning January 1, 2022, licensing applicants would be required to possess a valid fingerprint clearance card. The Board wishes to align Rules with § 32-430, in order to streamline the application process while continuing to protect the safety of the public.
R4-43-203 Continuing Education for Renewal of License	Licensees often do not understand that, according to rule, fieldwork supervision is not accepted for continuing education. To maintain consistency with national certification requirements, the Board desires revisions to allow an occupational therapist's supervision of a student's fieldwork to count as continuing education. The Board also wishes to increase the continuing education requirement for occupational therapists to 24 to ensure they are maintaining their knowledge, skills and abilities in the profession, and to add language requiring all licensees to complete a course on the Arizona Board of Occupational Therapy rules and statutes.

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
Statutes and Rules Subcommittee Meetings	Subcommittee meetings to meet and discuss rule revisions with representation from the public. The subcommittee meets one time per month since February 2023, and continues to meet to further discuss	The Board will continue to update as the subcommittee meets to discuss.

	rules.	

8. Economic, small business, and consumer impact comparison:

The Economic impact of the 2000 rulemaking was as anticipated for the four rules covered, except that changes are now necessary in R4-43-101, R4-43-402, R4-43-404, and R4-43-405 to account for statutory changes. The economic impact of the remaining rules is to provide the procedures necessary to regulate the OTs and OTAs. The rule provides all of the requirements necessary for the Board to enforce the statute and rule, including discipline of the licensees. Overall, the rules have a minimal to moderate economic impact on the licensed professionals and the public. The economic impact of the rules on the public is to protect the public from the licensure of persons who may harm them in the course of receiving occupational therapy services.

The Board, in 2003, reported in its economic impact statement (EIS) that fee increases proposed at that time would increase license renewal fees by 34%. The Board further reported that the need for increasing fees came about due to a legislated mandate to go from annual licensing to bi-annual licensing. The EIS stated that the Board's revenues had dropped significantly as a result.

The Board's last Five-Year-Review Report was approved in 2018; The Board reported that the revenue disparity reported in 2003 would be dealt with in a rule amendment to be filed later that year. The rules were never amended. However, adjustments were made to the fee structure to cover the Board's operating expenses.

When the previous executive director discovered the discrepancy between the fees published in rules and what the agency was charging, the fee amounts were immediately reverted to those published in rules.

The Board will submit a rulemaking in June 2024 to be consistent with statutory revisions, and to streamline administrative functions as identified as a result of Executive Order 2018-02. These revisions will not have an economic impact on applicants, consumers, or small businesses.

The Board should experience moderate costs to write and implement the proposed rules, and the related economic, small business, and consumer impact statement.

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-reviews have resulted in proposed rule revisions. However, none of these rule revisions was implemented.

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 Board believes that with the proposed changes the rules will impose the least burden and costs to the community regulated by the rules. The Board is making every effort to ensure the policies, procedures, paperwork and compliance costs effectively work for the regulated community, but that they are also efficient, cost effective and necessary to achieving the regulatory objectives for the Board.

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)?

There are no applicable federal laws with which to compare the stringency of the rules.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules were not adopted after July 29, 2010. Therefore, analysis related to general permits is not required for the rules in this report.

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 Board plans to submit a rulemaking to Council by June 2024. The Board plans to amend its current rules based on legislation passed since its last three Five-Year-Review Reports.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS

(Authority: A.R.S. § 32-3401 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-43-101 through R4-43-103, adopted effective October 14, 1992 (Supp. 92-4).

Article 1, consisting of Sections R4-43-101 through R4-43-103, adopted again by emergency action effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 1, consisting of Sections R4-43-101 through R4-43-103, adopted again by emergency action effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 1, consisting of Sections R4-43-101 through R4-43-103, adopted again by emergency action effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 1, consisting of Sections R4-43-101 through R4-43-103, adopted by emergency action effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section

ARTICLE 2. LICENSURE

Article 2, consisting of Sections R4-43-201 through R4-43-205, adopted effective October 14, 1992 (Supp. 92-4).

Article 2, consisting of Sections R4-43-201 through R4-43-204, adopted again by emergency action effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 2, consisting of Sections R4-43-201 through R4-43-204, adopted again by emergency action effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 2, consisting of Sections R4-43-201 through R4-43-204, adopted again by emergency action effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 2, consisting of Sections R4-43-201 through R4-43-204, adopted by emergency action effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section

ARTICLE 3. HEARINGS

Article 3, consisting of Sections R4-43-301 and R4-43-302, adopted effective October 14, 1992 (Supp. 92-4).

Article 3, consisting of Sections R4-43-301 and R4-43-302, adopted again by emergency action effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 3, consisting of Sections R4-43-301 and R4-43-302, adopted again by emergency action effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 3, consisting of Sections R4-43-301 and R4-43-302, adopted again by emergency action effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 3, consisting of Sections R4-43-301 and R4-43-302, adopted by emergency action effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section

ARTICLE 4. REGULATORY PROVISIONS

Article 4, consisting of Sections R4-43-401 through R4-43-406, adopted effective October 14, 1992 (Supp. 92-4).

Article 4, consisting of Sections R4-43-401 through R4-43-406, adopted again by emergency action effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Article 4, consisting of Sections R4-43-401 through R4-43-406, adopted again by emergency action effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Article 4, consisting of Sections R4-43-401 through R4-43-406, adopted again by emergency action effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 4, consisting of Sections R4-43-401 through R4-43-406, adopted by emergency action effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section

ARTICLE 1. GENERAL PROVISIONS

R4-43-101. Definitions

In addition to the definitions at A.R.S. § 32-3401, in this Chapter:

1. "Facility of Practice" means the principal location of an agency or organization where an occupational therapist or occupational therapy assistant practices occupational therapy.
2. "Good Moral Character" means an applicant has not been convicted of a felony or a misdemeanor within 5 years before application and never been convicted of a felony or misdemeanor involving moral turpitude.
3. "Health Care Professional" means a person certified as an Occupational Therapist or an Occupational Therapy Assistant by the American Occupational Therapy Certification Board or the National Board for Certification in Occupational Therapy, Inc. or any medical professional licensed by A.R.S. Title 32 or the equivalent if licensed outside of Arizona.
4. "Immediate area" means an occupational therapist is on the same floor and within 80 feet of an occupational therapy aide providing services to an occupational therapy patient.
5. "Immorality or misconduct that tends to discredit the occupational therapy profession" means:
   a. Engaging in false advertising of occupational therapy services.

b. Engaging in assault and battery of a patient, client, or other person with whom the licensee has a professional relationship.
c. Falsifying patient or client documentation or reports.
d. Failing to provide appropriate supervision of an occupational therapy assistant or unlicensed personnel performing occupational therapy.
e. Failing to provide a comprehensive occupational therapy service compatible with current research within ethical and professional standards, or failing to provide services based upon an evaluation of the patient or client needs and appropriate treatment procedures.
f. Failing to document or maintain patient treatment records, or failing to prepare patient or client reports within 30 days of service or treatment.
g. Failing to renew a license while continuing to practice occupational therapy.
h. Falsely claiming to have performed a professional service, charging for a service not rendered, or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
i. Obtaining a fee, a referral fee, or other compensation by fraud or misrepresentation.
j. Sexually inappropriate conduct with a client or patient, or with a former client or patient within 6 months after the termination of treatment.
k. Signing a blank, undated, or unprepared prescription form.
l. Using fraud, misrepresentation, or deception in assisting another person to obtain or attempt to obtain an occupational therapist or occupational therapy assistant license.
m. Violating any federal law, state law, administrative rules, or regulations concerning the practice of occupational therapy.
n. Violating rules or statutes concerning the training of unlicensed occupational therapy personnel or requiring an unlicensed person to provide occupational therapy services without proper training.

6. "Licensee" means a person licensed in Arizona as an occupational therapist or an occupational therapy assistant.
7. "Occupational therapy aide," "unlicensed personnel," and "occupational therapy technician" mean a person who is not licensed as an occupational therapist or occupational therapy assistant, working under the continuous supervision of a licensed occupational therapist.
8. "Physically present" means a supervising occupational therapist is present to observe the practice of occupational therapy.
9. "Premises" means the building and the surrounding property in which the occupational therapy is practiced.
10. "Person" means the same as in A.R.S. § 41-1001.
11. "Supervision" means a collaborative process for the responsible periodic review and inspection of all aspects of occupational therapy services. The following levels of supervision are minimal. An occupational therapist may assign an increased level of supervision if necessary for the safety of a patient or client. The levels of supervision are:
    a. "Close supervision" means the supervising occupational therapist provides initial direction to the occupational therapy assistant and daily contact while on the premises.
    b. "Continuous supervision" means the supervising occupational therapist is in the immediate area of the occupational therapy aide performing supportive services.
    c. "General supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 30-calendar days on a per patient or client basis while on the premises, with the supervising occupational therapist available by telephone or by written communication.
    d. "Minimal supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 30-calendar days while on the premises.
    e. "Routine supervision" means the supervising occupational therapist has face-to-face contact with the occupational therapy assistant at least once every 15-calendar days on a per patient or client basis while on the premises, with the supervising occupational therapist available by telephone or by written communication.
12. "Supportive Services" means clerical and maintenance activities, preparation of work area or equipment, and delegated, routine aspects of an intervention session with a patient or client that require no adaptations by an occupational therapy aide.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective November 6, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 707, effective January 25, 2000 (Supp. 00-1).

R4-43-102. Fees

A. The Board shall charge the following fees:
1. An applicant for licensure:
    a. Application fee: $100. This fee is in addition to the initial license fee.
    b. Limited permit fee: $35. Upon full licensure, the Board shall subtract $35 from the initial licensure fee.
2. A licensee:
    a. Reinstatement fee: $75. This reinstatement fee is in addition to the appropriate license renewal fee.
    b. Duplicate license fee: $10.
3. An occupational therapist:
    a. Initial license fee: $135.
    b. Renewal license fee: $135.
    c. Inactive status renewal fee: $25.
4. An occupational therapy assistant:
    a. Initial license fee: $70.
    b. Renewal license fee: $70.
    c. Inactive status renewal fee: $15.

B. All fees set forth in subsection (A) are nonrefundable except as provided in A.R.S. § 41-1077.

1. Initial application, initial licensure, limited permit, and returned or insufficient fund replacement checks shall be remitted in cash, cashier's check, or money order.
2. Renewal, duplicate license, and reinstatement fees shall be remitted in cash, cashier's check, money order, or personal check.

Historical Note
Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-103. Service by the Board
Pursuant to A.R.S. § 41-1063(A), service may be made by, for and on behalf of the Board of any decision, order, subpoena, notice or other process by personal service or by mailing a copy by certified mail. Service by certified mail shall be made to the last address of record filed with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is by certified mail, service is complete upon deposit in the United States mail.

Historical Note
Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4).

ARTICLE 2. LICENSURE

R4-43-201. Initial Application

A. An applicant for an initial license to practice as an occupational therapist or an occupational therapy assistant shall submit an application form provided by the Board to the Board's office. The application and all supporting documentation shall be received by the Board at least 7 days before a Board meeting to be considered at that Board meeting.

B. The initial application form shall be signed by an applicant and include the following information on the applicant:
1. Applicant's last name, 1st name, and middle name;
2. How applicant's name is to be shown on the licensure certificate;
3. Other names used;
4. Social security number;
5. Residence address;
6. Alternate mailing address if the residential address is to remain confidential;
7. The type of license for which applying;
8. The amount of the application and license fee to be submitted;
9. Applicant's American Occupational Therapy Certification Board or National Board for Certification in Occupational Therapy, Inc. certification number, date of certification, and the number of times the applicant has taken the national examination;
10. Education;
11. Professional experience, field work, or both within the last 5 years;
12. Employer's name, address, and telephone number;
13. Current and previous occupational therapy or other professional license or certification numbers from other states and foreign countries and the status of the license or certification;
14. Current and previous disciplinary actions;
15. Affidavit of applicant.

C. An applicant shall submit or cause to be submitted on the applicant's behalf the following:
1. Application fee;
2. Written verification received from:
   a. The National Board For Certification In Occupational Therapy, Incorporated or the American Occupational Therapy Certification Board of a passing score on the examination administered by these entities; or
   b. Certified letters of good standing issued by each state that has previously issued the applicant an occupational therapy license, provided at least 1 of the states requires standards for licensure equivalent to the requirements for licensure in this Chapter and A.R.S. §§ 32-3401 et seq.
3. Recommendation of good moral character from 2 health care professionals on a form that shall include the following:
   a. Applicant's last name, 1st name, and middle initial, and other names used by applicant;
   b. Applicant's mailing address;
   c. Applicant's American Occupational Therapy Certification Board or the National Board For Certification In Occupational Therapy certification number;
   d. Period of time the health care professional has known the applicant;
   e. Period of time the health care professional has worked with the applicant;
   f. A statement that the health care professional considers the applicant to be of good moral character;
   g. Address, city, state, and zip code where the health care professional worked with the applicant;
   h. A description of the professional relationship or professional experience with the applicant and why the health care professional recommends the applicant for an occupational therapy license;
   i. Name, address, and telephone number of the health care professional;
   j. The professional license or certification number and issuing agency of the health care professional;
   k. The health care professional's signature and date.

D. An applicant applying for a limited permit shall submit the application and information listed in subsections (B), (C), and this subsection. An Arizona licensed occupational therapist assuming the professional and legal responsibility for supervision of a limited permit applicant shall complete and sign a Direct Supervision Agreement for a Limited Permit form with the Board. The occupational therapist shall file the Direct Supervision Agreement for a Limited Permit form with the Board before the Board shall issue a limited permit. The Direct Supervision Agreement for a Limited Permit form shall contain the following:

1. Applicant's last name, 1st name, middle name, and other names used by the applicant;
2. Date the form is completed and signed by the supervising occupational therapist;
3. Name of the supervising occupational therapist;
4. Arizona license number of the supervising occupational therapist;
5. Limited permittee's employment address;
6. Supervisor's mailing address;
7. Supervisor's employment address and employment telephone number;
8. Description of supervision;
9. Signature of the supervising occupational therapist.

E. The Board shall retain the application and documents filed in support of the application.

F. If the Board denies an application, the applicant may, within 30 days of service of the notice of denial, make a written request for a hearing to review the Board's decision. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.

G. In a hearing conducted on a denial of a license, the applicant has the burden of proof.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-202. Renewal of License

A. A licensee shall renew a license by submitting to the Board a renewal application, proof of completion of the continuing education requirements in R4-43-203, and paying the renewal fee within 2 years of initial licensure or last license renewal date.

B. The renewal application form provided by the Board shall include the following:

1. Applicant's last name, first name, middle initial, and other names used by the applicant;
2. How applicant's name is to be shown on the renewal license;
3. Residence address;
4. Alternate mailing address if the residential address is to remain confidential;
5. Current Arizona Board of Occupational Therapy Examiners license number;
6. Type of renewal license for which applying;
7. The amount of the renewal fee;
8. Disciplinary actions since initial licensure;
9. Hours and titles of continuing education completed;
10. Total hours of continuing education completed;
11. Social security number;
12. Employer's name, address, and telephone number;
13. Signature and date.

C. Unless otherwise required by A.R.S. § 32-3202, a license that is not renewed within 2 years of the date of issuance expires by operation of law. A licensee may reinstate within 180 calendar days of the expiration date upon payment of the required renewal fee, a reinstatement fee under R4-43-102(A)(2)(a) and submittal of proof of completion of the continuing education requirements in R4-43-203.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Former Section R4-43-202 repealed; new Section R4-43-202 renumbered from R4-43-203 and amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-203. Continuing Education for Renewal of License

A. A licensee shall complete continuing education for renewal of a license as follows:

1. Occupational Therapist, 20 clock-hours for renewal of a 2-year license; and
2. Occupational Therapy Assistant, 12 clock-hours for renewal of a 2-year license.

B. A licensee shall complete the continuing education clock hours in subsection (A) within the 2-year period before the date the licensee's license expires, or if requesting a return to active status license, within the 2-year period before the date the licensee submits the return to active status request to the Board.

C. Continuing education shall contribute to professional competency and the practice of occupational therapy. The Board shall determine if continuing education hours contribute directly to the professional competency and if the continued education hours relate to the clinical practice of occupational therapy.

D. A licensee may fulfill the licensee's continuing education requirement by completing any of the following:

1. A professional workshop, seminar, or conference and submitting proof of attendance as follows:
   a. The American and Arizona Occupational Therapy Association's original check-in sheet displaying the organization's name, official stamp, hours, and licensee's name; or
   b. Photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock-hours, date of attendance, name of the workshop, seminar, or conference, licensee's name, and information necessary to contact the sponsoring organization or instructor for verification of attendance;
2. Self-study or formal study through course work and submitting a photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock hours, dates of attendance, name of the study or course work, licensee's name, and information necessary to contact the sponsoring organization or instructor for verification of attendance;
3. Viewing a taped video presentation and submitting a photocopy of a signed certificate or letter issued by the sponsoring organization or instructor displaying the clock-hours, dates of attendance, name of the study or course work, licensee's name, and information necessary to contact the sponsoring organization or instructor for verifica-

tion of attendance;

4. Undergraduate, graduate college, or university course work of a grade "C" or better and submitting a course completion notification sheet and a statement describing how the course extends the licensee's professional skill and knowledge;
5. Publishing:
   a. A book, for a maximum credit of 10 clock-hours, and submitting a copy of the book;
   b. An article, for a maximum credit of 4 clock-hours, and submitting a copy of the article;
   c. A chapter of a book, for a maximum of 5 clock-hours, and submitting a copy of the chapter or book;
   d. A film, for a maximum of 6 clock-hours, and submitting a copy of the film; or
   e. A videotape, for a maximum of 6 clock-hours, and submitting a copy of videotape;
6. Presenting a program, workshop, seminar, or conference of not less than 1.5 hours in duration for a maximum of 4 clock-hours and submitting a brochure, agenda, or similar printed material describing:
   a. The content of the presentation, workshop, seminar, or conference;
   b. The date, duration, and location of the presentation conference, workshop, or seminar; and
   c. The name of the presenting licensee or a signed certificate or letter from the program organizer if other than the presenting licensee; or
7. In-service training related to clinical occupational therapy services excluding safety, fire evacuation, and cardiopulmonary resuscitation (CPR), for a maximum of 4 clock-hours and submitting:
   a. A letter from the supervising occupational therapist or other immediate supervisor; and
   b. A licensee's statement consisting of:
      i. Specific topics,
      ii. Presenters,
      iii. Dates,
      iv. Times,
      v. Location, and
      vi. How the training or in-service relates to the clinical practice of occupational therapy or contributes to professional competency.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Former Section R4-43-203 renumbered to R4-43-202; new Section R4-43-203 renumbered from R4-43-204 and amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-204. Inactive License

A. A licensee may transfer an active license into inactive status if the licensee's license is current and in good standing.

B. The licensee shall not practice during the time the license is inactive.

C. A licensee may renew or reactivate an inactive license by:
1. Submitting a renewal application under R4-43-202;
2. Paying the licensure renewal fee under R4-43-102 or, if reactivating an inactive license, paying the renewal fee less the last inactive status fee paid by the applicant; and
3. Meeting the continuing education requirements under R4-43-203.

Historical Note

R4-43-204 adopted by emergency effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Section R4-43-204 adopted by emergency action permanently adopted as R4-43-205, new Section R4-43-204 adopted effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended effective December 5, 1997 (Supp. 97-4). Former Section R4-43-204 renumbered to R4-43-203; new Section R4-43-204 renumbered from R4-43-205 and amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-205. Procedures for Processing License Applications

A. Initial application for a license or permit.
1. Within 60 calendar days after receipt of an initial application for a license or permit, the Board shall perform an administrative completeness review and notify the applicant in writing that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what documentation or information is missing.
2. If the Board has notified an applicant that an application is incomplete within the 60-day administrative completeness review timeframe, the timeframe is suspended from the date of the notice.
3. An applicant with an incomplete application shall submit all missing documentation and information within 60 days from the date of the notice. If the applicant fails to do so for an initial license or permit, the Board may close the applicant's file. An applicant whose file has been closed and who later wishes to become licensed, shall apply anew.
4. Except for a limited permit application, an application is not complete until the applicant has fully complied with the application requirements of A.R.S Title 32, Chapter 34 and this Article. A limited permit application is complete when the Board receives all of the information required in R4-43-201(D) except for the exam score in R4-43-201(C)(2)(a).
5. If an applicant for an initial license or permit cannot submit all missing documentation or information within 60 days from the date of the notice, the applicant may request an extension by submitting a written request to the Board post marked or delivered not later than 60 days from the date of the notice. The written request for an extension shall explain the reasons for the applicant's inability to meet the 60-day deadline.
6. Under A.R.S. § 32-3403(A), the Executive Director's duties shall include review of requests for an extension. The Executive Director shall grant an extension request, if the extension will enable the applicant to submit the

missing documentation or information, but shall not grant an extension of more than 60 days. The Executive Director shall notify the applicant in writing of the decision to grant or deny the request for an extension.

7. If the applicant fails to submit all missing documentation and information within the extension period, the Board may close the applicant's file. An applicant whose file has been closed and who later wishes to become licensed, shall apply anew.
8. After receipt of all missing documentation or information within the administrative completeness timeframe specified in this Section, the Board shall notify the applicant in writing that the application is complete.
9. The Board shall perform the substantive review and issue or deny the license or permit no later than 60 days after receipt of a complete application. For this subsection, the date of receipt is the date of the notice advising the applicant that the application is complete.

B. Renewal license application, request to transfer into inactive status, or application to return to active status.

1. Within 60 calendar days after receipt of an application described in subsection (B)(2), the Board shall perform an administrative completeness review and notify the applicant in writing that the application is complete or incomplete.
2. The following applications are governed by this subsection:
   a. A renewal license application;
   b. A request to transfer into inactive status by a licensee with an unexpired license; and
   c. A renewal application to return to active status.
3. If the Board has notified an applicant that an application is incomplete within the 60-day administrative completeness review timeframe, the timeframe is suspended from the date of the notice.
4. An application is not complete until the applicant has fully complied with all of the application requirements of A.R.S. Title 32, Chapter 34 and this Article.
5. After receipt of all missing documentation and information within the administrative completeness timeframe specified in this Section, the Board shall notify the applicant that the application is complete.
6. The substantive review timeframe runs from the date of the Board's notice advising the applicant that the application is complete until the Board grants or denies the renewal or transfer. The substantive review timeframe is 60 days.
7. A timely submittal renewal application causes the license to remain in effect until further notice by the Board.
8. If a licensee fails to submit a renewal application before the expiration date, the applicant may seek reinstatement under R4-43-202(C) if applicable or reapply under R4-43-201.

C. For the purposes of A.R.S. § 41-1073, the Board establishes the following timeframes for any license or permit it issues:

1. Administrative completeness review timeframe: 60 days.
2. Substantive review timeframe: 60 days.
3. Overall timeframe: 120 days.

Historical Note

R4-43-204 adopted by emergency effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Former R4-43-204 now adopted as R4-43-205 effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Former Section R4-43-205 renumbered to R4-43-204; new Section R4-43-205 renumbered from R4-43-206 and amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-206. Renumbered

Historical Note

Adopted effective October 21, 1997 (Supp. 97-4). Section R4-43-206 renumbered to R4-43-205 by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

ARTICLE 3. HEARINGS

R4-43-301. Hearing Procedures

The Board shall conduct all hearings held under A.R.S. § 32-3442 et seq. in accordance with A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted without change effective October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-302. Rehearing or Review of Decision

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.

B. 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, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. That the Board's decision is a result of passion or prejudice; or
8. That 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 to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).

G. Not later that 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:

1. A ruling on the motion will further administrative convenience, expedition, or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 5 A.A.R. 1614, effective May 6, 1999 (Supp. 99-2).

ARTICLE 4. REGULATORY PROVISIONS

R4-43-401. Supervision of Occupational Therapy Assistants

A. Only a licensed occupational therapist shall:

1. Prepare an initial treatment plan, initiate or re-evaluate a client or patient's treatment plan, or authorize in writing a change of a treatment plan;
2. Delegate duties to a licensed occupational therapy assistant, designate an assistant's duties, and assign a level of supervision; and
3. Authorize a patient discharge.

B. A licensed occupational therapy assistant shall not:

1. Evaluate or develop a treatment plan independently;
2. Initiate a treatment plan before a client or patient is evaluated and a treatment plan is prepared by an occupational therapist;
3. Continue a treatment procedure appearing harmful to a patient or client until the procedure is reevaluated by an occupational therapist; or
4. Continue or discontinue occupational therapy services unless the treatment plan is approved or re-approved by a supervising occupational therapist.

C. A supervising occupational therapist shall supervise a licensed occupational therapy assistant as follows:

1. Not less than routine supervision if the occupational therapy assistant has less than 12 months work experience in a particular practice setting or with a particular skill.
2. Not less than general supervision if the occupational therapy assistant has more than 12 months but less than 24 months of experience in a particular practice setting or with a particular skill.
3. Not less than minimal supervision if an occupational therapy assistant has more than 24 months of experience in a particular practice setting or with a particular skill.
4. Increased level of supervision, if necessary, for the safety of a patient or client.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 6 A.A.R. 707, effective January 25, 2000 (Supp. 00-1).

R4-43-402. Supervision of Occupational Therapy Aides and Other Unlicensed Personnel

A. An occupational therapy aide shall not provide occupational therapy services in any setting. However, an occupational therapy aide may provide supportive services assigned by an occupational therapist or occupational therapy assistant after the aide is specifically trained to provide the supportive services by an occupational therapist.

B. An occupational therapy aide shall receive continuous supervision.

C. An occupational therapy aide shall not act independently.

D. An occupational therapy aide shall not perform the following tasks:

1. Evaluate a client or patient;
2. Prepare a treatment plan;
3. Make entries in client or patient record regarding client or patient status;
4. Develop, plan, adjust, or modify treatment procedures;
5. Interpret referrals or prescriptions for occupational therapy services;
6. Continue a task if there is a change in the client's or patient's condition;
7. Perform any task without adequate training or skills; and
8. Perform any task requiring licensure under A.R.S. § 32-3401-3445.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 6 A.A.R. 707, effective January 25, 2000 (Supp. 00-1).

R4-43-403. Designation of Title

An unlicensed person who works in a facility of practice shall use 1

of the following titles:

1. A person practicing under a limited permit shall use the term "Limited Permit" following the person's name.
2. An occupational therapy aide shall use the term "OT Aide" following the occupational therapy aide's name.
3. An occupational therapy student enrolled in an accredited program in occupational therapy shall use the term "OT Student" following the student's name.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted without change effective October 14, 1992 (Supp. 92-4). Amended by final rulemaking at 6 A.A.R. 707, effective January 25, 2000 (Supp. 00-1).

R4-43-404. Limited Permit Practice

A. Any change or addition of a supervising occupational therapist requires the filing of a new Direct Supervision Agreement for a Limited Permit form by the supervisor under R4-43-201(D). The supervisor shall submit the Direct Supervision Agreement for a Limited Permit form within 7 days of any change or addition of a supervising occupational therapist.

B. The supervising occupational therapist shall co-sign all patient records documenting patient treatment and progress.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-405. Display of License Certificate

Each licensee shall display a current license certificate issued by the Board in a prominent place in each facility of practice. A licensee may use a copy of the license certificate to satisfy this requirement.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 8, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted with changes effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

R4-43-406. Change of Name or Address

A. A licensee shall notify the Board in writing within 30 days of a legal name change. A copy of the official document evidencing the name change shall be included. The Board shall issue a duplicate license certificate reflecting the name change.

B. A licensee shall notify the Board in writing within 30 days of a change in mailing address.

Historical Note

Emergency rule adopted effective December 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 11, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective June 5, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Adopted without change effective October 14, 1992 (Supp. 92-4). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 5 A.A.R. 1427, effective April 22, 1999 (Supp. 99-2).

Arizona Revised Statutes

Chapter 34 OCCUPATIONAL THERAPY

32-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of occupational therapy examiners.
2. "Consultation" means the act or procedure of exchanging ideas or information or providing professional advice to another professional or responsible party regarding the provision of occupational therapy services.
3. "Evaluation" means an occupational therapist's assessment of treatment needs within the scope of practice of occupational therapy. Evaluation does not include making a medical diagnosis.
4. "Letter of concern" means a non-disciplinary advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in future action against the licensee's license.
5. "Occupational therapist" means a person who is licensed pursuant to this chapter to practice occupational therapy and who is a graduate of an accredited occupational therapy education program, completes the approved fieldwork and passes the examination as required by the board pursuant to section 32-3424.
6. "Occupational therapy" means the use of therapeutic activities or modalities to promote engagement in activities with individuals who are limited by physical or cognitive injury or illness, psychosocial dysfunction, developmental or learning disabilities, sensory processing or modulation deficits or the aging process in order to achieve optimum functional performance, maximize independence, prevent disability and maintain health. Occupational therapy includes evaluation, treatment and consultation based on the client's temporal, spiritual and cultural values and needs.
7. "Occupational therapy assistant" means a person who is licensed pursuant to this chapter, who is a graduate of an accredited occupational therapy assistant education program, who assists in the practice of occupational therapy and who performs delegated procedures commensurate with the person's education and training.
8. "Occupational therapy services" includes the following:

(a) Developing an intervention and training plan that is based on the occupational therapist's evaluation of the client's occupational history and experiences, including the client's daily living activities, development, activity demands, values and needs.
(b) Evaluating and facilitating developmental, perceptual-motor, communication, neuromuscular and sensory processing function, psychosocial skills and systemic functioning, including wound, lymphatic and cardiac functioning.
(c) Enhancing functional achievement, prevocational skills and work capabilities through the use of therapeutic activities and modalities that are based on anatomy, physiology and kinesiology, growth and development, disabilities, technology and analysis of human behavioral and occupational performance.

(d) Evaluating, designing, fabricating and training the individual in the use of selective orthotics, prosthetics, adaptive devices, assistive technology and durable medical equipment as appropriate.
(e) Administering and interpreting standardized and non-standardized tests that are performed within the practice of occupational therapy, including manual muscle, sensory processing, range of motion, cognition, developmental and psychosocial tests.
(f) Assessing and adapting environments for individuals with disabilities or who are at risk for dysfunction.
9. "Supervision" means the giving of instructions by the supervising occupational therapist or the occupational therapy assistant that are adequate to ensure the safety of clients during the provision of occupational therapy services and that take into consideration at least the following factors:
(a) Skill level.
(b) Competency.
(c) Experience.
(d) Work setting demands.
(e) Client population.
10. "Unprofessional conduct" includes the following:
(a) Habitual intemperance in the use of alcohol.
(b) Habitual use of narcotic or hypnotic drugs.
(c) Gross incompetence, repeated incompetence or incompetence resulting in injury to a client.
(d) Having professional connection with or lending the name of the licensee to an unlicensed occupational therapist.
(e) Practicing or offering to practice occupational therapy beyond the scope of the practice of occupational therapy.
(f) Obtaining or attempting to obtain a license by fraud or misrepresentation or assisting a person to obtain or to attempt to obtain a license by fraud or misrepresentation.
(g) Failing to provide supervision according to this chapter and rules adopted pursuant to this chapter.
(h) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter.
(i) Having been adjudged mentally incompetent by a court of competent jurisdiction.
(j) Knowingly aiding a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.
(k) Failing to report to the board any act or omission of a licensee or applicant or of any other person who violates this chapter.
(l) Engaging in the performance of substandard care by a licensee due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person receiving occupational therapy services is established.

(m) Failing to refer a client whose condition is beyond the training or ability of the occupational therapist to another professional qualified to provide such service.
(n) Censure of a licensee or refusal, revocation, suspension or restriction of a license to practice occupational therapy by any other state, territory, district or country, unless the applicant or licensee can demonstrate that the disciplinary action is not related to the ability to safely and skillfully practice occupational therapy or to any act of unprofessional conduct prescribed in this paragraph.
(o) Any conduct or practice that violates recognized standards of ethics of the occupational therapy profession, any conduct or practice that does or might constitute a danger to the health, welfare or safety of the client or the public or any conduct, practice or condition that does or might impair the licensee's ability to safely and skillfully practice occupational therapy.
(p) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this chapter.
(q) Falsely claiming to have performed a professional service, billing for a service not rendered or charging or collecting an excessive fee for services not performed.
(r) Sexually inappropriate conduct with a client. For the purposes of this subdivision, "sexually inappropriate conduct" includes:
(i) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a current client or with a former client within three months after termination of occupational therapy services.
(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or inappropriate physical contact of a sexual nature with a person treated by an occupational therapist or occupational therapy assistant.
(iii) Intentionally viewing a completely or partially disrobed client in the course of treatment if the viewing is not related to treatment under current practice standards.
(s) Knowingly making a false or misleading statement to the board on a license application or renewal form required by the board or any other verbal or written communications directed to the board or its staff.
(t) Conviction of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission and the board may take disciplinary action after the time for appeal has lapsed, when judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order. For the purposes of this subdivision, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
(u) Violating any federal law, state law, rule or regulation directly related to the practice of occupational therapy.
(v) Engaging in false advertising of occupational therapy services.
(w) Engaging in the assault or battery of a client.
(x) Falsifying client documents or reports.

(y) Failing to document or maintain client treatment records or failing to prepare client reports within thirty days of service or treatment.
(z) Failing to renew a license while continuing to practice occupational therapy.
(aa) Signing a blank, undated or unprepared prescription form.
(bb) Entering into a financial relationship other than a normal billing process that leads to embezzlement or violates recognized ethical standards.
(cc) Failing to maintain client confidentiality without written consent of the client or unless otherwise required by law.
(dd) Promoting or providing treatment, intervention or a device or service that is unwarranted for the condition of the client beyond the point of reasonable benefit.

32-3402. Board of occupational therapy examiners; members; qualifications; terms; compensation; civil immunity
A. The board of occupational therapy examiners is established and consists of five members appointed by the governor. Each board member shall be a resident of the state at the time of appointment. The governor shall appoint two persons who are not engaged, directly or indirectly, in the provision of health care services to serve as public members. The other three members shall have at least three years of experience in occupational therapy or teaching in an accredited occupational therapy education program in this state immediately before appointment and shall be licensed under this chapter. The governor may select board members from a list of licensees submitted by the Arizona occupational therapy association, inc. or any other appropriate organization.
B. 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 consecutive terms.
C. The board, at its first regular meeting after the start of each calendar year and as necessary, shall elect a chairperson and other officers from among its members. The board shall meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and shall keep an official record of these meetings. Other meetings may be convened at the call of the chairperson or the written request of any two board members. A majority of the members of the board shall constitute a quorum.
D. Each member of the board is eligible to receive compensation in the amount of one hundred dollars for each regular or special board meeting the member attends and is eligible for reimbursement for all expenses necessarily and properly incurred in attending board meetings.
E. A board member is immune from civil liability for any actions that are within the scope of the board member's duties if they are taken without malice and in the reasonable belief that they are warranted by law.

32-3403. Executive director; personnel; duties; compensation
A. Subject to title 41, chapter 4, article 4, the board may employ and discharge an executive director and other officers and employees as it deems necessary and

designate their duties. Board personnel are eligible to receive compensation as determined pursuant to section 38-611.
B. The executive director shall:
1. Issue and document licenses approved by the board.
2. Keep a record of the status of licenses and licensees.
3. Keep a record of the status of applicants, including those whose applications are denied.
4. Perform tasks and duties assigned by the board.
5. Collect fees and maintain accounting records according to generally accepted accounting principles.

32-3404. Powers and duties; commissioners; committees
A. The board shall:
1. Administer, coordinate and enforce this chapter.
2. Evaluate the qualifications of applicants.
3. Prescribe examination requirements for licensure.
4. Adopt rules necessary to carry out this chapter.
5. Conduct informal meetings, formal interviews and hearings and keep records and minutes necessary to carry out its functions.
6. Prescribe educational programs required for licensure pursuant to this chapter.
B. The board may:
1. Appoint commissioners to assist in the performance of its duties.
2. Report any violations of this chapter or rules adopted pursuant to this chapter to a county attorney, the attorney general, a federal agency or a state or national organization.
3. Establish committees to assist in carrying out its duties for a time prescribed by the board. The board may require a committee appointed pursuant to this paragraph to make regular reports to the board.
C. Commissioners appointed pursuant to subsection B, paragraph 1 of this section shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses that they incur in the performance of their duties.

32-3405. Occupational therapy fund; deposit of receipts by board
A. The occupational therapy fund is established. Pursuant to sections 35-146 and 35-147, civil penalties imposed under section 32-3442, subsection K shall be deposited in the state general fund. The board shall deposit ten per cent of all other monies collected under this chapter in the state general fund and deposit the remaining ninety per cent in the occupational therapy fund. Monies in the occupational therapy fund may be used by the board for payment of all necessary board expenses, including compensation and expenses of board members and board staff on claims approved by the board.
B. Monies deposited in the occupational therapy fund are subject to section 35-143.01.

32-3421. Practicing without a license; prohibition; use of titles

A. Except as provided by section 32-3422, a person shall not do any of the following in this state unless licensed pursuant to this chapter:

1. Practice or assist in the practice of occupational therapy.
2. Claim to be an occupational therapist, an occupational therapy assistant or a provider of occupational therapy services.
3. Render occupational therapy services.

B. A person shall not use any of the following titles, or any letters, abbreviations or insignia of these titles, in connection with that person's name or place of business unless the person is licensed pursuant to this chapter:

1. Occupational therapist.
2. Licensed occupational therapist.
3. Occupational therapist registered.
4. Occupational therapy assistant.
5. Licensed occupational therapy assistant.
6. Certified occupational therapy assistant.

32-3422. Persons and practices not required to be licensed

This chapter does not prevent or restrict the practice, services or activities of:

1. A person engaging in the practice of that person's profession if the service is not practiced as or represented to be occupational therapy.
2. A person licensed in this state from engaging in the profession or occupation for which the person is licensed.
3. A person employed as an occupational therapist or occupational therapy assistant by the United States or any agency of the United States, if that person provides occupational therapy solely under the direction or control of the agency that employs that person.
4. A person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program pursuant to section 32-3404, if the person is designated by a title that clearly indicates the person's status as a student or trainee.
5. A person fulfilling the supervised fieldwork experience requirements of section 32-3423, if the experience constitutes a part of the fieldwork experience necessary to meet the requirements of section 32-3423.
6. A person performing occupational therapy services in this state for purposes of continuing education, consultation or training, if these services are performed for no more than a cumulative total of sixty days in a calendar year in association with an occupational therapist licensed under this chapter, if either of the following is true:

(a) The person is licensed as an occupational therapist or occupational therapy assistant in good standing in another state.
(b) The person is certified by the national board for certification in occupational therapy, incorporated.

7. A person employed by a health care provider licensed pursuant to another chapter of this title if the person does not claim to be an occupational therapist or occupational therapy assistant and the services or activities constitute a part of the person's job duties.

32-3423. Application for licensure; qualifications

A. An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall:

1. Be of good moral character.

2. Successfully complete the academic and fieldwork requirements of an educational program subject to board review and standards prescribed by the board. The board shall require:

(a) For an occupational therapist, a minimum of nine hundred twenty-eight hours of supervised fieldwork experience as determined by the supervising institution, organization or sponsor.

(b) For an occupational therapy assistant, a minimum of six hundred eight hours of supervised fieldwork experience as determined by the supervising institution, organization or sponsor.

3. Pass an examination administered pursuant to section 32-3424.

4. Complete the application process and pay all fees required pursuant to this chapter.

B. The board may deny a license to an applicant who:

1. Commits a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission.

2. Engages in any conduct that violates section 32-3401.

C. An applicant who is denied a license may request a hearing pursuant to title 41, chapter 6, article 10.

32-3424. Examination for licensure of occupational therapists and occupational therapy assistants

A. An applicant for licensure shall take a written examination approved and administered by the national board for certification in occupational therapy, incorporated. The examination shall test an applicant's knowledge of the basic and clinical services relating to providing occupational therapy services, techniques and methods.

B. The applicant shall arrange for the examination following successful completion of the academic and fieldwork requirements of section 32-3423 and submit evidence of successful completion of the examination.

32-3425. Licensure by endorsement
A. The board shall grant a license to any person certified before July 1, 1990 as a registered occupational therapist or a certified occupational therapy assistant by the American occupational therapy certification board, incorporated.
B. The board may waive the examination, education or experience requirements and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia or a territory of the United States that requires standards for licensure considered by the board to be equivalent to the requirements of this chapter for licensure.
C. The board shall issue a license to a person who meets the requirements of this chapter on payment of all prescribed fees.

32-3426. Renewal of license; inactive status; notice of address or name change
A. Except as provided in section 32-4301, a license issued under this chapter is subject to renewal every two years and expires unless renewed. The board may reinstate an expired license if the licensee:
1. Complies with board rules for renewal of licenses.
2. Is not in violation of this chapter or board rules or orders.
3. Pays the fees prescribed pursuant to section 32-3427.
B. A licensee may request and the board may grant inactive status to a licensee who ceases to practice as an occupational therapist or occupational therapy assistant.
C. The board may establish by rule additional requirements for license renewal to require the successful completion of a prescribed number of hours of continuing education as a condition of licensure renewal.
D. A licensee must report to the board in writing a name change and any change in business or home address within thirty days after the change.

32-3427. Fees
A. The board by rule, shall establish and collect fees not to exceed:
1. One hundred dollars for application for a license.
2. Three hundred dollars for an initial license.
3. Three hundred dollars for renewal of a license.
4. Three hundred dollars for an application for reinstatement.
5. Seventy-five dollars for a limited license.
6. Fifty dollars for a duplicate license.
B. The board, by rule, shall establish and collect fees for renewal of an inactive status license.

32-3428. Limited license
A. The board may grant a limited license to a person who has not taken the licensure examination if that person was trained in this country and has completed the academic and fieldwork requirements of this chapter.

B. The board may grant a limited license to a foreign-trained person who has completed the academic and fieldwork requirements of this chapter if that person has not taken the licensure examination but submits proof of acceptance to take the licensure examination.
C. The holder of a limited license may practice occupational therapy only under the supervision of a licensed occupational therapist.
D. A limited license is valid for four months and becomes void if a person fails the examination. The limited license expires if a person passes the examination and is issued a license under section 32-3425, subsection C.
E. The board may reissue a limited license once.

32-3429. Foreign trained applicants
Foreign trained occupational therapists and occupational therapy assistants shall:
1. Satisfy the examination requirements of section 32-3424.
2. Provide proof of good moral character.
3. Complete the academic and supervised fieldwork requirements, substantially equal to those contained in section 32-3423 before taking the examination.
4. Submit a completed application as prescribed by the board.
5. Pay all applicable fees prescribed pursuant to section 32-3427.

32-3430. Fingerprinting
A. Each applicant for original licensure, license renewal, license reinstatement or a limited license pursuant to this chapter who has not previously done so shall submit a full set of fingerprints to the board at the applicant's or licensee's 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. If the board does not have any evidence or reasonable suspicion that the applicant has a criminal history and the applicant otherwise satisfies the requirements of section 32-3423, the board may issue a license or a limited license before it receives the results of a criminal records check.
C. The board shall suspend a license or a limited license of a person who submits an unreadable set of fingerprints and does not submit a new readable set of fingerprints within twenty days after being notified by the board.
D. This section does not affect the board's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license or a limited license.

32-3441. Proper use of title or designation of occupational therapists; license display; supervision; responsibilities
A. A person who is licensed pursuant to this chapter to practice as an occupational therapist and who is in good standing may use the title of licensed occupational therapist and the abbreviation "O.T.", "O.T./L.", "O.T.R." or "O.T.R./L.". A person who is licensed pursuant to this chapter to practice as a licensed occupational

therapy assistant and who is in good standing may use the title of licensed occupational therapy assistant and the abbreviation "O.T.A.", "O.T.A./L.", "C.O.T.A." or "C.O.T.A./L.".
B. Each occupational therapist and occupational therapy assistant shall display the person's current license in each facility in which the person practices occupational therapy. If a facility is not available for the display of the license, the occupational therapist or the occupational therapy assistant must carry a board-issued wallet-sized license card during working hours.
C. The board may adopt rules reasonably related to sound client care governing an occupational therapist's supervision of licensed occupational therapy assistants or unlicensed personnel or students working with the occupational therapist.
D. An occupational therapist and an occupational therapy assistant are professionally and legally responsible for supervising client care given by unlicensed personnel or students. If an occupational therapist or occupational therapy assistant fails to adequately supervise client care given by unlicensed personnel or students, the board may take disciplinary action against the occupational therapist or occupational therapy assistant.
E. In all settings in which occupational therapy services are provided, an occupational therapist, during evaluation, intervention and outcome and discharge planning:
1. Must sign all clinical documentation performed by students.
2. Must be the primary clinical supervisor for level II occupational therapist and occupational therapy assistant students, including level II doctoral students. The occupational therapist's supervision of the student must initially be direct and subsequently may be decreased to less direct supervision as appropriate to the setting, the client's needs and the student's ability.
F. In all settings in which occupational therapy services are provided, an occupational therapy assistant, during evaluation, intervention and outcome and discharge planning:
1. Must sign all clinical documentation performed by students.
2. Must be under the direction of an occupational therapist.
3. May be the primary clinical educator for level I occupational therapist and occupational therapy assistant students and level II occupational therapy assistant students. The occupational therapy assistant's supervision of the student must initially be direct and subsequently may be decreased to less direct supervision as appropriate to the setting, the client's needs and the student's ability.

32-3442. Disciplinary action; informal meetings; formal interviews; hearings; penalties; reinstatement of license
A. The board may:
1. Receive written complaints filed against licensees and conduct investigations.
2. Conduct an investigation at any time on its own initiative without receipt of a written complaint if the board has reason to believe:

(a) That there may be a violation of this chapter, a rule adopted pursuant to this chapter or a written board order.
(b) That a licensee is or may be guilty of unprofessional conduct or is or may be acting outside the scope of practice.
(c) That a licensee is or may be incompetent.
B. Any occupational therapist, occupational therapy assistant or health care institution as defined in section 36-401 shall report to the board any information the occupational therapist, occupational therapy assistant, health care institution or individual may have that appears to show that an occupational therapist or an occupational therapy assistant is or may be guilty of unprofessional conduct or is or may be incompetent.
C. A person who provides information to the board in good faith pursuant to subsection A or B of this section is not subject to an action in civil damages as a result of providing the information.
D. Within sixty days of receipt of a written complaint pursuant to subsection A of this section or information pursuant to subsection B of this section, the board shall notify the licensee about whom information has been received as to the content of the complaint or information.
E. The board may request an informal meeting or a formal interview with the licensee or any other person to further its investigation or to resolve a complaint.
F. If a licensee refuses the board's request for an informal meeting or a formal interview, or in place of holding an informal meeting or a formal interview, the board shall hold a hearing pursuant to title 41, chapter 6, article 10.
G. If the results of an informal meeting or a formal interview indicate that suspension or revocation of the licensee's license or a civil penalty might be appropriate, the board shall notify the licensee of the time and place for a hearing pursuant to title 41, chapter 6, article 10.
H. If at the informal meeting or formal interview the board finds a violation of this chapter, but the violation is not of sufficient seriousness to merit a civil penalty or suspension or revocation of a license, it may take one or more of the following actions:
1. Issue a decree of censure.
2. Establish length and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee. Probation may include:
(a) Submission of the licensee to examinations to determine the mental or physical condition or professional competence of the licensee at the licensee's expense.
(b) Occupational therapy training or education that the board believes to be necessary to correct deficiencies.
(c) Review or supervision of the licensee's practice that the board finds necessary to identify and correct deficiencies in the practice, including a requirement that the licensee regularly report to the board on matters related to the licensee's probationary requirements.
(d) Restrictions on the nature and scope of practice to ensure that the licensee does not practice beyond the limits of the licensee's capabilities.

3. Issue a letter of concern.
4. Issue a non-disciplinary 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 practice standards for licensees including current developments, skills, procedures or treatment interventions.
5. Dismiss the complaint.
I. In addition to the terms of probation described in subsection H, paragraph 2 of this section, probation may also include temporary suspension or restriction of the licensee's license to practice. A licensee's failure to comply with probation or any other board order is cause for a hearing pursuant to title 41, chapter 6, article 10.
J. At the licensee's expense the board may require any combination of a physical, mental or occupational therapy competence examination as part of a board investigation, including, if necessary, the taking of depositions as may be required to fully inform itself with respect to the allegations presented by the complaint. These examinations may include biological fluid testing.
K. Any licensee who, after a hearing, is found guilty of unprofessional conduct or incompetence is subject to the following:
1. A decree of censure.
2. Probation as provided in this section.
3. Suspension or revocation of the license.
4. Imposition of a civil penalty of not less than two hundred fifty dollars nor more than ten thousand dollars for each violation of this chapter.
5. Any combination of these sanctions for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety.
L. A licensee shall return to the board a revoked or suspended license within fifteen days after it is revoked or suspended.
M. The board may reinstate a person's license that has been suspended for less than two years pursuant to this section if the person pays a renewal fee and a reinstatement fee as prescribed by the board by rule and completes the reapplication process as prescribed by the board.
N. The board may reinstate a person's license that has been suspended for more than two years pursuant to this section if the person does all of the following:
1. Reapplies for a license pursuant to section 32-3423.
2. To the board's satisfaction, demonstrates competency to practice.
3. Completes any other requirements prescribed by the board.

32-3443. Hearings and investigations; subpoenas
A. The board may issue subpoenas to compel attendance of witnesses and production of documents and administer oaths, take testimony, hear offers of proof and receive exhibits in evidence in connection with a board investigation or hearing. If a board subpoena is disobeyed, the board may invoke the aid of any court in this

state in requiring the attendance and testimony of witnesses and the production of documentary evidence.
B. Any person appearing before the board may be represented by counsel.
C. The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of occupational therapy. If an investigation indicates that a person may be practicing occupational therapy unlawfully, the board shall inform the person of the alleged violation. If the person does not immediately cease the unlawful practice of occupational therapy, the board may refer the matter for criminal prosecution pursuant to section 32-3445.

32-3444. 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.

32-3445. Violations; classification
A person is guilty of a class 1 misdemeanor who:
1. Obtains a license by fraud, by misrepresentation or in any manner other than that prescribed in this chapter.
2. Practices or assists in the practice of occupational therapy and is not licensed or exempt from the requirements of licensure pursuant to this chapter.
3. Violates any provision of this chapter.

32-3446. Substance abuse recovery program; consent agreement
In lieu of a disciplinary proceeding prescribed by this article, the board may permit a licensee to actively participate in a board-approved substance abuse recovery program if:
1. The board has evidence that the licensee is an impaired professional.
2. The licensee has not been convicted of a felony relating to a controlled substance in a court of competent jurisdiction.
3. The licensee enters into a consent agreement and complies with all of the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on the licensee's practice imposed by the board to protect the public. If a licensee does not enter into a consent agreement, the board may begin an investigation and disciplinary proceedings.
4. As part of the agreement between the licensee and the board, the licensee signs a waiver that allows the substance abuse recovery program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

ARIZONA BOARD OF NURSING
Title 4, Chapter 19, Articles 3 & 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 7, 2023

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

FROM: Council Staff

DATE: **October 24, 2023**

SUBJECT: **ARIZONA BOARD OF NURSING**
Title 4, Chapter 19, Articles 3 & 8

Summary

This Five-Year Review Report (5YRR) from Arizona Board of Nursing (AZBN) or (Board), covers twelve (12) rules in Title 4, Chapter 19, Article 3 regarding Licensure and fourteen (14) rules in Title 4, Chapter 19, Article 8 regarding Certified and Licensed Nursing Assistants and Certified Medication Assistants.

Article 3 contains rules pertaining to licensure. The rules cover criteria for licensure by examination, licensure by endorsement, requirements for credential evaluation service, temporary licenses, license renewals, inactive licenses, changes to name or address, school nurse certification requirements, certified registered nurses, the Nurse Licensure Compact, practice requirements, and background.

Article 8 contains rules pertaining to Certified Nursing Assistants (CNAs) and Certified Medication Assistants (CMAs). The rules cover common standards for training programs; program requirements; initial approval and re-approval of training programs; deficiencies and rescission of program approval, unprofessional program conduct, voluntary termination, disciplinary action, and reinstatement; initial licensure and certification; licensure and certification by endorsement; related fees; renewals; CNA and LNA registers; changes of name

or address; performance of acceptable tasks; standards of conduct; and reinstatement or subsequent issuance.

Proposed Action

The Board made amendments as proposed in the prior 5YRR which became effective in April 2019. The amendments included eliminating paper document submissions and streamlining the school nurse requirements. The Board also amended several additional rules in 2020. The Board indicates that they are not proposing any further changes to the rules at this time.

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's review found that the rules in Article 3 are effective in achieving their objective. Since the last 5YRR, select rules were changed to become consistent with new rules, modernize practices, and to expedite processing times for temporary license applications. The Board indicates the Economic, Small Business and Consumer Impact Statement (EIS) has not changed in the last five years and there has been no measurable economic impact on the Board or regulated public because of these rules.

The rules in Article 8 were modified to increase consistency within the Nurse Practice Act. These changes include amendments to language and references and a repeal of a rule pertaining to the printing of paper duplicate licenses. The EIS submitted in 2019 and 2020 have not changed. The EIS anticipates a possible reduction of administrative costs for the Board.

Stakeholders are identified as the Board, registered and practical nurses, those seeking to renew or obtain a nursing license, school nurses, current and potential nursing assistant programs, nursing and medication assistants, and the 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 believes that all rules in Article 3 and Article 8 rules impose the least burden and costs to persons regulated by these rules.

4. Has the agency received any written criticisms of the rules over the last five years?

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 indicates that the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates that the rules are effective in achieving their objectives.

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 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 indicates that the licenses, certifications, authorizations, and approvals it issues fall within the definition of general permit under A.R.S. § 41-1001, and are compliant with all requirements.

11. Conclusion

This 5YRR from the Board covers twelve (12) rules in Title 4, Chapter 19, Article 3 regarding Licensure and fourteen (14) rules in Title 4, Chapter 19, Article 8 regarding Certified and Licensed Nursing Assistants and Certified Medication Assistants. The Board indicates that the rules are generally clear, concise, and understandable; consistent with other rules and statutes; and enforced as written.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Joey Ridenour
Exec. Director

Arizona Board of Nursing

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June 28, 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; Five Year Rule Review for Arizona Administrative Code Title 4, Chapter 19, Articles 3 & 8

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, Articles 3 and 8, which is due on June 28, 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: Five Year Rule Review of A.A.C. Title 4, Chapter 19, Articles 3 & 8
C: GRRC Staff

5 Year Review Report

Agency Overview

Arizona State Board of Nursing

Background

- At the turn of the 19th century, nurse registration emerged in order to separate trained from untrained nurses as a means to protect the public. In 1921, the Arizona Legislature determined, as a matter of public policy, that the practice of nursing is a privilege granted by the people of Arizona as defined by the laws enacted by the elected representatives. It is not a natural right of individuals. Therefore, in the interest of public health, safety and welfare and to protect people from unprofessional and incompetent nursing practices, only qualified persons hold the privilege to be licensed as a nurse. The Nurse Practice Act's fundamental purpose is to protect the public and any license/certificate issued pursuant to the statutes shall be a revocable privilege; thereby no holder shall acquire any irrevocable right.

General Purpose of the Agency

The purposes of the Board of Nursing are to protect the public by:

- Promoting public protection through education and informational services to prevent violations of the Nurse Practice Act.
- Establishing eligibility standards for licensure for Advanced Practice Registered Nurses (APRNs), Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Licensed Nursing Assistants (LNAs).
- Maintaining a Registry the meets federal requirements for Certified Nursing Assistants (CNAs).
- Determining eligibility, examine and license/certify/register qualified applicants.
- Providing for interstate/foreign endorsements.
- Renewing licenses/certificates, grant temporary licenses/certificates, and provide for inactive status for those already licensed as requested.
- Setting procedures for relicensure/reinstatement/recertification for previously licensed and certified individuals.
- Establishing minimum educational standards for programs of nursing.
- Approving nursing education programs.
- Investigating and resolve complaints against regulated parties, and if violations are substantiated, impose disciplinary sanctions.
- Monitoring regulated parties on probation to ensure patient safety.

- Denying licensure/certification to applicants deemed unsafe to practice due to serious convictions, behaviors or acts.
- Enforcing legal prohibitions against the unlicensed practice of registered nursing/licensed practical nursing and use of title, and referring unlicensed practice to law enforcement.
- Ordering evaluations of licensees/certificate holders to determine their ability to practice safely; take disciplinary action based on the results of the evaluation.
- Establishing the scope of practice for nurses within limits of legislative authority.
- Promulgating rules that regulate nursing.
- Issuing Advisory Opinions regarding the function of nursing practice and education.
- Establishing a non-disciplinary rehabilitation option for nurses at risk for or experiencing medical, substance abuse, or mental health conditions that could impair nursing practice entitled Alternative to Discipline Programs, including the previously established CANDO (Chemically Addicted Nurse Diversion Option) as an alternative to traditional disciplinary action.
- Enforcing the provisions of applicable statutes/rules.
- Establishing competency standards for maintaining a license

Changes in agency objectives since establishment.

The Arizona State Board of Nursing (AZBN) has made a number of regulatory improvements since the agency began in 1921.

- Disciplinary Actions were rare during the early days (1921-1977), when few complaints were received by the Board. Beginning in the 1980's the number of drug related cases increased significantly. In 1987, the AZBN developed an effective, non-disciplinary, confidential program entitled "CANDO" (Chemically Addicted Nurse Diversion Option) to monitor and assist nurses entering into rehabilitation when impaired by substance abuse and thereby reduce the risk to the public. This program has since legislatively expanded July 2018 to become the "Alternative to Discipline Program," which includes nurses with medical or mental health conditions that may affect nursing practice, and nurses at risk for any of these conditions. While participating in an Alternative to Discipline Program, and depending on the individual nurse's condition, the nurse may agree to cease practicing nursing during a period of rehabilitation, and may only return after an experienced evaluator assures the nurse is safe to practice. CANDO averaged 50-70 admissions per year with approximately 200 individuals participating in the program on an annual basis, and the AZBN expects these numbers to increase with the expansion of this non-disciplinary, rehabilitative program.
- The Executive Director may accept a voluntary surrender of a license or certificate if a respondent chooses this option instead of a Board-imposed disciplinary action.
- The AZBN continues to develop AZBN-approved policies to increase efficiency in triage and resolution of complaints against regulated parties. These include

policies establishing criteria as to when to open investigations, when investigations may be closed without presentation to the AZBN, either by dismissal, or non-disciplinary resolution.

- In 1995, the legislature authorized the Board to certify and maintain a register of nursing assistants, a workforce of approximately 22,000. Combined with approximately 92,000 RNs, 11,000 LPNs, and 7,000 LNAs, the AZBN manages the largest investigator case load of all the Arizona health profession licensing boards. This legislative change, along with improved investigative procedures, increased the volume of investigative reports to the Board from an average of 64 cases per month in 1996 to approximately 150 in FY2018.
- Initial licensure examinations are psychometrically sound and legally defensible, as the test questions clearly relate to the practice of the profession at entry level. The National Council Licensing Exam (NCLEX) is based on empirical job analyses that are performed at a national level every 3 years by the National Council of State Boards of Nursing. Test plans and passing standards are re-evaluated on the same triennial basis to ensure the content and NCLEX RN and NCLEX PN are reflective of current competencies required for safe and effective practice.
- In 1994, all boards of nursing began offering computerized adaptive testing (CAT), which is offered year round in testing centers with high speed turn around of less that 24 hours, providing qualified applicants with reduced times for licensure.
- In 1999, the AZBN mandated that applicants for licensure/certificate have criminal history reports from the DPS/FBI to allow the AZBN to evaluate potential harm to the public. Depending on the seriousness of an applicant's criminal history, they may be required to provide information about prior behavior before a decision is made to grant the individual legal authority to practice and issue a license/certificate. In approximately 2001, the Board adopted triage criteria to exclude some minor, remote in time, or isolated criminal incidents from a requirement to investigate.
- Mandatory reporting of licensee/certificate holders suspected of violating the Arizona Nurse Practice Act has been required for over 25 years. AZBN complies with Federal mandatory reporting laws; when final disciplinary actions are taken, the disciplinary information must be reported to the National Practitioner Data Bank.
- In 1987, the federal Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. The AZBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of the AZBN. The basic argument for assigning jurisdiction to nursing boards was that, if nurses are to delegate nursing tasks to nurse aides, then nursing boards should control that aspect of the nurse aide training and approval. Because the job description of nurse aides fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable that the AZBN would assume authority and oversight of the regulation of CNAs.

- In 2001, as part of an Auditor General Sunset review, the agency proposed amendments to the Nurse Practice Act, including setting standards for continued competency. The AZBN rules were amended to require that all nurses practice nursing for a minimum of 960 hours within the past 5 years in order to qualify to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009, omnibus legislation to amend the Nurse Practice Act provided delegated authority to the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the AZBN to engage in pilot studies for innovation in nursing education, practice and regulation; allow the AZBN to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the AZBN to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.
- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.
- Due to federal laws that prevent the Board from charging for nursing assistant certification, the costs of conducting fingerprint background checks on nursing assistants, and the necessity to use licensing fees from RNs and LPNs to support the nursing assistant program, in 2015 the legislature authorized two levels of nursing assistant, effective 7/1/2016. Certified Nursing Assistants (CNAs), a new category of nursing assistant, are those individuals who meet minimal federal requirements, are not subject to criminal background checks and are under limited AZBN jurisdiction. CNAs pay no fees. Licensed Nursing Assistants (LNAs), similar to pre-7/1/2016 nursing assistants, are subject to criminal background checks and full Board jurisdiction. LNAs pay a $50 licensure fee, a one-time $50 fingerprint fee and a $50 renewal fee every 2 years. Applicants may choose either level.

Agency's major accomplishments.

As part of its initial strategic plan, the AZBN continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following recent accomplishments:

- Developed and implemented new Alternative to Discipline Program
- Assisted with development of new enhanced Nurse Licensure Compact, adopted by Arizona, and implemented January 2018
- Continuous use and improvement of online license/certificate verification, and renewal of licenses and certificates.

- Upgraded and streamlined phone systems for more effective and efficient customer service.
- Provides annual conferences for nurse educators and nursing assistant educators.
- Publishes a Journal semi-annually
- Provides outreach education in response to community requests.
- Meet with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Continues to conduct paperless Board and Education Committee meetings.
- Continues to provide oversight for use of Certified Nursing Assistants to administer specified medications in long term care facilities.
- Improved processing time of licensure applications from 14 days in 2002 to 2 days in 2017.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Utilizes a legally defensible simulation exam of nursing competency starting in 2008 and began using the exam in 2012 to identify unsafe practices in nurses reported to the Board for unsafe practice
- Collects annual data on RN/LPN renewal information related to nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- Implementation of new categories of nursing assistants, as authorized by the legislature in 2015. The new categories are: CNAs and LNAs, and these changes went into effect on July 1, 2016. All categories of nursing assistant are required to complete an approved nursing assistant training and competency evaluation program (NATCEP) and have the same scope of practice. Licensure is optional for nursing assistants who choose to pay a fee and submit to a criminal background check and are under the full authority of the Board. Licensed Nursing Assistants (LNA) would pay application and renewal fees. Certification is open to nursing assistants upon completion of a NATCEP, whereby the nursing assistant would be placed on a registry that meets federal requirements. The jurisdiction of the Board is limited to substantiated instances of abuse, neglect and misappropriation of property.

Rules promulgated in the past 5 years

During the past five years the following rules actions were taken:

- Article 5 – amended by emergency rulemaking, effective May 23, 2018
- On April 2, 2019, the following rules were amended: R4-19-101, R4-19-201, R4-19-203, R4-19-205, R4-19-206, R4-19-207, R4-19-209, R4-19-210, R4-19-211, R4-19-213, R4-19-214, R4-19-215, R4-19-216, R4-19-217, R4-19-309, R4-19-403, R4-19-505, R4-19-506, R4-19-507, R4-19-511, R4-19-801, R4-19-802, R4-19-809, R4-19-810, R4-19-815; and the following were repealed: R4-19-202, R4-19-204, R4-19-212, R4-19-307, R4-19-811.

- On November 3, 2020, (SOS Date December 2020), the following rules were

amended: A.A.C. R4-19-101, R4-19-102, R4-19-207, R4-19-208, R4-19-209, R4-19-210, R4-19-216, R4-19-301, R4-19-304, R4-19-305, R4-19-308, R4-19-501, R4-19-502, R4-19-503, R4-19-504, R4-19-505, R4-19-506, R4-19-507, R4-19-508, R4-19-511, R4-19-512, R4-19-513, R4-19-514, R4-19-604, R4-19-804, R4-19-806, R4-19-809, R4-19-815; and R4-19-501; R4-19-503 was renumbered

- Effective January 2, 2022: (related to new Licensed Health Aide, pursuant to statutory mandate) R4-19-101 was amended in Table 1; and the new Article 9 was enacted R4-9-901-904.

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5 Year Rule Review Arizona State Board of Nursing Title 4, Chapter 19, Articles 3 & 8

ARTICLE 3. LICENSURE

A.A.C. R4-19-301, R4-19-302, R4-19-303, R4-19-304, R4-19-305, R4-19-306, R4-19-307, R4-19-308, R4-19-309, R4-19-310 R4-19-311, R4-19-312, R4-19-313

The Board promulgated R4-19-313 in 2013, and amended all other rules in this Article at that time, except R4-19-311, Nurse Licensure Compact, that became effective January 19, 2018.

The Board amended R4-19-309 and repealed R4-19-307 in 2019.

The Board also amended R4-19-301, 304, 305, and 308 in 2020.

Information that is Identical Within All Rules—Article 3

1. Authority

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1) and A.R.S. §32-1664. Additional statutory authority for specific sections can be found in A.R.S. §§ 32-1601, 32-1605.01 (B) (3) and (B) (4), 32-1606(A), 32-1606 (B) (4), (B) (5), (B) (9), (B) (13), (B) (15) and (B) (21), 32-1635, 32-1636, 32-1640, 32-1643, 32-1644, 32-1660, 32-1660.01 - 32-1660.03, 32-1664, 32-3208, 41-1080, 41-1092 *et seq*., and 41-1701.

2. Analysis of Effectiveness in Achieving Objectives

These rules effectively achieve their objectives. Since the last 5 Year Rules Review, in April, 2019, R4-19-307 (issuance of duplicate, paper licenses) was repealed because the AZBN is becoming paperless, and R4-19-309 was amended in 2019 to streamline school nurse licensure requirements.

Additionally, in 2020, the Board:

- Amended R4-19-301, 305, and 308 to align the references to address from the current "mailing address" to the new "address of record", which is defined in and

consistent with the newer legislation in A.R.S. § 32-3226.

- Amended R4-19-304 to expedite processing temporary license applications to reduce regulatory burdens on stakeholders. By maintaining the applicant's requirement to submit fingerprints, but reducing the requirement to receive the report back from law enforcement, which can sometimes cause delays, the Board maintained a balance of public protection and efficiency to stakeholders, so that they may begin work earlier.

3. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with federal and state statutes and rules. This Article complies with lawful presence requirements of federal and state law, 8 U.S.C. § 1641, and A.R.S. §1-501. The rules are also consistent with federal reporting requirements for the National Practitioner Data Bank.

4. Agency Enforcement of the Rules

These rules are currently enforced as written.

5. Clarity, Conciseness, and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

6. Written Criticisms Of the Rules Over The Past Five Years

The Board has not received any written criticisms of these rules during the past five years.

7. Economic, Small Business and Consumer Impact Summary

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 3 in 2019 and 2020 have not changed. There has been no measurable economic impact to the Board or regulated public as a result of these rules in the past 5 years.

The 2019 Notice of Final Rulemaking noted that, for Article 3, there may have been modest economic benefit from the changes to the school nurse requirements in R4-19-309. The Board is unable to quantify those benefits, particularly given the statutory limitations on those changes. If any, they would be modest and positive for the regulated persons involved, and positive to reduce administrative costs for the agency, with no other impacts anticipated.

For the 2020 Notice of Final Rulemaking, none of the changes to Article 3 were anticipated to have any economic impact except possibly a positive impact from the change to R4-19-304 in that it would allow applicants to work sooner with temporary licenses, which could also benefit Arizona employers including small businesses.

8. Analysis submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.

The Board has not received any analysis as described above.

9. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

The AZBN made amendments, effective April 2, 2019, consistent with the prior five year review, including eliminating paper document submissions and streamlining the school nurse requirements.

10. Probable Benefits of the Rule Outweigh the Costs

The Board believes that all Article 3 rules, impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective, which is patient and public protection.

The Board had hoped to remove any requirements for school nurse certification, in R4-19-309, however A.R.S. § 32-1606(B)(13) requires that the Board enact rules with

specifications for school nurses, so the Board amended R4-19-309 to streamline the requirements to be consistent with other nurse licensure requirements.

11. More Stringent than Federal Law

These rules are not more stringent than federal law.

12. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

The AZBN believes that the licenses certifications, authorizations, and approvals it issues fall within the definition of general permit under ARS § 41-1001, and are compliant with all requirements.

13. Proposed Course of Action

Given that the Board amended and repealed a rule recently, in 2019 and 2020, no other changes are anticipated at this time.

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Analysis of Individual Rules Article 3

R4-19-301. Licensure by Examination

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and (B) (4), 32-1606(B) (5) and (B) (15) and (16), and implements the provisions of A.R.S. §§ 32-1632, 32-1633, 32-1634.01, 32-1637, 32-1638, 32-1639.01. and 32-1643 (A) (3) and (4).

2. Objective

This rule specifies criteria for licensure by exam of registered and practical nurses. There are provisions within the rule for graduates of Arizona, out-of-state, and international nursing programs. Included are requirements for proof of U.S. citizenship or alien status, and criminal background checks.

3. Proposed Action

There is no proposed action for this rule at this time.

R4-19-302. Licensure by Endorsement

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and (B) (4) and 32-1606 (B) (15). Implementing statutes include A.R.S. §§ 32-1634, 32-1634.02, 32-1639, 32-1639.02 and 32-1643 (A) (3) and (4).

2. Objective

This rule specifies criteria for licensure by endorsement of registered and practical nurses. There are provisions within the rule for graduates of international nursing programs, and applicants from other states who can verify safe practice.

3. Proposed Action

There is no proposed action for this rule at this time.

R4-19-303. Requirements for Credential Evaluation Service

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606(B) (9) and implements the provisions of A.R.S. § 32-1634.01, 32-1634.02, 32-1639.01, and 32-1639.02.

2. Objective

This rule establishes the criteria that a credential evaluation service must meet in order to examine the credentials for internationally educated nurses applying for licensure in AZ.

3. Proposed Action

There is no proposed action for this rule at this time.

R4-19-304. Temporary License

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01(B) (3) and implements the provisions of A.R.S. §§32-1635, 32-1640 and 32-1643 (A) (9).

2. Objective

This rule establishes the criteria and conditions for issuance of a temporary license, including for issuance of a temporary license for the purpose of completing a refresher course.

3. Proposed Action

There is no proposed action for this rule at this time.

R4-19-305. License Renewal

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and (B) (4) and implements provisions of §32-1642.

2. Objective

This rule establishes the requirements to renew a nursing license.

3. Proposed course of action

There is no proposed action for this rule at this time.

R4-19-306. Inactive License

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606(A) (1) and implements provisions of A.R.S. §32-1636 (E).

2. Objective

This rule establishes procedures for transferring a license to either inactive or retirement status.

3. Proposed course of action

There is no proposed action for this rule at this time.

R4-19-307. Repealed in 2019

R4-19-308. Change of Name or Address

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606 (A) (1) and implements provisions of A.R.S. §32-1609.

2. Objective

This rule establishes the process for changing the name or address of a licensee or

applicant, in writing or electronically.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-309. School Nurse Certification Requirements

1. Authorization

This rule is specifically authorized and required by A.R.S §32-1606(B) (13).

2. Objective

This rule establishes standards for certification of school nurses.

3. Proposed Course of Action

Amendments made in 2019, no proposed action at this time.

R4-19-310. Certified Registered Nurse

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606 (A) (1) and implements A.R.S. §32-1601(7).

2. Objective

The rule establishes the standards for recognition of additional certifications.

3. Proposed Course of Action

A request has been made to the Arizona Secretary of State's Office to update the statutory citation from the prior A.R.S. § 32-1601(5), to the current § 32-1601(7) by informal process.

R4-19-311. Nurse Licensure Compact

1. Authorization

This rule was previously specifically authorized by A.R.S §32-1668 and implemented provisions of A.R.S. 32-1669. The new, Enhanced Nurse Licensure Compact rule, effective January 18, 2018, are authorized by and implement provisions of A.R.S §§ 32-1660 and 32-1660.01-1660.03.

2. Objective

This rule serves to implement provisions of the Enhanced Nurse Licensure Compact (eNLC).

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-312. Practice Requirement

1. Authorization

This rule is specifically authorized by A.R.S. §32-1606(B) (20) and implements provisions of A.R.S. § 32-1633 (C) and 32-1638 (C).

2. Objective

This rule establishes a practice requirement for nurses to renew or obtain a license as a measure of competency, and includes a provision for meeting the requirements by providing nursing care for a family member or in a foreign country, under specific requirements.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-313. Background

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606 (A) (1)

and implements A.R.S. §32-1664, and specifically §32-1664(F) and Rule 4-19-405.

2. Objective

This rule protects the public from sexual predators and identifies potential and scope for rehabilitation for qualified applicants.

3. Proposed Action

There is no proposed action for this rule at this time.

ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS

A.A.C. R4-19-801, R4-19-802, R4-19-803, R4-19-804, R4-19-805, R4-19-806, R4-19-807, R4-19-808, R4-19-809, R4-19-810, R4-19-811, R4-19-812, R4-19-813, R4-19-814, and R4-19-815.

The AZBN promulgated these rules in 2000 with publication in the *Register* on February 4, 2000. The AZBN amended all rules except R4-19-811 and R4-19-815, in 2005 with publication in the *Register* on October 28, 2005. R4-19-814 was again amended in 2009 with publication in the *Register* on December 19, 2008. This Article was amended in 2014, 2016, and 2017. Article 8 was extensively revised, effective July 1, 2017, related to statutory creation of two, new categories of nursing assistants.

Since the last 5 Year Rules Review Report, the Board, in its April 2, 2019, rulemaking made technical corrections to R4-19-801 and 802 to correct the titles to include both certified and licensed nursing assistants (CNAs and LNAs); modified R4-19-809 to accurately reflect the two types of nursing assistants (LNAs and CNAs); amended R4-19-

810 to clarify the requirements for the nursing assistant registers and associated investigations and listings; repealed R4-19-811 which was related to printing of paper duplicate licenses, consistent with the repeal of R4-19-307; and amended R4-19-815 to clarify the process for reissuance or subsequent issuance of licensure and certification, to be consistent with process used for nurses, as reflected in R4-19-404. In addition, this rule now reference the statute, A.R.S. § 32-1664(F). The intent was to increase consistency within the Nurse Practice Act.

Information that is Identical Within All Rules - Article 8

1. Authority

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1). Additional statutory authority for this Article can be found in A.R.S. §§ 32-1601(6), (14), and (25), 32-1605.01 (B) (3) and (B) (4), 32-1606 (B) (1), (B) (2), (B) (8), (B) (10), (B) (11) and (B) (16), 32-1615, 32-1646, 32-1647, 32-1648, 32-1649, 32-1650, 32-1650.01-07, 32-1663, 32-1664, 32-1666, 32-1666.01, and 32-1667.

2. Analysis of Effectiveness in Achieving Objectives

These rules are generally effective in achieving their objectives, and have been recently updated through amendments and repeal since the last five year review.

3. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with state statutes and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

4. Agency Enforcement of the Rules

These rules are currently enforced as written.

5. Clarity, Conciseness, and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

6. Written Criticisms Of the Rules Over The Past Five Years

The AZBN has not received any written criticisms of these rules during the past five years.

7. Economic, Small Business and Consumer Impact Summary

The Board regulates approximately 21,127 Certified Nursing Assistants, 8,316 Licensed Nursing Assistants, and 138 Nursing Assistant Training Programs.

The Economic, Small Business and Consumer Impact Statement (EIS) submitted with the amendments to Article 8 in 2019 and 2020 have not changed. There has been no measurable economic impact to the Board or regulated public as a result of these rules in the past 5 years.

The 2019 Notice of Final Rulemaking for this article notes a possible minor benefit only for R4-19-810 by reducing administrative costs for the Board, with no other impacts anticipated.

The 2020 Notice of Final Rulemaking for this article notes a possible minor benefit only for R4-19-804 by reducing administrative costs for the Board associated with producing paper copies, with no other impacts anticipated.

8. Analysis submitted by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states.

The Board has not received any analysis as described above.

9. If applicable, how the agency completed the course of action indicated in the agency's previous five year review.

The AZBN made amendments and a repeal, effective April 2, 2019, and again November 3, 2020, consistent with the prior five year review and changes in statute.

10. Probable Benefits of the Rule Outweigh the Costs

The Board believes that all Article 8 rules impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective, which is patient and public protection. One particular example of the flexibility of these rules is the July 1, 2016, change to two levels of nursing assistant, which has proven successful in providing individuals a choice as to which level of review they wish to seek.

11. More Stringent than Federal Law

These rules are not more stringent than federal law.

12. Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037

The AZBN believes that the licenses certifications, authorizations, and approvals it issues fall within the definition of general permit under ARS § 41-1001.

13. Proposed Course of Action

The AZBN has extensively updated this Article twice in the past five years. No additional changes are proposed.

Analysis of Individual Rules - Article 8

R4-19-801. Common Standards for Certified Nursing Assistant (CNA) and Certified Medication Assistant (CMA) Training Programs

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606 (B) (1) and (B) (2), and (B) (11) and implements provisions of A.R.S. § 32-1649, 32-1650.01, 32-1666 (B) and 42 CFR 483.150,

483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule serves to inform current and potential nursing assistant programs of the standards that must be met to obtain Board approval.

3. Proposed Course of Action

This rule was amended in 2019 and there is no proposed action for this rule at this time.

R4-19-802. CNA Program Requirements

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606 (B) (1) and (B) (2), and (B) (11) and implements provisions of A.R.S. § 32-1666 (B). It is also consistent with 42 C.F.R. 483.152.

2. Objective

This rule provides detailed information regarding the curricular requirements of an approved nursing assistant program.

3. Proposed Course of Action

This rule was amended in 2019 and there is no proposed action for this rule at this time.

R4-19-803. Certified Medication Assistant Program Requirements

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606 (B) (1) and (B) (2), and implements provisions of A.R.S. § 32-1650.01.

2. Objective

This rule establishes the criteria that a medication assistant program provider must meet in order to be approved by the Board.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-804. Initial Approval and Re-Approval Training Programs

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606 (B) (1) and (B) (2), and (B) (11) and implements provisions of A.R.S. §32-1650.01, 32-1666 (B) and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes the criteria and conditions for initial renewing approval of a nursing and medication assistant training programs.

3. Proposed Course of Action

This rule was amended in 2020 and there is no proposed action for this rule at this time.

R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement.

1. Authorization

This rule is specifically authorized by A.R.S § §32-1606 (B) (1) and (B) (2), and (B) (11) and implements provisions of A.R.S. §§ 32-1601 (12), (26), and 32-1650.01, 32-1666 (B) and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes the grounds for rescission, disciplinary action and reinstatement for a nursing assistant training program, and further defines unprofessional program conduct. It also establishes the process for reinstatement of a previously terminated nursing assistant training program.

3. Proposed course of action

There is no proposed action for this rule at this time.

R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification

1. Authorization

This rule is specifically authorized by A.R.S § § 32-1605.01 (B) (3) and (B) (4) and 32-1606 (B) (11), and 32-1650, 32-1650.02-07, and implements provisions of A.R.S. §§ 32-1643, 32-1645, 32-1646, 32-1666 (B), 41-1080, and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes procedures for obtaining nursing and medication assistant certification.

3. Proposed course of action

This rule was amended in 2020 and there is no proposed action for this rule at this time.

R4-19-807. Nursing Assistant Licensure and Medication Assistant Certification by Endorsement

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and (B) (4) and 32-1606 (B) (11), 32-1650, 32-1650.02-07, and implements provisions of A.R.S. §§ 32-1643, 32-1645, 32-1666 (B) and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes the process for nursing and medication assistants from other states to endorse into Arizona.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-808. Fees Related to Certified Medication Assistant

1. Authorization

This rule is authorized by A.R.S § § 32-1606 (B) (1), and implements A.R.S. §§ 32-1650, 32-1650.02-07, and 44-6852.

2. Objective

This rule establishes the fees and related payment process for obtaining a Certified Medication Assistant certificate.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and 32-1606 (B) (11) and implements provisions of A.R.S. §§ 32-1645, 32-1650, 32-1650.02-07, 32-1666 (B) 32-1663.01 and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes standards for renewal of nursing and medication assistant certification.

3. Proposed Course of Action

This rule was amended in 2019 and 2020, and there is no proposed action for this rule at this time.

R4-19-810. Certified Nursing Assistant Register; Licensed Nursing Assistant Register

1. Authorization

This rule is specifically authorized by A.R.S § 32-1606 (B) (11) and implements provisions of

A.R.S. §§ 32-1645 and 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

The rule implements the federal requirements for the nursing assistant register.

3. Proposed Course of Action

This rule was amended in 2019 and there is no proposed action for this rule at this time.

R4-19-811. Application for Duplicate License or Certificate
REPEALED in 2019.

R4-19-812. Change of Name or Address

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606(A) (1) and implements provisions of A.R.S. § 32-1609.

2. Objective

This rule establishes the process for changing the name or address of a licensee or certificate holder.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks

1. Authorization

This rule is authorized by general rulemaking authority of the Board A.R.S § 32-1606 (A) (1) and implements provisions of §§ 32-1650, 32-1650.01-07, 32-1646, 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156 and 483.158.

2. Objective

This rule establishes the activities and conditions under which a nursing assistant and medication assistant may practice. It serves to inform both the nursing or medication assistant, and the delegating nurse, about the range of acceptable tasks a nursing or medication assistant may perform.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-814. Standards of Conduct for Licensed Nursing Assistants and Certified Medication Assistants

1. Authorization

This rule is specifically authorized by A.R.S §§ 32-1645, 32-1646, 32-1650, 32-1650.02-07, and implements provisions of A.R.S.§§ 32-1601 (26), 32-1606(B)(10), 32-1663 and 32-1664.

2. Objective

This rule clarifies 32-1601 (26) (d) as it applies to licensed nursing assistant or medication assistant conduct. It serves to notify the public of actions by nursing or medication assistants that the Board considers unprofessional conduct.

3. Proposed Course of Action

There is no proposed action for this rule at this time.

R4-19-815. Reinstatement or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

1. Authorization

This provision is authorized by the Board's general rulemaking authority under A.R.S. §32-1606 (A) (1) and 32-1664 (P) and implements provisions of A.R.S. §§ 32-1601, 32-1650, 32-1650.02-07, and 32-1663.

2. Objective

This rule establishes the conditions under which a previously denied, revoked, or voluntarily surrendered nursing assistant license or medication certificate may be reinstated or reissued.

3. Proposed Course of Action

This rule was amended in 2019 and 2020, and there is no proposed action for this rule at this time.

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faculty shall be licensed in the location of the clinical activity.

4. A distance learning nursing program shall provide students with supervised clinical and laboratory experiences so that program objectives are met and didactic learning is validated by supervised, on-ground clinical and laboratory experiences.
5. A distance-learning nursing program shall provide students with adequate access to technology, resources, technical support, and the ability to interact with peers, preceptors, and faculty.

C. A nursing program, located in another state or territory of the United States, that wishes to provide clinical experiences in Arizona under A.R.S. § 32-1631(3), shall obtain Board approval before offering or conducting a clinical session. To obtain approval, the program shall submit a proposal package that contains:

1. A self study, describing the program's compliance with R4-19-201 through R4-19-206; and
2. A statement regarding, the number and type of student placements planned, and written commitment by the clinical facilities to provide the necessary clinical experiences, the name and qualifications of faculty licensed in Arizona and physically present in the facility who will supervise the experience and verification of good standing of the program in the jurisdiction of origin.

D. The Board may require a nursing program approved under this Section to file periodic reports to determine compliance with the provisions of this Article. A program shall submit a report to the Board within 30 days of the date on a written request from the Board or by the due date stated in the request if the due date is after the normal 30-day period.

E. The Board shall approve an application to conduct clinical instruction in Arizona that meets the requirements in A.R.S. Title 32, Chapter 15 and this Chapter, and is in the best interest of the public. An applicant who is denied approval to conduct clinical instruction in Arizona may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

F. If the Board finds that a nursing program located and approved in another state or territory of the United States does not meet requirements for nursing programs prescribed in this Article the Board may take other disciplinary action depending on the severity of the offense after offering a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

1. Students enrolled at the time of rescission of approval shall not be granted licensure unless the applicant meets all applicable licensure requirements.
2. The Board shall ensure that the applicant has completed a curriculum that is equivalent to that of an approved nursing program.

Historical Note

New Section R4-19-217 renumbered from R4-19-215 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

ARTICLE 3. LICENSURE

R4-19-301. Licensure by Examination

A. An applicant for licensure by examination shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and all former names used by the applicant;
   b. Address of Record, including declared primary state of residence, e-mail address, and telephone number;
   c. Place and date of birth;
   d. Ethnic category and marital status, at the applicant's discretion;
   e. Social Security number for an applicant who lives or works in the United States;
   f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
   g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
   h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
   i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
   j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
   k. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      ii. Action taken on a nursing license by any other state;
      iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last 5 years;
      vii. Current participation in an alternative to discipline program in any other state;
   l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
   m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
4. Pay the applicable fees.

B. If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
   a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
   b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:
   a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
   b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.

C. If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:
1. To demonstrate nursing program equivalency, one of the following:
   a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
   b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
   c. A report from any other credential evaluation service (CES) approved by the Board.
2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.
4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
   a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
   b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
   c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
   d. A Visa Screen Certificate from CGFNS,
   e. A CGFNS Certificate,
   f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
   g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.

D. An applicant for a registered nurse license shall attain one of the following:
1. A passing score on the NCLEX-RN;
2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
3. A score of not less than 350 on each part of the SBTPE for registered nurses.

E. An applicant for a practical nurse license shall attain:
1. A passing score on the NCLEX-PN;
2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
3. A score of not less than 350 on the SBTPE for practical nurses.

F. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:
1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
3. Return or deny the application if the education was not equivalent and no remediation is possible.

Historical Note

Former Section II, Part I; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective February 20, 1980

(Supp. 80-1). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-24 renumbered as Section R4-19-301 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-302. Licensure by Endorsement

A. An applicant for a license by endorsement shall submit all of the information required in R4-19-301(A).

B. In addition to the information required in subsection (A), an applicant for a license by endorsement shall:

1. Submit evidence of a passing examination score in accordance with:
   a. R4-19-301(E) for a registered nurse applicant, or
   b. R4-19-301(F) for a practical nurse applicant.
2. Submit the following:
   a. Evidence of previous or current license in another state or territory of the United States,
   b. Information related to the nurse's practice for the purpose of collecting nursing workforce data, and
   c. One of the following:
      i. Completion of a pre-licensure nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing (NCSBN) at the time of program completion and the program meets educational standards substantially comparable to Board standards for educational programs in Article 2;
      ii. If the applicant completed a pre-licensure nursing program that has been assigned a program code by the NCSBN but the program's approval was rescinded under A.R.S. § 32-1606(B)(8) or removed from the list of approved programs under A.R.S. § 32-1644(D) or R4-19-212 during the applicant's enrollment in the program, proof of completion of the program and completion of any remedial education required by the Board to mitigate the deficiencies in the applicant's initial nursing program;
      iii. If the applicant graduated from a U.S. nursing program before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience, proof both of program completion and initial licensure without additional educational or experiential requirements;
      iv. If the applicant graduated from an international nursing program, proof of meeting the requirements in R4-19-301.
      v. If the Board finds that the documentation submitted by the applicant does not fulfill one of the requirements in (B)(2)(b)(i) through (iv), but the applicant has submitted verified employer evaluations demonstrating applicant's safe practice as a registered or practical nurse in another state for a minimum of two years full-time during the past three years and applicant otherwise meets licensure requirements, the Board may grant a single-state only license if the Board determines that licensure is in the best interest of the public.

C. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part II; Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-25 renumbered and amended as Section R4-19-302 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-303. Requirements for Credential Evaluation Service

A. A CES seeking Board approval shall submit documentation to the Board demonstrating that it:

1. Provides a credential evaluation to determine comparability of registered nurse or practical nurse programs in other countries to nursing education in the United States;
2. Evaluates original source documents;
3. Has five or more years of experience in evaluating nursing educational programs or employs personnel that have this experience;
4. Employs staff with expertise in evaluating nursing programs;
5. Has access to resources pertinent to the field of nursing education and the evaluation of nursing programs;
6. Issues a report on each applicant, and supplies the Board with a sample of such a report, regarding the comparability of the applicant's nursing educational program to nursing education in the United States that includes:
   a. The current name of the applicant including any names formerly used by the applicant;
   b. Source and description of the documents evaluated;
   c. Name and nature of the nursing education program, including status of the parent institution;
   d. Dates applicant attended;
   e. References consulted;
   f. A seal or some other security measure;
   g. Notification of any falsification or misrepresentation of documents by the applicant;
   h. A report on licensure examination results for the applicant, if an exam was required for licensure in the international jurisdiction; and
   i. The status of any international nursing licenses held by the applicant.
7. Has a quality control program that includes at a minimum:

a. Standards regarding the use of original documents;
b. Verification of authenticity of documents and translations;
c. Processes and procedures to prevent and detect fraud;
d. Policies for maintaining confidentiality of applicant educational records;
e. Responsiveness to applicants, including ensuring that reports are issued no later than eight weeks from the receipt of an applicant's documents; and
f. Tracking of and notification to the Board of any trends in falsification or misrepresentation of documents;

8. Follows or exceeds the standards of the National Association of Credentialing Services (NACES) or an equivalent organization;
9. Responds to Board requests for information in a timely and thorough manner; and
10. Agrees to notify the Board before any changes in any of the above criteria.

B. If a CES fails to comply with the provisions of subsection (A), the Board may rescind its approval of the CES.

C. The Board shall approve a credential evaluation service that meets the criteria established in this Section. A CES applicant who is denied approval or whose approval is revoked may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part III; Former Section R4-19-26 repealed, new Section R4-19-26 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-26 renumbered and amended as Section R4-19-27, new Section R4-19-26 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered as Section R4-19-303 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1802, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-303 renumbered to R4-19-304; new Section R4-19-303 made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-304. Temporary License

A. Subject to subsection (B), the Board shall issue a temporary license if:

1. An applicant:
   a. Is qualified under:
      i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
      ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
   b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
   c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(D), and the Board receives the applicant's fingerprint card or fingerprints; or
3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
4. An applicant who does not meet the practice requirements in R4-19-312(B) or (D), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.

B. An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary license or extension of a temporary license without Board approval.

C. A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.

D. An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.

E. An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

Historical Note

Former Section II, Part IV; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-27 repealed, new Section R4-19-27 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-27 renumbered and amended as Section R4-19-28. Former Section R4-19-26 renumbered and amended as Section R4-19-27 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered and amended as Section R4-19-304 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-304 renumbered to R4-19-305; new Section R4-19-304 renumbered from R4-19-303 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Chapter Section references updated under subsections (A)(2) and (A)(4) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-305. License Renewal

A. An applicant for renewal of a registered or practical nursing license shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, address of record, e-mail address, telephone number and declared primary state of residence;
   b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
   c. Marital status and ethnic category, at the applicant's discretion;
   d. Information regarding qualifications, including:
      i. Educational background;
      ii. Employment status;
      iii. Practice setting; and
      iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
   e. Responses to questions regarding the applicant's background on the following subjects:
      i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
      ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
      iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
      v. Substance use disorder within the last five years;
      vi. Current participation in an alternative to discipline program in any other state; and
      vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.
   f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
   g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
   h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
   i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and
2. Pay fees for renewal authorized by A.R.S. § 32-1643 (A)(6); and
3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.

B. A license expires on August 1 of the year of renewal indicated on the license.

C. A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.

D. If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.

E. The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part V; Repealed effective January 20, 1975 (Supp. 75-1). New Section R4-19-28 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-28 renumbered and amended as Section R4-19-29. Former Section R4-19-27 renumbered and amended as Section R4-19-28 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and repealed as Section R4-19-305 effective February 21, 1986 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-305 renumbered to R4-19-306; new Section R4-19-305 renumbered from R4-19-304 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-306. Inactive License

A. A licensee in good standing may submit to the Board either as a separate written document or as part of the renewal application, a request to transfer to inactive status, or retirement status under A.R.S. §§ 32-1606(A)(10) and 32-1636(E).

B. The Board shall send a written notice to the licensee granting inactive or retirement status or denying the request. A licensee denied a request for transfer to inactive or retirement status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part VI; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-29 repealed, new Section R4-19-29 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-29 renumbered and amended as Section R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and amended as Section R4-19-29 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered as Section R4-19-306 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-306 renumbered to R4-19-307; new Section R4-19-306 renumbered from R4-19-305 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-307. Repealed

Historical Note
Former Section II, Part VII; Former Section R4-19-30 renumbered and amended as Section R4-19-45, new Section R4-19-30 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-30 renumbered and amended as Section R4-19-31. Former Section R4-19-29 renumbered and amended as R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered and amended as Section R4-19-307 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-307 renumbered to R4-19-308; new Section R4-19-307 renumbered from R4-19-306 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-308. Change of Name or Address

A. A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.

B. A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in address of record, and residential address, if different, within 30 days.

Historical Note
Former Section II, Part VII; Former Section R4-19-31 repealed, new Section R4-19-31 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32. Former Section R4-19-30 renumbered and amended as Section R4-19-31 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-31 renumbered as Section R4-19-308 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-308 renumbered to R4-19-309; new Section R4-19-308 renumbered from R4-19-307 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-309. School Nurse Certification Requirements

A. An applicant for initial school nurse certification shall hold a current license in good standing or multistate privilege to practice as a registered nurse in Arizona.

B. An initial or renewal of certificate expires six years after the issue date on the certificate.

C. The Board shall grant a school nurse certificate to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a school nurse certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note
Former Section II, Part IX; Repealed effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-32 renumbered as Section R4-19-309 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 8 A.A.R. 1813, effective March 20, 2002 (Supp. 02-1). Former Section R4-19-309 renumbered to R4-19-311; new Section R4-19-309 renumbered from R4-19-308 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-310. Certified Registered Nurse
A registered nurse who has been certified by a nursing certification organization accredited by the Accreditation Board for Specialty Nursing Certification, the National Commission for Certifying Agencies, or an equivalent accrediting agency as determined by the Board is deemed certified for the purposes of A.R.S. § 32-1601(5).

Historical Note
New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-311. Nurse Licensure Compact
The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact Model Rules and Regulations for RNs and LPN/VNs, published by the National Council of State Boards of Nursing, Inc., 111 E. Wacker Dr., Suite 2900, Chicago, IL 60601, www.ncsbn.org, November 13, 2012, and no later amendments or editions, which is incorporated by reference and on file with the Board.

Historical Note
New Section renumbered from R4-19-309 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2485, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 2852, effective September 11, 2013 (Supp. 13-3).

R4-19-312. Practice Requirement

A. The Board shall not issue a license or renew the license of an applicant who does not meet the applicable requirements in subsections (B), (C), and (D).

B. An applicant for licensure by endorsement or renewal shall either have completed a post-licensure nursing program or practiced nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:

1. Completed a post-licensure nursing education program at a school that is accredited under R4-19-201(A) and obtained a degree, or an advanced practice certificate in nursing within the past five years; or
2. Practiced for a minimum of 960 hours within the past five years where the nurse:
   a. Worked for compensation or as a volunteer, as a licensed nurse in the United States or an international jurisdiction, and performed one or more acts under A.R.S. § 32-1601(21) as an RN if applying for

RN renewal or licensure or A.R.S. § 32-1601(17) as an LPN if applying for LPN renewal or licensure; or

b. Held a position for compensation or as a volunteer in the United States or an international jurisdiction that required or recommended, in the job description, the level of licensure being sought or renewed; or

c. Engaged in clinical practice as part of an RN-to-Bachelor of Science in Nursing, Masters, Doctoral or Nurse Practitioner program.

C. Care of family members does not meet the requirements of subsection (B)(2) unless the applicant submits evidence:

1. That the applicant is providing care as part of a medical foster home; or
2. That the specific care provided by the applicant was:
   a. Ordered by another health care provider who is authorized to prescribe and was responsible for the care of the patient,
   b. The type of care would typically be authorized by a third-party payer, and
   c. The care was documented and reviewed by the health care provider.

D. An applicant for licensure by either examination or endorsement, who does not meet the requirements of subsection (B), shall have completed the clinical portion of a pre-licensure nursing program within two years of the date of licensure.

E. A licensee or applicant who fails to satisfy the requirements of subsection (B) or (D), shall submit evidence of satisfactory completion of a Board-approved refresher or competency program. The Board may issue a temporary license stamped "for refresher course only" to any applicant who meets all requirements of this Article except subsection (B) or (D) and provides evidence of applying for enrollment in a Board-approved refresher or competency program.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). 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 subsection (B)(2)(a) were 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). A.R.S. Section references updated under subsection (B)(2)(a) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

R4-19-313. Background

A. All applicants convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a Board order under A.R.S. § 32-1664(F) and R4-19-405 unless the individual is precluded from licensure under A.R.S. § 32-1606(B)(17). If the evaluation identifies sexual behaviors of a predatory nature, the Board shall deny licensure or renewal of licensure.

B. All individuals reporting a substance use disorder in the last five years may be subject to a Board order for an evaluation under A.R.S. § 32-1664(F) and R4-19-405 to determine safety to practice.

C. The Board may order the evaluation of other individuals on a case-by-case basis under A.R.S. § 32-1664(F) and R4-19-405.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

ARTICLE 4. REGULATION

R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice

A. A licensed practical nurse shall engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a registered nurse or licensed physician.

B. A LPN's nursing practice is limited to those activities for which the LPN has been prepared through basic practical nursing education in accordance with A.R.S. § 32-1637(1) and those additional skills that are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.

C. A LPN shall:

1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C.19;
2. Demonstrate honesty and integrity;
3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice.
5. Maintain competence through ongoing learning and application of knowledge in practical nursing practice.
6. Protect confidential information unless obligated by law to disclose the information;
7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(24) and further specified in R4-19-403 and R4-19-814, to the Board;
8. Respect a client's rights, concerns, decisions, and dignity;
9. Maintain professional boundaries; and
10. Respect a client's property and the property of others.

D. In participating in the nursing process and implementing client care across the lifespan, a LPN shall:

1. Contribute to the assessment of the health status of clients by:
   a. Recognizing client characteristics that may affect the client's health status;
   b. Gathering and recording assessment data;
   c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
2. Contribute to the development and modification of the plan of care by:
   a. Planning episodic nursing care for a client whose condition is stable or predictable;
   b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
   c. Determining priorities of care together with the supervising registered nurse or physician;
3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
   a. Following nurse and physician orders and seeking clarification of orders when needed;
   b. Administering treatments, medications, and procedures;
   c. Attending to client and family concerns or requests;
   d. Providing health information to clients as directed by the supervising RN or physician or according to an established educational plan;
   e. Promoting a safe client environment;
   f. Communicating relevant and timely client information with other health team members regarding:

Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-703. Oral Proceedings

A. The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.

B. The Board shall record all oral proceedings either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.

C. The presiding officer shall conduct an oral proceeding according to A.R.S. § 41-1023; and

1. Request each person in attendance register;
2. Obtain the following information from any person who intends to speak:
   a. Name and whether the person represents another;
   b. Position with regard to the proposed rule; and
   c. Approximate length of time needed to speak;
3. Open the proceeding by identifying the subject matter of the rules under consideration and the purpose of the proceeding;
4. Present the agenda;
5. Ensure that a Board representative explains the background and general content of the proposed rules;
6. Limit comments to a reasonable period, and prevent undue repetition of comments;
7. Announce the address for written public comments and the date and time for the close of record; and
8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-703 repealed; new Section R4-19-703 renumbered from R4-19-704 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-704. Petition for Altered Effective Date

A. A person wishing to alter the effective date of a rule shall file a written petition that contains:

1. The name, current address, and telephone number of the person submitting the petition;
2. Identification of the proposed rule;
3. If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A);
4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
5. The signature of the person submitting the petition.

B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-704 renumbered to R4-19-703; new Section R4-19-704 renumbered from R4-19-705 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-705. Written Criticism of an Existing Rule

A. Any person may file with the Board a written criticism of an existing rule that contains:

1. The rule addressed, and
2. The reason the existing rule is inadequate, unduly burdensome, unreasonable, or improper.

B. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-705 renumbered to R4-19-704; new Section R4-19-705 renumbered from R4-19-706 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-706. Renumbered

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Renumbered to R4-19-705 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS

R4-19-801. Common Standards for Nursing Assistant (NA) and Certified Medication Assistant (CMA) Training Programs

A. Program Administrative Responsibilities

1. Any person or entity offering a training program under this Article shall, before accepting tuition from prospective students, and at all times thereafter, provide program personnel including a coordinator and instructors, as applicable, who meet the requirements of this Article.
2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.
3. A training program shall obtain and maintain Board approval or re-approval as specified in this Article and A.R.S § 32-1650.01 (B) before advertising the program, accepting any tuition, fees, or other funds from prospective students, or enrolling students.
4. A training program that uses external clinical facilities shall execute a written agreement with each external clinical facility.
5. A training program that requires students to pay tuition for the program shall:
   a. Make all program costs readily accessible on the school's website with effective dates,
   b. Publically post any increases in costs on the school's website 30 days in advance of the increase;
   c. Include in the cost calculation and public posting, all fees directly paid to the program including but not limited to tuition, lab fee, clinical fee, enrollment fee, insurance, books, uniform, health screening, credit card fee and state competency exam fee; and
   d. Provide a description of all program costs to the student that are not directly paid to the program.
6. Before collecting any tuition or fees from a student, a training program shall notify each prospective student of Board requirements for certification and licensure including:
   a. Legal presence in the United States; and

b. For licensure, criminal background check requirements, and ineligibility under A.R.S. § 32-1606(B)(15) and (16).

7. Within the first 14 days of the program and before 50% of program instruction occurs, a training program shall transmit to the Board-approved test vendor, accurate and complete information regarding each enrolled student for the purposes of tracking program enrollment, attrition and completion. Upon receipt of accurate completion information, the vendor shall issue a certificate of completion to the program for each successful graduate.
8. A training program shall provide the Board, or its designee, access to all training program records, students and staff at any time, including during an announced or unannounced visit. A program's refusal to provide such access is grounds for withdrawal of Board approval.
9. A training program shall provide each student with an opportunity to anonymously and confidentially evaluate the course instructor, curriculum, classroom environment, clinical instructor, clinical setting, textbook and resources of the program;
10. A training program shall provide and implement a plan to evaluate the program that includes the frequency of evaluation, the person responsible, the evaluative criteria, the results of the evaluation and actions taken to improve the program. The program shall evaluate the following elements at a minimum every two years:
    a. Student evaluations consistent with subsection (A)(9);
    b. First-time pass rates on the written and manual skills certification exams for each admission cohort;
    c. Student attrition rates for each admission cohort;
    d. Resolution of student complaints and grievances in the past two years; and
    e. Review and revision of program policies.
11. A training program shall submit written documentation and information to the Board regarding the following program changes within 30 days of instituting the change:
    a. For a change or addition of an instructor or coordinator, the name, RN license number, and documentation that the coordinator or instructor meets the applicable requirements of R4-19-802(B) and (C) for NA programs and R4-19-803 (B) for CMA programs;
    b. For a change in classroom location, the previous and new location, and a description of the new classroom;
    c. For a change in a clinical facility, the name and address of the new facility and a copy of the signed clinical contract;
    d. For a change in the name or ownership of the training program, the former name or owners and the new name or owners; and
    e. For a decrease in hours of the program, a written revised curriculum document that clearly highlights new content, strikes out deleted content and includes revised hours of instruction, as applicable.

B. Policies and Procedures

1. A training program shall promulgate and enforce written policies and procedures that comply with state and federal requirements, and are consistent with the policies and procedures of the parent institution, if any. The program shall provide effective and review dates for each policy or procedure.
2. A training program shall provide a copy of its policies and procedures to each student on or before the first day the student begins the program.
3. The program shall promulgate and enforce the following policies with accompanying procedures:
    a. Admission requirements including:
        i. Criminal background, health and drug screening either required by the program or necessary to place a student in a clinical agency; and
        ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.
    b. Student attendance policy, ensuring that a student receives the hours and types of instruction as reported to the Board in the program's most recent application to the Board and as required in this Article. If absences are permitted, the program shall ensure that each absence is remediated by providing and requiring the student to complete learning activities that are equivalent to the missed curriculum topics, clinical experience or skill both in substance and in classroom or clinical time.
    c. A final examination policy that includes the following provisions;
        i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one retake. The program may allow an additional retake following documented, focused remediation based on past test performance. Any retake examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record; and
        ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor's presence, direct observation, and supervision.
    d. Student record maintenance policies consistent with subsection (D) including the retention period, the location of records and the procedure for students to access to their records.
    e. Clinical supervision policies consistent with clinical supervision provisions of this Section, and:
        i. R4-19-802(C) and (D) for NA programs, or
        ii. R4-19-803(B) and (C) for CMA programs;
    f. Student conduct policies for expected and unacceptable conduct in both classroom and clinical settings;
    g. Dismissal and withdrawal policies;
    h. Student grievance policy that includes a chain of command for grade disputes and ensures that students have the right to contest program actions and provide evidence in support of their best interests including the right to a third party review by a person or committee that has no stake in the outcome of the grievance;
    i. Program progression and completion criteria.

C. Classroom and clinical instruction

1. During clinical training sessions, a training program shall ensure that each student is identified as a student by a name badge or another means readily observable to staff, patients, and residents.

2. A training program shall not utilize, or allow the clinical facility to utilize, students as staff during clinical training sessions.
3. A training program shall provide a clean, comfortable, distraction-free learning environment for didactic teaching and skill practice.
4. A training program shall provide, in either electronic or paper format, a written curriculum to each student on or before the first day of class that includes a course description, course hours including times of instruction and total course hours, instructor information, passing requirements, course goals, and a topical schedule containing date, time and topic for each class session.
5. For each unit or class session the program shall provide, to its students, written:
   a. Measurable learner-centered objectives,
   b. An outline of the material to be taught, and
   c. The learning activities or reading assignment.
6. A training program shall utilize an electronic or paper textbook corresponding to the course curriculum that has been published within the previous five years. Unless granted specific permission by the publisher, a training program shall not utilize copies of published materials in lieu of an actual textbook.
7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:
   a. Reference materials, corresponding to the level of the curriculum; and
   b. Equipment and supplies necessary to practice skills.
8. A training program instructor shall:
   a. Plan each learning experience;
   b. Ensure that the curriculum meets the requirements of this Section;
   c. Prepare written course goals, lesson objectives, class content and learning activities;
   d. Schedule and achieve course goals and objectives by the end of the course; and
   e. Require satisfactory performance of all critical elements of each skill under R4-19-802(H) for nursing assistant and R4-19-803(D)(4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor's presence at the bedside.
9. A qualified RN instructor shall be present at all times and during all scheduled classroom, skills laboratory and clinical sessions. In no instance shall a nursing assistant or other unqualified person provide any instruction, reinforcement, evaluation or independent activities in the classroom or skills laboratory.
10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:
    a. Remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences;
    b. Providing the instructor's current and valid contact information to students and facility staff during the instructor's scheduled teaching periods;
    c. Observing each student performing tasks taught in the training program;
    d. Documenting each student's performance each day, consistent with course skills and clinical objectives;
    e. During the clinical session, engaging exclusively in activities related to the supervision of students; and
    f. Reviewing all student documentation.

D. Records

1. A training program shall maintain the following program records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
   a. Curriculum and course schedule for each admission cohort;
   b. Results of state-approved written and manual skills testing;
   c. Documentation of program evaluation under subsection (A)(10);
   d. A copy of any Board reports, applications, or correspondence, related to the program; and
   e. A copy of all clinical contracts, if using outside clinical agencies.
2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
   a. A record of each student's legal name, date of birth, address, telephone number, e-mail address and Social Security number, if available;
   b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803(D)(4) for medication assistants;
   c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course;
   d. Scores for each test, quiz, or exam and whether such test, quiz, or exam was retaken; and
   e. For NA programs only, a copy of a document providing proof of legal presence in the United States as specified in A.R.S. § 41-1080 to be remitted to the Board's designated testing vendor in order to facilitate timely placement of program graduates on a nursing assistant registry.

E. Certifying Exam Passing Standard: A training program and each site of a consolidated program under R4-19-802(E) shall attain, at a minimum, an annual first-time passing rate on the manual skill and written certifying examinations that is equal to the Arizona average pass rate for all candidates on each examination minus 20 percentage points. The Board may waive this requirement for programs with less than five students taking the exam during the year. The Board shall issue a notice of deficiency under R4-19-805 to any program with five or more students taking the exam that fails to achieve the minimum passing standard in any calendar year.

F. Distance Learning; Innovative Programs
1. A training program may be offered using real-time interactive distance technologies such as interactive television and web based conferencing if the program meets the requirements of this Article.
2. Before a training program may offer, advertise, or recruit students for an on-line, innovative or other non-traditional program, the program shall submit an application for innovative applications in education under R4-19-214 and receive Board approval.

G. Site visits: A training program shall permit the Board, and its designee, including another state agency, to conduct an onsite scheduled evaluation for initial Board approval and renewal of approval in accordance with R4-19-804 and announced or unannounced site visits at any other time the Board deems necessary.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R.

757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection (A)(6), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-802. Nursing Assistant (NA) Program Requirements

A. Organization and Administration

1. A nursing assistant program may be offered by:
   a. An educational institution licensed by the State Board for Private Postsecondary Education,
   b. A public educational institution or a program funded by a local, state or federal governmental agency,
   c. A health care institution licensed by the Arizona Department of Health Services or a federally authorized health care institution,
   d. A private business that meets the requirements of this Article and all other legal requirements to operate a business in Arizona.
2. If a nursing assistant program is offered by a private business, the program shall meet the following requirements.
   a. Hold insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a financial strength rating of "A minus" or better by Best's Credit Ratings, Moody's Investors Service, Standard and Poor's rating service or another comparable rating service as determined by the Board in the amount of a minimum of $15,000. The program shall ensure that:
      i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
      ii. The amount of the bond or insurance is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
      iii. The bond or insurance is maintained for an additional 24 months after program closure; and
   b. Upon initial use and remodeling, provide the Board with a fire inspection report from the Office of the State Fire Marshall or the local authority with jurisdiction, indicating that each program classroom and skill lab location is in compliance with the applicable fire code.
3. Programs approved by the Board before the effective date of this Section shall comply with subsection (A)(2) within one year of the effective date. If a program does not charge tuition or fees, the bond requirement is waived.
4. A Medicare or Medicaid certified long-term care facility-based nursing assistant program shall not require a student to pay a fee for any portion of the program including the initial attempt on the state competency exam.
5. In addition to the policies required in R4-19-801(B), the Board may approve a nursing assistant program to offer an advanced placement option to a student with a background in health care. A nursing assistant program wishing to offer an advance placement option shall submit their advanced placement policy to the Board and receive approval before implementing the policy. The program shall include, at a minimum, the following provisions in its policy:
   a. Advanced placement is limited to students with at least one year full-time employment in the direct provision of health care within the past five years or students who have successfully completed course work that included direct patient care experiences in allied health, medicine or nursing in the past five years.
   b. The program, at a minimum, shall require an advanced placement student to meet the same outcomes as regular students on all examinations and skill performance demonstrations.
   c. The program shall require an advanced placement student to successfully accomplish all clinical objectives during a minimum of 16 hours of clinical practice under the direct supervision and observation of a qualified instructor and in a long-term care facility.
   d. Upon successful completion of advanced placement and any other program requirements, the program shall credit the graduate with the same number of didactic, laboratory and clinical hours as the regular graduate.

B. Program coordinator qualifications and responsibilities

1. Program coordinator qualifications include:
   a. Holding 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; and
   b. Possessing at least two years of nursing experience at least one year of which is in the provision of long-term care facility services.
2. A director of nursing in a health care facility may assume the role of a program coordinator for a nursing assistant training program that is housed in the facility but shall not function as a program instructor.
3. A program coordinator's responsibilities include:
   a. Supervising and evaluating the program;
   b. Ensuring that instructors meet Board qualifications and there are sufficient instructors to provide for a clinical ratio not to exceed 10 students per instructor;
   c. Ensuring that the program meets the requirements of this Article; and
   d. Ensuring that the program meets federal requirements regarding clinical facilities under 42 CFR 483.151.
4. Other than the director of nursing in a long-term care facility, a program coordinator may also serve as a program instructor.

C. Program instructor qualifications and duties

1. Program instructor qualifications include:
   a. Holding a current, registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and provide documentation of a minimum of one year full time or 1500 hours employment providing direct care as a registered nurse in any setting; and
   b. At a minimum, one of the following:
      i. Successful completion of a three semester credit course on adult teaching and learning concepts offered by an accredited post-secondary educational institution,

ii. Completion of a 40 hour continuing education program in adult teaching and learning concepts that was awarded continuing education credit by an accredited organization,
iii. One year of full-time or 1500 hours experience teaching adults as a faculty member or clinical educator, or
iv. One year of full time or 1500 hours experience supervising nursing assistants, either in addition to or concurrent with the one year of experience required in subsection (C)(1)(a).

2. In addition to the program instruction requirements in R4-19-801(C), a nursing assistant program instructor shall provide on-site supervision for each student placed in a health care facility not to exceed 10 students per instructor;

D. Clinical and classroom hour requirements and resources

1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:
   a. Instructor-led teaching in a classroom setting for a minimum of 40 hours;
   b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours; and
   c. Instructor-supervised clinical experiences for a minimum of 40 hours, consistent with the goals of the program. Clinical requirements include the following:
      i. The program shall provide students with clinical orientation to any clinical setting utilized.
      ii. The program shall provide a minimum of 20 hours of direct resident care in a long-term care facility licensed by the Department of Health Services, except as provided in subsection (iv). Direct resident care does not include orientation and clinical pre and post conferences.
      iii. If another health care facility is used for additional required hours, the program shall ensure that the facility provides opportunities for students toapply nursing assistant skills similar to those provided to long-term care residents.
      iv. If a long-term care facility licensed by the Department of Health Services is not available within 50 miles of the training program's classroom, the program may provide the required clinical hours in a facility or unit that cares for residents or patients similar to those residing in a long-term care facility.
   d. To meet the 120 hour minimum program hour requirement, a NA program shall designate an additional 20 hours to classroom, skill or clinical instruction based upon the educational needs of the program's students and program resources.
2. A nursing assistant training program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills. At a minimum, the program shall provide:
   a. Hospital-type bed, over-bed table, linens, linen protectors, pillows, privacy curtain, call-light and nightstand;
   b. Thermometers, stethoscopes, including a teaching stethoscope, aneroid blood pressure cuffs, and a scale;
   c. Realistic skill training equipment, such as a manikin or model, that provides opportunity for practice and demonstration of perineal care;
   d. Personal care supplies including wash basin, towels, washcloths, emesis basin, rinse-free wash, tooth brushes, disposable toothettes, dentures, razor, shaving cream, emery board, orange stick, comb, shampoo, hair brush, and lotion;
   e. Clothes for dressing residents including undergarments, socks, hospital gowns, shirts, pants and shoes or non-skid slippers;
   f. Elimination equipment including fracture bed pans, bed pans, urinals, ostomy supplies, adult briefs, specimen cups, graduate cylinder, and catheter supplies;
   g. Aseptic and protective equipment including running water, sink, soap, paper towels, clean disposable gloves, surgical masks, particulate respirator mask for demonstration purposes, gowns, hair protectors and shoe protectors;
   h. Restorative equipment including wheelchair, gait belt, walker, anti-embolic hose, adaptive equipment, and cane;
   i. Feeding supplies including cups, glasses, dishes, straws, standard utensils, adaptive utensils and clothing protectors;
   j. Clean dressings, bandages and binders; and
   k. Documentation forms.

E. Consolidated Programs

1. A nursing assistant program may request, in writing, to consolidate more than one site of a program under one program approval for convenience of administration. The site of a program is where didactic instruction occurs. The Board may approve the request for a consolidated program if all the following conditions are met:
   a. The program is not based in a long-term care facility;
   b. The program does not offer an innovative program as defined in R4-19-214 at any consolidated site;
   c. A single RN administrator has authority and responsibility for all sites including hiring, retention and evaluation of all program personnel;
   d. Curriculum and policies are identical for all sites;
   e. Instructional delivery methods are substantially similar at all sites;
   f. Didactic, lab practice and clinical hours are identical for all sites;
   g. The program presents sufficient evidence that all sites have comparable resources, including classroom, skill lab, clinical facilities and staff. Evidence may include pictures, videos, documentation of equipment purchase and instructor resumes;
   h. The program provides an application to the Board a minimum of 30 days before consolidation of the program or use of the new site;
   i. The site is fully staffed before accepting students;
   j. The program evaluates each site separately under R4-19-801(A)(9);
   k. The program arranges for the test vendor to provide a separate program number for each site;
2. There have been no substantiated complaints against the program or failure to follow the provisions of this Article in the past two years.
3. The program shall notify the Board if a site is closed or has not been used in two years.
4. A program that has been Board-approved as a consolidated program may request to add additional sites 30 days in advance of site utilization. The Board may approve the new site if the site meets the criteria in subsection (E)(1).

5. The Board may deny a request to consolidate programs or add a site if the requirements of this section are not met. Denial of such a request is not a disciplinary action and does not affect the program's approval status.
6. The Board shall not renew or visit any site that was not used in the previous approval period.

F. Curriculum: a nursing assistant training program shall provide classroom and clinical instruction regarding each of the following subjects:
1. Communication, interpersonal skills, and documentation;
2. Infection control;
3. Safety and emergency procedures, including abdominal thrusts for foreign body airway obstruction and cardiopulmonary resuscitation;
4. Patient or resident independence;
5. Patient or resident rights, including the right to:
   a. Confidentiality;
   b. Privacy;
   c. Be free from abuse, mistreatment, and neglect;
   d. Make personal choices;
   e. Obtain assistance in resolving grievances and disputes;
   f. Security of a patient's or resident's personal property; and
   g. Be free from restraints;
6. Recognizing and reporting abuse, mistreatment or neglect to a supervisor;
7. Basic nursing assistant skills, including:
   a. Taking vital signs, height, and weight using standing, wheelchair and bed scales;
   b. Maintaining a patient's or resident's environment;
   c. Observing and reporting pain;
   d. Assisting with diagnostic tests including obtaining specimens;
   e. Providing care for patients or residents with drains and tubes including catheters and feeding tubes;
   f. Recognizing and reporting abnormal patient or resident physical, psychological, or mental changes to a supervisor;
   g. Applying clean bandages;
   h. Providing peri-operative care; and
   i. Assisting in admitting, transferring, or discharging patients or residents.
8. Personal care skills, including:
   a. Bathing, skin care, and dressing;
   b. Oral and denture care;
   c. Shampoo and hair care;
   d. Fingernail care;
   e. Toileting, perineal, and ostomy care;
   f. Feeding and hydration, including proper feeding techniques and use of assistive devices in feeding; and
9. Age specific, mental health, and social service needs, including:
   a. Modifying the nursing assistant's behavior in response to patient or resident behavior,
   b. Demonstrating an awareness of the developmental tasks and physiologic changes associated with the aging process,
   c. Responding to patient or resident behavior,
   d. Allowing the resident or patient to make personal choices and providing and reinforcing other behavior consistent with the individual's dignity,
   e. Providing culturally sensitive care,
   f. Caring for the dying patient or resident, and
   g. Using the patient's or resident's family as a source of emotional support for the resident or patient;
10. Care of the cognitively impaired patient or resident including;
   a. Understanding and addressing the unique needs and behaviors of patients or residents with dementia or other cognitive impairment,
   b. Communicating with cognitively impaired patients or residents,
   c. Reducing the effects of cognitive impairment, and
   d. Appropriate responses to the behavior of cognitively impaired individuals.
11. Skills for basic restorative services, including:
   a. Body mechanics;
   b. Resident self-care;
   c. Assistive devices used in transferring, ambulating and dressing;
   d. Range of motion exercises;
   e. Bowel and bladder training;
   f. Care and use of prosthetic and orthotic devices; and
   g. Turning and positioning a resident in bed, transferring a resident between bed and chair and positioning a resident in a chair.
12. Health care team member skills including the role of the nursing assistant and others on the health care team, time management and prioritizing work; and
13. Legal aspects of nursing assistant practice, including:
   a. Requirements for licensure and registry placement and renewal.
   b. Delegation of nursing tasks,
   c. Ethics,
   d. Advance directives and do-not-resuscitate orders, and
   e. Standards of conduct under R4-19-814.
14. Body structure and function, together with common diseases and conditions.

G. Curriculum sequence: A nursing assistant training program shall provide a student with a minimum of 16 hours instruction in the subjects identified in subsections (F)(1) through (F)(6) before allowing a student to care for patients or residents.

H. Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:
1. Hand hygiene, gloving and gowning; and
2. Skills in subsection (F)(7), (8) and (11)(a), (c), (d), (f), and (g).

I. One-year approval: following receipt and review of a complete initial application as specified in R4-19-804 the Board may approve the program for a period that does not exceed one year, if requirements are met, without a site visit.

J. A Medicare or Medicaid certified long-term care facility-based program shall provide in its initial and each renewal application, a signed, sworn, and notarized document, executed by the program coordinator, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program including the initial attempt on the state competency exam.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016

(Supp. 16-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-803. Certified Medication Assistant Program Requirements

A. Organization and Administration: A certified medication assistant (CMA) program may only be offered by those entities identified in A.R.S § 32-1650.01(A).

B. Instructor qualifications and duties
1. A medication assistant program instructor shall:
   a. 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;
   b. Possess at least two years or 3,000 hours of direct care nursing experience; and
   c. Have administered medications to residents of a long-term care facility for a minimum of 40 hours.
2. Duties of a medication assistant instructor include, but are not limited to:
   a. Ensuring that the program meets the requirements of this Article;
   b. Planning each learning experience;
   c. Teaching a curriculum that meets the requirements of this Section;
   d. Implementing student and program evaluation policies that meet or exceed the requirements R4-19-801(A)(9) and (10);
   e. Administering not less than three secure unit examinations and one comprehensive final exam consistent with the course curriculum and the requirements of R4-19-801(B)(3)(c) and;
   f. Requiring each student to demonstrate satisfactory performance of all critical elements of each skill in subsection (D)(4) before allowing a student to perform the skill on a patient or resident without the instructor's presence and direct observation;
   g. Being physically present and attentive to students in the classroom and clinical setting at all times during all sessions;
3. A program instructor shall supervise only one student for the first 12 hours of each student's clinical experience; no more than three students for the next 12 hours of each student's clinical experience; and no more than five students for the next 16 hours of each student's clinical experience;

C. Clinical and classroom hour requirements and resources
1. A medication assistant training program shall ensure each graduate received a minimum of 100 hours of total instruction consisting of:
   a. Instructor-led didactic instruction for a minimum of 45 hours;
   b. Instructor supervised skill practice and testing for a minimum of 15 hours;
   c. Instructor supervised medication administration for a minimum of 40 hours in a long-term care facility licensed by the Department of Health Services.
2. A medication assistant program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills in subsection (D)(3) and (D)(4). At a minimum, the program shall provide the following:
   a. A medication cart similar to one used in the clinical practice facility;
   b. Simulated medications and packaging consistent with resident medications;
   c. Pill crushers, pill splitters, medication cups and hand hygiene supplies;
   d. Medication administration record forms; and
   e. Current drug references, calculator and any other equipment used to administer medications safely.

D. Curriculum: a medication assistant training program shall provide classroom and clinical instruction in each of the following subjects.
1. Role of certified medication assistant (CMA) in Arizona including allowable acts, conditions, delegation and restrictions;
2. Principles of medication administration including:
   a. Terminology,
   b. Laws affecting drug administration,
   c. Drug references,
   d. Medication action,
   e. Medication administration across the human lifespan,
   f. Dosage calculation,
   g. Medication safety,
   h. Asepsis, and
   i. Documentation.
3. Medication properties, uses, adverse effects, administration and care implications for the following types of medications:
   a. Vitamins, minerals, and herbs,
   b. Antimicrobials,
   c. Eye and ear medications,
   d. Skin medications,
   e. Cardiovascular medications,
   f. Respiratory medications,
   g. Gastrointestinal medications,
   h. Urinary system medications and medications to attain fluid balance,
   i. Endocrine/reproductive medications,
   j. Musculoskeletal medications,
   k. Nervous system/sensory system medications and
   l. Psychotropic medications.
4. Medication administration theory and skill practice in administration of:
   a. Oral tablets, capsules, and solutions;
   b. Ear drops, eye drops and eye ointments;
   c. Topical lotions, ointments and solutions;
   d. Rectal suppositories; and
   e. Nasal drops and sprays.
5. Any other topics deemed by the program or the Board as necessary and pertinent to the safe administration of medications.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

R4-19-804. Initial Approval and Re-Approval of Training Programs

A. An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents in an electronic format.

B. The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval

except for completing instruction to students who enrolled before the expiration date.

C. A program applying for initial approval shall include all of the following in their 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. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for NA programs or R4-19-803 for CMA programs;
5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
7. Name, address, telephone number and contact person, for all health care institutions which will be clinical sites for the program;
8. Medicare certification status of all clinical sites, if any;
9. Evidence of program compliance with this Article including all of the following:
   a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
   b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
   c. Written curriculum and course schedule according to the provisions of this Article;
   d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
   e. Copy of signed, current clinical contracts;
   f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;
   g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
   h. A plan to evaluate the program that meets requirements in R4-19-801(A)(10);
   i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
   j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
   k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

D. Re-approval of Training Programs

1. A training program applying for re-approval shall submit an electronic application and accompanying materials to the Board before expiration of the current approval. A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.
2. The program shall include the following with the renewal application:
   a. A program description and course goals;
   b. Name, license number, and qualifications of current program personnel;
   c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
   d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
   e. A copy of current program policies, consistent with R4-19-801;
   f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
   g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801(A)(10);
   h. The title, author, year of publication, and publisher of the textbook used by the program;
   i. Copies of the redacted records of one program graduate;
   j. The total number of enrolled students and graduates for each year since the last approval;
   k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
   l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
   m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

E. Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a NA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.

F. Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.

G. A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for a period of two years from the date of denial.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement

A. Deficiencies

1. Upon determining that a training program has not complied with this Article, the Board s may issue a written notice of deficiency to the program. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, for correction of the deficiencies. Under no circumstances, however, shall the period for correction of deficiencies exceed six months.
   a. Within ten days from the date that the notice of deficiency is served, the program shall submit a plan of correction to the Board.
   b. The Board, through its authorized representative, may approve the plan of correction or require modifications to the plan if the plan does not adequately address the deficiencies.
   c. The Board may conduct periodic evaluations and site visits during the period of correction to ascertain the program's progress toward correcting the deficiencies.
   d. The Board shall evaluate the program's compliance, at a regularly scheduled Board meeting following the period of correction to determine whether the program has corrected the deficiencies.
2. The Board may rescind the approval of a training program or take other disciplinary action under A.R.S. § 32-1663, based on the number and severity of violations if the program engages in any of the following:
   a. Failure to submit a plan of correction to the Board within ten days of service of a notice of deficiency.
   b. Failure to comply with the requirements of this Article within the period set by the Board in the notice of deficiency;
   c. Noncompliance with federal, state, or, if applicable, private postsecondary requirements;
   d. Failure to permit a scheduled or unannounced Board site visit or failure to allow a Board representative access to program documents, staff or students during a site visit or investigation;
   e. Loaning or transferring Board program approval to another entity or facility, including a facility with the same ownership;
   f. Offering, advertising, recruiting, or enrolling students in a training program before Board approval is granted;
   g. Conducting a training program after expiration of Board approval without filing an application for renewal of approval before the expiration date;
   h. For a long-term care based nursing assistant program, charging for any portion of the program;
   i. Committing an act of unprofessional program conduct.

B. Unprofessional program conduct. A notice of deficiency or a disciplinary action including denial of approval or rescission of approval may be issued against a training program for any of the following acts of unprofessional conduct:

1. Failing to maintain minimum standards of acceptable and prevailing educational practice;
2. Any violation of this Article;
3. Utilization of students as labor rather than for educational purposes in a health care facility;
4. Failing to follow the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failing to provide the classroom, laboratory or clinical teaching hours required by this Article or described in the program description;
6. Enrolling students in a program without adequate faculty, facilities, or clinical experiences, as required by this Article;
7. Permitting unqualified persons to supervise teaching-learning experiences in any portion of the program;
8. Failing to comply with Board requirements within designated timeframes;
9. Engaging in fraud, misrepresentation or deceit in advertising, recruiting, promoting or implementing the program;
10. 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;
11. Failing to supervise students in the clinical setting in accordance with this Article or allowing more than the maximum students per clinical instructor prescribed in this Article;
12. 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, faculty, patients or the public.
13. 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;
14. Failing to take appropriate action to safeguard a patient's or resident's welfare or follow policies and procedures of the program or clinical site designed to safeguard the patient or resident;
15. Failing to promptly provide make-up classroom, laboratory, or clinical hours, with adequate notice to students, equivalent educational content, and reasonable scheduling, when shortages of hours were caused by the program or program instructors;
16. 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, residents, or the public.
17. Engaging in retaliatory, threatening, or intimidating conduct toward current, prospective or former program students, instructors, other staff, or the public, who make complaints about any aspect of the program to program staff or the Board.

C. Disciplinary Action. If the Board issues disciplinary action against the approval of a nursing assistant or medication assistant training program, the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

D. Voluntary termination

1. If a training program is voluntarily terminating before renewal, the program shall submit a written notice of termination to the Board.
2. The program coordinator shall continue the training program, including retaining necessary instructors, until the last student is transferred or has completed the training program.
3. Within 15 days after the termination of a training program, the administrator or 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.

E. Re-issuance of approval

1. If the Board revokes the approval of a training program, the owner, administrator or coordinator of the revoked program may apply for re-issuance of program approval after a period of two years by complying with the requirements of this Article. The owner, administrator and coordinator of a program that had its approval revoked shall not own, administer or coordinate a training program for a period of two years from the date of program revocation.
2. If the Board, in lieu of revocation, accepts a voluntarily surrender of a program's approval, the program's owner, administrator or coordinator may apply for reissuance of the program's approval after a period of two years. The owner, administrator and coordinator of a program that voluntarily surrendered its approval shall not own, administer or coordinate a training program for a period of two years from the date of the surrender of approval.
3. A training program owner, administrator or coordinator whose program approval was voluntarily surrendered or that had its approval rescinded or revoked shall submit a complete reissuance application packet in writing that contains all of the information and documentation required of programs applying for initial approval. In addition, the program shall provide substantial evidence that the basis for revocation or voluntary surrender no longer exist and that reissuance of program approval is in the best interest of the public.
4. The Board may reissue approval to a training program that meets the requirements of this Article. A program that is denied reissuance of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reissuance. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification

A. An applicant for initial licensed nursing assistant (LNA) licensure or CMA certification shall submit the following to the Board:

1. A verified application on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and any and all former names used by the applicant;
   b. Current address of record, including county of residence, e-mail address and telephone number;
   c. Place and date of birth;
   d. Social Security number;
   e. Ethnic category and marital status at the applicant's discretion;
   f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required in A.R.S. § 32-1650-02(A)(4);
   g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
   h. A list of all states in which the applicant is or has been included on a nursing assistant registry or been licensed or certified as a nursing or medication assistant and the license or certificate number, if any;
   i. For medication assistant, proof of LNA licensure and 960 hours or 6 months full time employment as a CNA or LNA in the past year, as required in A.R.S. § 32-1650.02;
   j. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories;
      ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
      iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
      iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
      v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
4. For LNA applicants, one or more fingerprint cards or fingerprints;
5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606(B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.

B. An applicant for licensure as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:

1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years:
2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past

two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;

4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either this or another state in the last 2 years that included:
   a. Didactic content regarding long-term care clients; and
   b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.

C. An applicant for medication assistant shall meet the qualifications of A.R.S. §§ 32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:

1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester credit, or equivalent, pharmacology course; and
2. A document signed by both the applicant's clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.

D. Certifying Exam

1. A LNA applicant shall take and pass both portions of the certifying exam within 2 years:
   a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
   b. Of the date of the first test for all other applicants.
2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
   a. Of program completion for graduates of Board-approved programs, or
   b. Of the date of the first test for all other applicants.
3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D)(1) or (2).

E. An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.

F. The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if licensure or certification is in the best interest of the public.

G. An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. Medication assistant certification expires when nursing assistant licensure expires.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-807. Nursing Assistant Licensure and Medication Assistant Certification by Endorsement

A. An applicant for LNA or CMA by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.

B. An applicant who has been employed for less than one year shall list all employers during the past two years.

C. An applicant for nursing assistant licensure by endorsement shall meet the training program criteria in R4-19-806(B). An applicant for medication assistant endorsement shall, in addition, provide evidence satisfactory completion of a training program that meets the requirements of A.R.S. § 32-1650.04 and pass a competency examination as prescribed in A.R.S. § 32-1650.03.

D. In addition to the other requirements of this Section, an applicant for licensure or certification by endorsement shall provide evidence that the applicant:

1. Is or has been, within the last 2 years, listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States with no substantiated complaints or discipline; and
2. For nursing assistant, meets one or more of the following criteria:
   a. Regardless of job title or description, performed nursing assistant activities for a minimum of 160 hours for an employer or as part of a nursing or allied health program in the past two years; or
   b. Has completed a nursing assistant training program and passed the required examination within the past two years.
3. In addition to the above requirements, for medication assistant certification, meets the practice requirements of A.R.S. § 32-1650.04 and pays applicable fees under R4-19-808.

E. The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.

F. An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure or certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-808. Fees Related to Certified Medication Assistant

A. The Board shall collect the following fees related medication assistant certification:
1. Initial application for certification by exam, $50.00.
2. Fingerprint processing, $50.00.
3. Application for certification by endorsement, $50.00.

B. If an individual or entity submits a dishonored check, draft order or note, the Board may collect, from the provider of the instrument, the amount allowed under A.R.S. § 44-6852.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 5004, effective November 15, 2002 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal

A. An applicant for renewal of a LNA license or a CMA certificate shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, address of record including county of residence, e-mail address and telephone number;
   b. Marital status and ethnicity at the applicant's discretion;
   c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
   d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for medication assistant renewal, documentation that the applicant has completed a Board-approved training program for the licensure or certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
   e. Responses to questions that address the applicant's background:
      i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
      ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since licensed, certified or last renewed, and
      iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
      iv. Any disciplinary action or investigation related to the applicant's nursing or nursing assistant license or medication assistant certificate, nursing assistant certificate or registry listing by any other state regulatory agency since issuance of the license or certificate, or since last renewal and not previously disclosed to the Board.
      v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
   f. For LNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum of 160 hours every two years since the last license or certificate was issued, or
   g. For CMA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
   h. Pay applicable fees according to A.R.S. § 32-1643 and R4-19-808.

B. An applicant's license or certificate expires every two years on the last day of the applicant's birth month. If an applicant fails to timely renew the license or certificate, the applicant shall;
1. Not work or practice as an LNA or CMA until the Board issues a renewal license or certificate; and
2. Pay any late fee imposed by the Board.

C. If an applicant's license or certificate was, or is currently, revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona license or certificate until a review or investigation has been completed and a decision made by the Board.

D. The Board may renew an LNA license and CMA certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license or certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license or certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

R4-19-810. Certified Nursing Assistant Registry; Licensed Nursing Assistant Registry

A. The Board shall maintain a Certified Nursing Assistant (CNA) Registry and a Licensed Nursing Assistant (LNA) Registry. All individuals listed in either Registry shall provide proof to the Board, either directly or through the Board's test vendor, of legal presence in the United States as specified in A.R.S. § 41-1080. Both Registries meet the requirements of A.R.S. § 32-1606(B)(11).
1. To be placed on the CNA Registry, an applicant shall either:
   a. Have successfully completed an approved nursing assistant training program and passed the nursing assistant written and manual skills competency evaluation within the past two years; or
   b. For endorsement, be listed on another state's nursing assistant registry.

2. To renew CNA Registry status under A.R.S. § 32-1642(E), an applicant shall submit an application that includes verified statements establishing:
   a. Whether applicant has performed nursing assistant or nursing related services for at least eight hours within the past 24 months. An applicant must complete this work requirement to be eligible for renewal.
   b. Whether the applicant's listing on any registry in any other state includes documented findings of abuse, neglect or misappropriation of property.
3. The Executive Director shall include the following information in the CNA Registry for each registered individual:
   a. Full legal name and any other names used;
   b. Address of record;
   c. County of residence;
   d. The date of initial placement on the registry;
   e. Dates and results of both the written and manual skills portions of the nursing assistant competency examination;
   f. Date of expiration of current registration, if applicable;
   g. Any substantiated complaints of abuse, neglect or misappropriation of property; and
   h. Registry status such as active or expired as applicable.

B. An LNA applicant who meets the qualifications under subsection (A)(1) and the licensure requirements of this Article shall be placed on an LNA Registry. The Executive Director shall include the following information in the LNA Registry for each licensed individual:
1. Information contained in subsection (A)(3);
2. Status of the license and any Board actions on the license, such as active, denied, expired, or revoked, as applicable.

C. The Executive Director shall include the following information in the applicable Registry for an individual if the Board, or the United States Department of Health and Human Services (HHS) finds that the individual has violated relevant law. For a finding by the Board or HHS, the Executive Director shall include:
1. The finding, including the date of the decision, and a reference to each statute, rule, or regulation violated; and
2. The sanction, if any, including the date of action and the duration of action, if time-limited.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-811. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

R4-19-812. Change of Name or Address

A. An applicant, CNA, LNA, or CMA certificate holder shall notify the Board, in writing or electronically through the Board's website of any legal name change within 30 days of the change, and submit a copy of the official document verifying the name change.

B. An applicant, CNA, LNA, or CMA certificate holder shall notify the Board in writing or electronically through the Board's website of any change of address within 30 days of the address change.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks

A. A CNA or LNA may perform the following tasks as delegated by a licensed nurse:
1. Tasks for which the nursing assistant has been trained through the curriculum identified in R4-19-802, and
2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence performing the task:
   a. The task can be safely performed according to clear, exact, and unchanging directions;
   b. The task poses minimal risk to the patient or resident and the consequences of performing the task improperly are not life-threatening or irreversible;
   c. The results of the task are reasonably predictable; and
   d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.

B. A licensed nursing assistant who is also certified as a medication assistant under A.R.S. § 32-1650.02 may administer medications under the conditions imposed by A.R.S. § § 32-1650 through 32-1650.07.

C. A licensed nursing assistant under this Article shall:
1. Recognize the limits of the licensee's personal knowledge, skills, and abilities;
2. No change
3. Inform the registered nurse, licensed practical nurse, or another person authorized to delegate the task about the licensee's ability to perform the task before accepting the assignment;
4. Accept delegation, instruction, and supervision from a licensed nurse or another person authorized to delegate a task;
5. Not perform any task that requires a judgment based on nursing knowledge;
6. Acknowledge responsibility for personal actions necessary to complete an accepted assigned task;
7. Follow the plan of care, if available;
8. Observe, report, and record signs, symptoms, and changes in the patient or resident's condition in an ongoing and timely manner; and
9. Retain responsibility for all assigned tasks without delegating any tasks to another person.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-814. Standards of Conduct for Licensed Nursing Assistants and Certified Medication Assistants

For purposes of A.R.S. § 32-1601(24)(d), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a LNA license and a CMA certificate includes the following:

1. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any member of the patient's or resident's family;
2. Engaging in sexual conduct with a patient, resident, or any member of the patient's or resident's family who does not have a pre-existing relationship with the licensee or any conduct while on duty or in the presence of a patient or resident that a reasonable person would interpret as sexual;
3. Leaving an assignment or abandoning a patient or resident who requires care without properly notifying the immediate supervisor;
4. Failing to accurately and timely document care and treatment provided to a patient or resident, including, for a CMA, medications administered or not administered;
5. Falsifying or making a materially incorrect entry in a health care record;
6. Failing to follow an employer's policies and procedures, designed to safeguard the patient or resident;
7. Failing to take action to protect a patient or resident whose safety or welfare is at risk from potential or actual incompetent health care practice, or to report the practice to the immediate supervisor or a facility administrator;
8. Failing to report signs, symptoms, and changes in patient or resident conditions to the immediate supervisor in an ongoing and timely manner;
9. Violating the rights or dignity of a patient or resident;
10. Violating a patient or resident's right of privacy by disclosing confidential information or knowledge concerning the patient or resident, unless disclosure is otherwise required by law;
11. Neglecting or abusing a patient or resident physically, verbally, emotionally, or financially;
12. Failing to immediately report to a supervisor and the Board any observed or suspected abuse or neglect, including a resident or patient's report of abuse or neglect;
13. Soliciting, or borrowing, property or money from a patient or resident, or any member of the patient's or resident's family, or the patient's or resident's guardian;
14. Soliciting or engaging in the sale of goods or services unrelated to the licensee's health care assignment with a patient or resident, or any member of the patient or resident's immediate family, or guardians;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.
16. Repeated use or being under the influence of alcohol, medication, or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
17. Accepting or performing patient or resident care tasks that the licensee lacks the education, competence or legal authority to perform;
18. Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;
19. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state law;
20. Permitting or assisting another person to use the licensee's license or CMA certificate holder's certificate or identity for any purpose;
21. Making untruthful or misleading statements in advertisements of the individual's practice as a licensed nursing assistant or certified medication assistant;
22. Offering or providing licensed nursing assistant or certified medication assistant services for compensation without a designated registered nurse supervisor;
23. Threatening, harassing, or exploiting an individual;
24. Using violent or abusive behavior in any work setting;
25. Failing to cooperate with the Board during an investigation by:
    a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
    b. Not responding to a subpoena or written request for information issued by the Board;
    c. Not completing and returning a Board-issued questionnaire within 30 days; or
    d. Not informing the Board of a change of address or phone number within 10 days of each change;
26. Cheating on the competency exam or providing false information on an initial or renewal application for licensure or certification;
27. Making a false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
28. Making a false or misleading statement on a nursing assistant, medication assistant or health care related employment or credential application;
29. If an applicant, licensee or CMA certificate holder is charged with a felony or a misdemeanor, involving conduct that may affect patient safety, failing to notify the Board, in writing, within 10 working days of being charged under A.R.S. § 32-3208. The applicant, licensee or CMA certificate holder shall include the following in the notification:
    a. Name, current address, telephone number, Social Security number, and license and certificate number, if applicable;
    b. Date of the charge; and
    c. Nature of the offense;
30. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The applicant, licensee or CMA certificate holder shall include the following in the notification:
    a. Name, current address, telephone number, Social Security number, and license and CMA certificate number, if applicable;
    b. Date of the conviction;
    c. Nature of the offense;
31. For a medication assistant, performance of any acts associated with medication administration not specifically authorized by A.R.S. § 32-1650 et.seq; and
32. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a patient, resident, or the public may be harmed.

33. Violation of any other state or federal laws, rules or regulations.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). 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. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

A. A person whose LNA license or CMA certificate was denied, revoked, or voluntarily surrendered according to A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license or certificate:
1. Five years from the date of denial or revocation, or
2. In accordance with the terms of a voluntary surrender agreement.

B. A person who applies for issuance or re-issuance of a license or certificate under the conditions of subsection (A) is subject to the following terms and conditions:
1. The applicant shall submit a written application for issuance or re-issuance of the license or certificate that contains substantial evidence that the basis for surrendering, denying, or revoking the license or certificate has been removed and that the issuance or re-issuance of the license or certificate will not be a threat to public health or safety.
2. Safe practice:
   a. According to A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice as an LNA or CMA.
   b. The Board may require the applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.

C. The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.

D. After considering the application, the Board may:
1. Grant certification or licensure, with or without conditions or limitations, or
2. Deny the application.

E. An applicant who is denied issuance or re-issuance of LNA licensure or CMA certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6, of this Chapter.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 3289, with an immediate effective date of December 2, 2020 (Supp. 20-4).

ARTICLE 9. LICENSED HEALTH AIDE

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.

Historical Note

New Section made by final exempt rulemaking (the Board solicited comments on draft rules) at 28 A.A.R. 111 (January 7, 2022), with an effective date of January 2, 2022 (Supp. 21-4).

R4-19-902. Initial Approval and Renewal of Approval of LHA Training Programs

32-1606. 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 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 and practical nurse applicants.

5. License and renew the licenses of qualified registered 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 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 those 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.

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 nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it 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.

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.

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.

32-1605.01. Executive director; compensation; powers; duties

A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director who is not a member 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 or the executive director's designee shall:

1. Perform the administrative duties of the board.

2. Subject to title 41, chapter 4, article 4, employ personnel needed to carry out the functions of the board.

3. Issue and renew temporary and permanent licenses, certificates and prescribing or dispensing authority.

4. Issue single state and multistate licenses pursuant to this chapter to applicants who are not under investigation and who meet the qualifications for licensure prescribed in this chapter.

5. Perform other duties as directed by the board.

6. Register certified nursing assistants and maintain a registry of licensed nursing assistants and certified nursing assistants.

7. On behalf of the board, enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency. A licensee who materially fails to comply with a program requirement shall be reported to the board and terminated from the confidential program. Any records of a 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:

(a) The licensee voluntarily agrees to participate in the confidential program.

(b) The licensee complies with all treatment requirements or recommendations, including participation in alcoholics anonymous or an equivalent twelve step program and nurse support group.

(c) The licensee refrains from the practice of nursing until the return to nursing has been approved by the treatment program and the executive director or the executive director's designee.

(d) The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.

(e) The licensee's nursing employer is notified of the licensee's chemical dependency and participation in the confidential program and is provided a copy of the stipulated agreement.

8. Approve nursing assistant training programs that meet the requirements of this chapter.

C. If the board adopts a substantive policy statement pursuant to section 41-1091 and the executive director or designee reports all actions taken pursuant to this subsection to the board at the next regular board meeting, the executive director or designee may:

1. Dismiss a complaint pursuant to section 32-1664 if the complainant does not wish to address the board and either there is no evidence substantiating the complaint or, after conducting an investigation, there is insufficient evidence that the regulated party violated this chapter or a rule adopted pursuant to this chapter.

2. Enter into a stipulated agreement with the licensee or certificate holder for the treatment, rehabilitation and monitoring of the licensee's or certificate holder's abuse or misuse of a chemical substance.

3. Close complaints resolved through settlement.

4. Issue letters of concern.

5. In lieu of a summary suspension hearing, enter into a consent agreement if there is sufficient evidence that the public health, safety or welfare imperatively requires emergency action.

D. The executive director may accept the voluntary surrender of a license, certificate or approval to resolve a pending complaint that is subject to disciplinary action. The voluntary surrender or revocation of a license, certificate or approval is a disciplinary action, and the board shall report this action if required by federal law.

32-1635. Temporary license to practice registered nursing

A. The board may issue a temporary license to practice registered nursing to an applicant for a license who meets the qualifications for licensing specified in sections 32-1632 and 32-1633 and board rules.

B. Temporary licenses expire on the date specified in the license and may be renewed at the discretion of the executive director.

32-1636. Use of titles or abbreviations

A. Only a person who holds a valid and current license to practice registered nursing in this state or in a party state pursuant to section 32-1668 may use the title "nurse", "registered nurse", "graduate nurse" or "professional nurse" or the abbreviation "R.N.".

B. Only a person who holds a valid and current license to practice practical nursing in this state or in a party state as defined in section 32-1668 may use the title "nurse", "licensed practical nurse" or "practical nurse" or the abbreviation "L.P.N.".

C. Only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a registered nurse practitioner in this state may use the title "nurse practitioner", "registered nurse practitioner" or "nurse midwife", if applicable, or use any words or letters to indicate the person is a registered nurse practitioner. A person who is certified as a registered nurse practitioner shall indicate by title or initials the specialty area of certification.

D. Except as provided in subsection C of this section, only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a certified nurse midwife in this state may use the title "certified nurse midwife" or "nurse midwife" or use any words or letters to indicate the person is a certified nurse midwife.

E. Only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a clinical nurse specialist may use the title "clinical nurse specialist" or use any words or letters to indicate the person is a clinical nurse specialist. A person who is certified as a clinical nurse specialist shall indicate by title or initials the specialty area of certification.

F. A nurse who is granted retirement status shall not practice nursing but may use the title "registered nurse-retired" or "RN-retired" or "licensed practical nurse-retired" or "LPN-retired", as applicable.

32-1640. Temporary license to practice as a licensed practical nurse

A. The board may issue a temporary license to practice as a licensed practical nurse to an applicant for a license who meets the qualifications for licensing specified in section 32-1637 and as prescribed by the board by rule.

B. Temporary licenses expire on the date specified in the license and may be renewed at the discretion of the executive director.

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.

32-1644. Approval of nursing schools and nursing programs; application; maintenance of standards

A. The board shall approve all new prelicensure nursing, nurse practitioner and clinical nurse specialist programs pursuant to this section. A postsecondary educational institution or school in this state that is accredited by an accrediting agency recognized by the United States department of education desiring to conduct a registered nursing, practical nursing, nurse practitioner or clinical nurse specialist program shall apply to the board for approval and submit satisfactory proof that it is prepared to meet and maintain the minimum standards prescribed by this chapter and board rules.

B. The board or its authorized agent shall conduct a survey of the institution or program applying for approval and shall submit a written report of its findings to the board. If the board determines that the program meets the requirements prescribed in its rules, it shall approve the applicant as either a registered nursing program, practical nursing program, nurse practitioner program or clinical nurse specialist program in a specialty area.

C. A nursing program approved by the board may also be accredited by a national nursing accrediting agency recognized by the board. If a prelicensure nursing program is accredited by a national nursing accrediting agency recognized by the board, the board does not have authority over it unless any of the following occurs:

1. The board receives a complaint about the program relating to patient safety.

2. The program falls below the standards prescribed by the board in its rules.

3. The program loses its accreditation by a national nursing accrediting agency recognized by the board.

4. The program allows its accreditation by a national nursing accrediting agency recognized by the board to lapse.

D. From time to time the board, through its authorized employees or representatives, may resurvey all approved programs in the state and shall file written reports of these resurveys with the board. If the board determines that an approved nursing program is not maintaining the required standards, it shall immediately give written notice to the program specifying the defects. If the defects are not corrected within a reasonable time as determined by the board, the board may take either of the following actions:

1. Approve the program but restrict the program's ability to admit new students until the program complies with board standards.

2. Remove the program from the list of approved nursing programs until the program complies with board standards.

E. All approved nursing programs shall maintain accurate and current records showing in full the theoretical and practical courses given to each student.

F. The board does not have regulatory authority over the following approved nurse practitioner or clinical nurse specialist programs unless the conditions prescribed in subsection C are met:

1. A nurse practitioner or clinical nurse specialist program that is part of a graduate program in nursing accredited by an agency recognized by the board if the program was surveyed as part of the graduate program accreditation.

2. A nurse practitioner or clinical nurse specialist program that is accredited by an agency recognized by the board.

32-1660. Nurse licensure compact

The nurse licensure compact is adopted and enacted into law as follows:

Article I

Findings and Declaration of Purpose

A. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.

2. Violations of nurse licensure laws and other laws regulating the practice of nursing may result in injury or harm to the public.

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states.

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

B. The general purposes of this compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety.

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions.

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction.

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

6. Decrease redundancies in the consideration and issuance of nurse licenses.

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II

Definitions

As used in this compact:

A. "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee or limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

B. "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

C. "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

D. "Current significant investigative information" means either:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

E. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

F. "Home state" means the party state that is the nurse's primary state of residence.

G. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

H. "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

I. "Multistate licensure privilege" means a legal authorization associated with a multistate license that allows the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in a remote state.

J. "Nurse" means a registered nurse or a licensed practical/vocational nurse, as those terms are defined by each party state's practice laws.

K. "Party state" means any state that has adopted this compact.

L. "Remote state" means a party state, other than the home state.

M. "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

N. "State" means a state, territory or possession of the United States and the District of Columbia.

O. "State practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice and establish the methods and grounds for imposing discipline. State practice laws do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Article III

General Provisions and Jurisdiction

A. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse or as a licensed practical/vocational nurse, under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

C. Each party state shall require that, in order for an applicant to obtain or retain a multistate license in the home state, the applicant meets all of the following criteria:

1. Meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws.

2. either:

(a) Has graduated or is eligible to graduate from a licensing board-approved registered nurse or licensed practical/vocational nurse prelicensure education program.

(b) Has graduated from a foreign registered nurse or licensed practical/vocational nurse prelicensure education program that both:

(i) Has been approved by the authorized accrediting body in the applicable country.

(ii) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program.

3. If a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, Has successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening.

4. Has successfully passed an NCLEX-RN® or NCLEX-PN® examination or recognized predecessor, as applicable.

5. Is eligible for or holds an active, unencumbered license.

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.

9. Is not currently enrolled in an alternative program.

10. Is subject to self-disclosure requirements regarding current participation in an alternative program.

11. Has a valid United States social security number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension or probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such an action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license on the effective date of this compact may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse who changes the nurse's primary state of residence after this Compact's effective date must meet all applicable requirements in subsection C of this article to obtain a multistate license from a new home state.

2. A nurse who fails to satisfy the multistate licensure requirements in subsection C of this article due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the interstate commission of nurse licensure compact administrators.

Article IV

Applications for Licensure in a Party State

A. On application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

C. If a nurse changes the nurse's primary state of residence by moving between two party states, the nurse must apply for licensure as follows in the new home state and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission:

1. The nurse may apply for licensure in advance of a change in primary state of residence.

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in the nurse's primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license that is valid only in the former home state.

Article V

Additional Authorities Invested in Party State Licensing Boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state as follows:

(a) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

(b) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigation of a nurse who changes the nurse's primary state of residence during the course of such an investigation. The licensing board shall also have the authority to take any appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which any witness or evidence is located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

Article VI

Coordinated Licensure Information System

and Exchange of Information

A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications with the reasons for such denials and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

H. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state that includes, at a minimum:

1. Identifying information.

2. Licensure data.

3. Information related to alternative program participation.

4. Other information that may facilitate the administration of this compact, as determined by commission rules.

I. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

Article VII

Establishment of the Interstate Commission of Nurse

Licensure Compact Administrators

A. The party states hereby create and establish a joint public entity known as the interstate commission of nurse licensure compact administrators as follows:

1. The commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting and meetings are as follows:

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the laws of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII of this compact.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss any of the following:

(a) Noncompliance of a party state with its obligations under this compact.

(b) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

(c) Current, threatened or reasonably anticipated litigation.

(d) Negotiation of contracts for the purchase or sale of goods, services or real estate.

(e) Accusing any person of a crime or formally censuring any person.

(f) Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(g) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(h) Disclosure of investigatory records compiled for law enforcement purposes.

(i) Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact.

(j) Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this article, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or an order of a court of competent jurisdiction.

C. The commission, by a majority vote of the administrators, shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:

1. Establishing the fiscal year of the commission.

2. Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees.

(b) Governing any general or specific delegation of any authority or function of the commission.

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed.

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission.

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

6. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus monies that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

D. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

E. The commission shall maintain its financial records in accordance with the bylaws.

F. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

G. The commission shall have the following powers:

1. To adopt uniform rules to facilitate and coordinate the implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states.

2. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected.

3. To purchase and maintain insurance and bonds.

4. To borrow, accept or contract for services of personnel, including employees of a party state or nonprofit organizations.

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space or other resources.

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters.

7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same if at all times the commission avoids any appearance of impropriety or conflict of interest.

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed if at all times the commission avoids any appearance of impropriety.

9. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed.

10. To establish a budget and make expenditures.

11. To borrow money.

12. To appoint committees, including advisory committees composed of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons.

13. To provide and receive information from, and to cooperate with, law enforcement agencies.

14. To adopt and use an official seal.

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

H. Financing of the Commission is as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The commission may levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all party states.

3. The commission may not incur obligations of any kind before securing the monies adequate to meet the same or pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of monies handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

I. Qualified immunity, defense and indemnification are as follows:

1. The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities. this paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, wilful or wanton misconduct of that person.

2. The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining that person's own counsel if the actual or alleged act, error or omission did not result from that person's intentional, wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment,

duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from the intentional, wilful or wanton misconduct of that person.

Article VIII

Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as other provisions of this compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

C. Before the adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking both:

1. On the website of the commission.

2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include all of the following:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on.

2. The text of the proposed rule or amendment and the reason for the proposed rule.

3. A request for comments on the proposed rule from any interested person.

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

E. Before the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

F. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

G. The commission shall publish the place, time and date of the scheduled public hearing. The following apply to hearings under this subsection:

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available on request.

2. This subsection does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

H. If no one appears at the public hearing, the commission may proceed with the adoption of the proposed rule.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission, by majority vote of all administrators, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. On determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice or an opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably practicable, but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to do any of the following:

1. Meet an imminent threat to public health, safety or welfare.

2. Prevent a loss of commission or party state funds.

3. Meet a deadline for the adoption of an administrative rule that is required by federal law or rule.

L. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

Article IX

Oversight, Dispute Resolution and Enforcement

A. Oversight is as follows:

1. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

2. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or adopted rules.

B. Default, technical assistance and termination are as follows:

1. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall do both of the following:

(a) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission.

(b) Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated on an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed on in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution is as follows:

1. On request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

2. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. If the commission cannot resolve disputes among party states arising under this compact:

(a) The party states may submit the issues in dispute to an arbitration panel that is composed of individuals appointed by the compact administrator in each of the affected party states and an individual who is mutually agreed on by the compact administrators of all the party states involved in the dispute.

(b) The decision of a majority of the arbitrators is final and binding.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with this compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. if judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

3. The remedies in this compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Article X

Effective Date, Withdrawal and Amendment

A. This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by at least twenty-six states or December 31, 2018. All party states to this compact that also were parties to the prior nurse licensure compact, superseded by this compact, shall be deemed to have withdrawn from the prior compact within six months after the effective date of this compact.

B. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until that party state has withdrawn from the prior compact.

C. Any party state may withdraw from this compact by enacting a statute repealing the compact. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such a withdrawal or termination.

E. This compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

F. This compact may be amended by the party states. An amendment to this compact does not become effective and binding on the party states until it is enacted into the laws of all party states.

G. Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all states.

Article XI

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes of the compact. the provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States, or if the applicability of the compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

32-1660.01. Applicability of compact; scope of practice; notification; withdrawal from compact

A. The compact adopted by section 32-1660 does not alter the scope of practice of a registered nurse practicing in this state. A registered nurse practicing in this state shall comply with the scope of practice enacted under this chapter.

B. The commission created by the compact adopted by section 32-1660 does not have the authority to alter the scope of practice for registered nurses practicing in this state. The governor may withdraw this state from the compact adopted by section 32-1660 if the board notifies the governor that the commission has adopted a rule to change the scope of practice for registered nurses in this state and a law is enacted that repeals the compact.

32-1660.03. Arizona state board of nursing; notice of commission actions

The Arizona state board of nursing, within thirty days after an interstate commission of nurse licensure compact administrators action, shall post on the board's public website notice of any commission action that may affect a nurse's license.

32-3208. Criminal charges; mandatory reporting requirements; civil penalty; exceptions

A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.

B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.

C. On receipt of this information the regulatory board may conduct an investigation.

D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than $1,000 in addition to other disciplinary action it takes.

E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.

F. On request, a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

G. Notwithstanding any other provision of this section, a person who is licensed or permitted pursuant to chapter 18 of this title is not subject to:

1. An investigation, a civil penalty or any other disciplinary action for failing to disclose a criminal charge if the criminal charge is more than four years old and does not involve sexual misconduct, an incident or occurrence involving a felony, diversion of a controlled substance or impairment while practicing. Diversion of a controlled substance does not include administrative errors or recordkeeping violations when there is not evidence of an actual loss of a controlled substance.

2. A civil penalty or any other disciplinary action for failing to report a criminal charge if the licensee or permittee has disclosed the charge in any manner, including a renewal application, even if the disclosure occurred after the ten-working-day period specified in subsection A of this section.

41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions

A. Subject to subsections C and D of this section, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.

2. A driver license issued by a state that verifies lawful presence in the United States.

3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.

4. A United States certificate of birth abroad.

5. A United States passport.

6. A foreign passport with a United States visa.

7. An I-94 form with a photograph.

8. A United States citizenship and immigration services employment authorization document or refugee travel document.

9. A United States certificate of naturalization.

10. A United States certificate of citizenship.

11. A tribal certificate of Indian blood.

12. A tribal or bureau of Indian affairs affidavit of birth.

13. Any other license that is issued by the federal government, any other state government, an agency of this state or a political subdivision of this state that requires proof of citizenship or lawful alien status before issuing the license.

B. This section does not apply to an individual if either:

1. Both of the following apply:

(a) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.

(b) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

2. All of the following apply:

(a) The individual is a resident of another state.

(b) The individual holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state.

(c) The individual seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state.

C. If, pursuant to subsection A of this section, an individual has affirmatively established citizenship of the United States or a form of nonexpiring work authorization issued by the federal government, the individual, on renewal or reinstatement of a license, is not required to provide subsequent documentation of that status.

D. If, on renewal or reinstatement of a license, an individual holds a limited form of work authorization issued by the federal government that has expired, the individual shall provide documentation of that status.

E. If a document listed in subsection A, paragraphs 1 through 12 of this section does not contain a photograph of the individual, the individual shall also present a government issued document that contains a photograph of the individual.

F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state or to an individual who provides a service to any person.

2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service.

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.

41-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona peace officer standards and training board.

2. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

3. "Criminal justice agency" means courts or a government agency or any subunit thereof which performs detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

4. "Department" means the department of public safety.

5. "Director" means the director of the department of public safety.

6. "Patrol" means the Arizona highway patrol.

7. "Peace officer" means any personnel of the department designated by the director as being a peace officer under the provisions of this chapter.

8. "Reserve" means the department of public safety reserve.

E

ARIZONA STATE LAND DEPARTMENT PROGRESS UPDATE ON ARTICLES REVIEWED OUTSIDE OF THE FIVE-YEAR REVIEW PROCESS PURSUANT TO A.R.S. § 41-1056(D) AND A.R.S. § 41-1056(F) EXTENSION REQUEST TO AMEND OR REPEAL RULES IN TITLE 12, CHAPTER 5, ARTICLES 7-9 AND 11 PURSUANT TO A.R.S. § 41-1056(E)

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
1110 West Washington Street, Phoenix, AZ 85007
(602) 542-4631

October 26, 2023

Arizona Department of
Administration Governor's
Regulatory Review Council
100 North 15th Avenue,
Suite 402
Phoenix, AZ 85007

Attn: Nicole Sornsin, Chairperson

RE: Arizona State Land Department's Comprehensive Rule

Review Schedule Dear Chairperson Sornsin:

On June 6, 2023, the Governor's Regulatory Review Council (GRRC) approved an extension for rule review and requested that the Arizona State Land Department (ASLD) complete a rule review for A.A.C. Title 12, Chapter 5, Articles 1-11, by November 1, 2023; ASLD is pleased to inform GRRC that it will meet that deadline.

In a letter dated May 15, 2022, ASLD requested an additional extension date for Articles 13-25 for March 1, 2024. At the GRRC meeting on June 6, 2023, GRRC members noted that the request for extension of the deadline for Articles 12-25 would not be granted; and they graciously indicated that they would like to see the progress of the first rule review report before setting a deadline for the second half of the Chapter.

Over the course of the last four months, ASLD has worked to complete the rule review for the first part of the Article, and concurrently, has made changes to dedicated staff and resources to support regular rule writing and review from the sections in the Department going forward.

Respectfully, I believe it prudent to seek GRRC's favorable consideration of the following:

- A "progress update" to GRRC on June 1, 2024, for work completed on the rule review for the second half of the Chapter -A.AC. Title 12, Chap. 5, Arts. 12-25

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- An extension on rule making for A.AC. Title 12, Chap. 5, Alts. 1, 7, 8, 9, 11 to April 30, 2024; for which ASLD plans to submit the initial filing with the Arizona Secretary of State on October 31, 2023

Recognizing that ASLD has previously asked for and been granted an extension for A.A.C. Title 12, Chap. 5, Arts. 1, 7, 8, 9, 11, I would like to share what the Department has completed to date and how the Department's plan for completing the rulemaking process.

The Department has completed 5-year Rule Review Reports for A.A.C. Title 12, Chap. 5 Arts. 1-11, and has proposed rule amendments contained in A.A.C. Title 12, Chap. 5, Arts. 7, 8, 9 and 11. Documents reflecting this work are attached to this letter.

Going forward, the Department will focus on stakeholder outreach, as the existing extension did not allow a level of stakeholder input that ALSD feels is necessary for these proposed amendments, especially given how long it has been since the Department last undertook this process. As such, the Department intends to do the following:

For the stakeholder process we will create an online portal on our website to capture stakeholder input. We plan on having this ready to go live when the Secretary of State posts our notice of proposed rulemaking. In addition to the portal, we will provide an email and phone number for stakeholders who prefer giving input via those avenues.

We intend to identify stakeholders through an internal stakeholder brainstorming session where we will identify those who may be impacted. We will then notify our impacted stakeholders via letter, requesting input, as well as hold two stakeholder meetings in late November and one or two in December. The stakeholder meetings will provide opportunities for them to provide input on the proposed rule amendments. Our goal is to implement a robust and thorough rulemaking process and I feel that it is of the utmost importance that we be able to have the necessary conversations with ASLD's stakeholders.

Upon completion of the stakeholder feedback gathering process, we will follow the standard rulemaking procedures in order to complete the rulemaking process.

Katie Hobbs
Governor

Robyn Sahid
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Executive Deputy Commissioner

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Additionally, recognizing the Department's longstanding deficiencies in rulemaking, I would like to reiterate my commitment to the continued review and improvement of ASLD's rules. The Department intends to work with GRRC in order to ensure that it has an effective standard rulemaking process.

Please feel free to reach out to Lynn Cordova at lcordova@azland.gov or 602-542-2654 should you have any questions.

Sincerely,

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

1.	**Article, Part, or Section Affected (as applicable)**	**Rulemaking Action**
	R12-5-101	Amend
	R12-5-102	Amend
	R12-5-104	Amend
	R12-5-105	Amend
	R12-5-106	Amend
	R12-5-107	Amend
	R12-5-110	New Section
	R12-5-702	Amend
	R12-5-703	Amend
	R12-5-705	Amend
	R12-5-801	Amend
	R12-5-802	Repeal
	R12-5-902	Amend
	R12-5-904	Amend
	R12-5-910	Amend
	R12-5-1101	Amend

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

Authorizing statute: A.R.S. § 37-132

Implementing statute: A.R.S. § 37-132

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: Volume 29 A.A.R. (*to be filled in by the Register Editor*)

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

Name: Kristen Desmangles

Address: Arizona State Land Department
1110 W. Washington Street, Suite 160
Phoenix, AZ 85007

Telephone: (602) 542-3130

E-mail: kdesmangles@azland.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The proposed rulemaking updates and clarifies language and improves transaction timeframes for the benefit of customers. The proposed organizes the Chapter in places, and reduces the burden on its customers, and even provides greater clarity for the staff required to implement. The proposed rules conform to the format and style requirements of the Governor's Regulatory Review Council and Secretary of State's Office.

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

The Department did not review or rely on any study in the preparation of this proposed rulemaking.

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

This proposed rulemaking does not diminish a statewide grant of authority of a political subdivision of this State.

8. The preliminary summary of the economic, small business, and consumer impact:

The Department anticipates that these proposed rules will increase transparency which supports the customer's understanding of the Department's expectation for application submittal and processing. Eliminating some of the requirements that were outdated and improving timeframe efficiencies also support the economic development impacts to the applicants (consumer) in a very positive way.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Kristen Desmangles
Address: Arizona State Land Department
1110 W. Washington Street, Suite 160
Phoenix, AZ 85007
Telephone: (602) 542-3130
E-mail: kdesmangles@azland.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

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

No other matters are prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

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

There are no federal laws or regulations applicable to the rules.

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

The Department has not received any such analysis.

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

Not applicable.

13. The full text of the rules follow:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

Section
R12-5-101. Definitions
R12-5-102. Computation of Extension of Time
R12-5-104. Application Forms, Filing Requirements, and Restrictions~~; Legal Status; Submission of Applications~~; Applications Confer No Rights
R12-5-105. ~~Manner of Signing Documents~~ Drafting, Terms, and Execution of Instruments and Contracts before the Department
R12-5-106. Assignments; Subleases
R12-5-107. Fees; Remittances; Rental Payments
R12-5-110. Real Estate Broker Commissions

ARTICLE 7. SPECIAL LEASING PROVISIONS

Section
R12-5-702. Agricultural Leases
R12-5-703. Commercial Leases
R12-5-705. Grazing leases

ARTICLE 8. RIGHTS-OF-WAY

Section
R12-5-801. Rights-of-way
~~R12-5-802. Reservoir, Dam, and Other Sites~~

ARTICLE 9. EXCHANGES

Section
~~R12-5-902. Definitions~~
R12-5-904. Application
~~R12-5-910. Maps and Photographs~~

ARTICLE 11. SPECIAL USE PERMITS

Section
R12-5-1101. Policy; Use of Land

ARTICLE 1. GENERAL PROVISIONS

R12-5-101. Definitions

R12-5-102. Computation of Extension of Time

R12-5-104. Application Forms, Filing Requirements, and Restrictions~~; Legal Status; Submission of Applications~~; Applications Confer No Rights

R12-5-105. ~~Manner of Signing Documents~~ Drafting, Terms, and Execution of Instruments and Contracts before the Department

R12-5-106. Assignments; Subleases

R12-5-107. Fees; Remittances; Rental Payments

R12-5-112. Real Estate Broker Commissions

ARTICLE 1. DEFINITIONS

R12-5-101. Definitions

Unless the context otherwise requires, a word, term, or phrase that is defined in A.R.S. Title 27, Chapter 2 or Title 37 has the same meaning when used in this Chapter. Except as otherwise stated, the following definitions of words, terms, and phrases apply to this Chapter.

1. "Best interest of the state" means best interest of the Trust.
2. "Common mineral materials and products," also "common variety minerals", means cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock, and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, or fill for general construction

and similar purposes.

3. "Contiguous" means two parcels of land that have at least part of one side in common or have a corner touching.

4. "Existing Road" means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.

~~4.~~ 5. "Grantee" means the holder of a right-of-way and includes the holder of an approved assignment of a right-of-way other than an assignment for the purpose of granting a security interest.

~~5.~~ 6. "Lease" means any validly executed document that entitles the lessee to surface or subsurface use or occupancy of ~~State land~~ State Trust Land excluding an assignment for the purposes of granting a security interest.

~~6.~~ 7. "Lessee" means the holder of a lease excluding an assignment for the purpose of granting a security interest.

~~7.~~ 8. "Lessor" means the Department.

9. "Linear Right of Way" means a Right-of-Way issued for State Trust Land for utilities (including without limitation water, electrical, and communication) which are linear and non-exclusive.

~~8.~~10. "Natural product" means any material or substance occurring in its native state that when extracted, is subject to depletion and includes water, vegetation, ~~common mineral products and materials~~ and Common mineral materials and products that are severable from the land, except geothermal resources and those substances subject to the mineral exploration permit and mineral leasing laws of this State.

~~9.~~ 11."Non-conflicted application" means an application for the use of ~~State land~~ State Trust Land that is not conflicted by one or more applications for the same use of the land filed within the time-frame for a conflicting application to be filed under A.R.S. § 37-284.

12. "Non-Linear Right of Way" means a Right-of-Way issued for State Trust Land for utilities (including without limitation water, electrical, and communication) such as reservoirs, dam sites, and power or irrigation plant sites which are non-linear or ot appurtenant to a Linear Right-of-Way, inherently exclusive, and not otherwise classified as commercial.

~~10.~~ 13. "Party" means a person or agency named or admitted as a party in a proceeding or someone seeking to intervene and may include the Department.

14. "Partial Patent" means a patent for less than an entire tract covered under a Certificate of Purchase.

15. "Patent" means a land grant conveying title from the Department to a purchaser.

~~11.~~ 16. "Permit" or "Special Land Use Permit" means any Department-issued document that entitles the permittee ~~to~~ a non-exclusive right to use the surface or subsurface ~~use or occupancy~~ of ~~State land~~ State Trust Land, excluding an assignment for the purposes of granting a security interest, and does not grant any interest in the land.

~~12.~~ 17. "Permittee" means the holder of a permit excluding an assignment for the purpose of granting a security interest.

~~13.~~ 18. "Person" ~~has the same meaning as prescribed~~ includes those identified in A.R.S. § 1-215 as well as trusts and governmental entities, including without limitation political subdivisions, municipal corporations, and foreign governments.

~~14.~~ 19. "Public Records" means the area designated by the Commissioner within the offices of the Department for the submission of all documents to be filed with the Department.

~~15.~~ 20. "Right-of-way" means a non-exclusive right of use and passage over, through, or beneath the surface of ~~State land~~ State Trust Land~~,~~ for an express purpose or to travel to a specific location, and includes Linear Rights-of-Way and Non-Linear Rights-of-Way.

~~16. "Special Land Use Permit" means a Department-issued document that entitles a permittee to occupy or use State land for an express purpose, not otherwise expressly provided for by law, and for a specific duration.~~

21. "State Land(s)", "State Trust Land(s)", or "Trust Land(s)" means any land held in trust by the State and administered by the Arizona State Land Department pursuant to the Enabling Act, Constitution, and Titles 37 and 27 of Arizona Revised Statutes.

~~17.~~ 22. "Sublease" means an agreement ~~approved by the Commissioner, except when it is not expressly required in a Lease to be pre-approved,~~ between a lessee and a third person to lease the property where the lessee retains an interest in the lease.

23. "Subsurface Lessee" means the holder of a lease of the subsurface estate of any State Trust Land for oil and gas, mineral, or other similar natural products.

24. "Surface Lessee" means the holder of a lease of the surface estate of any State Trust Land for grazing, agricultural, commercial, homesite, or use or removal of natural products.

R12-5-102. Computation or Extension of Time

A. Computation of time. In computing any time period prescribed or allowed under this Chapter, except a time period prescribed under Article 2 of this Chapter, the Department shall:

1. ~~exclude~~ Exclude the day from which the designated time period begins to run~~.~~;
2. ~~The computation of time includes~~ Include intermediate Saturdays, Sundays, and legal holidays except when a time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays;
3. ~~The~~ Include the last day of the period is included ~~unless~~ it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday; and
4. ~~When the time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays~~ Add five days to the time period when service of process is given by certified mail and no return receipt has been provided.

B. Extension of time. At the Commissioner's initiative, or upon request, the Commissioner may extend any time period to perform or complete any ordered or required action. The Commissioner shall extend a time period only if the person making a request shows good cause for the extension.

R12-5-104. Application Forms~~; Legal Status; Submission of Applications; Applications Confer No Rights~~ , Filing Requirements and Restrictions, and Rights

A. Forms. A person shall submit an application, report, or other document ~~required by statute or this Chapter~~ to be filed with the Department upon a form prescribed by the Department when applicable. The Department may require an applicant to furnish any information as it deems necessary, and forms may be changed from time to time as the Department deems necessary. ~~The Department shall accept for filing other instruments, such as corporation papers, liens or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.~~

B. ~~Required information as to legal~~ Legal status. A corporation, limited partnership, association, or other entity authorized to conduct business in this state that is applying to purchase, lease, or sublease ~~State land~~ State Trust Land or any interest in ~~State land~~ State Trust Land shall state in its application that it is authorized to conduct business in this state.

C. ~~Submission of application, report, document, or other instrument~~ Requirement to pay fees to file documents. A person shall submit an application, report, document, or other instrument ~~electronically or otherwise to the Department along~~ simultaneous with payment of any required fee.

D. Incomplete or deficient applications and filings. If any application, or any of an application's corresponding attachments, does not contain the information required by statute or this Chapter, the Department shall immediately provide written notice of the deficiency to the applicant. The Department shall then allow 20 days from the date on the written notice from the Department for the applicant to cure the deficiency. If additional time is needed to cure the deficiency, the applicant may request an extension of the time pursuant to R12-5-102(B). If a deficiency is not timely cured, the application cannot be processed on its merits and shall be deemed withdrawn. An application shall be made a record of the Department when an application is deemed complete.

E. Restrictions on filing documents unrelated to State Trust Land. The Department shall accept for filing other instruments relating to State Trust Land, such as corporation papers, liens, or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.

~~D.~~ F. Application confers no rights. A pending application to lease, purchase, or use ~~State land~~ State Trust Land confers no rights to the applicant.

1. The Department may allow a lessee who files a conflicted or non-conflicted application for renewal of ~~an existing~~ a lease to remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed until the application to renew is granted or denied if:
    a. The rent is current;
    b. The lessee is in possession, or otherwise occupies or uses the land; and
    c. The lessee is in good standing under the lease sought to be renewed.
2. A lessee who remains in possession or continues to occupy or use the land in accordance with the provisions of the lease with the Department's permission under this Section shall pay any rent or other monies owed, such as penalty and interest on delinquent rent or irrigation district assessments. If a prior lessee or permittee should not be awarded a renewed lease or permit, the Department may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

G. Rights reserved to the Department. The Department may grant any rights in or license to use State Trust Land without the consent of a surface or subsurface lessee, permittee, or grantee of a Right-of-Way, except when otherwise restricted or prohibited by an instrument or contract.

R12-5-105. ~~Manner of Signing Documents before the Department~~ Drafting, Terms, and Execution of Instruments and Contracts

A. Forms. All instruments and contracts issued by the Department shall be on forms prescribed by the Department.

B. Terms. All instruments and contracts shall contain such provisions, covenants, conditions, and restrictions as may be prescribed by the Department.

~~A.~~C. Process for execution of documents. Upon approval of an application, the Department shall mail out two duplicate, unsigned original copies of the document to be signed by the applicant. ~~A person~~ The applicant shall sign ~~a~~ both duplicate originals of the document or instrument requiring signature in the same manner as the person's name appears of record with the Department or in the manner ~~in~~ which the ~~person~~ is requesting the Department issue a new document or instrument. The applicant shall return both signed duplicate originals of the document or instrument to the Department. After execution by the Commissioner, one copy of the signed instrument shall be returned to the applicant.

D. Failure to execute document. If the Department offers out a contract for the execution and an applicant does not execute and return the contract, together with full payment as indicated by the included statement, within 60 days from the date of mailing by the Department, the application shall be deemed withdrawn; provided, however, that should the applicant object to an appraised rental value, they may appeal the appraisal as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered contract.

~~**B.** If a document is executed for the benefit of:~~

~~1. One individual, the document shall be signed by that individual or by an authorized representative of the individual;~~

~~2. More than one individual, the document shall be signed by each individual or by the individual's authorized representative; or~~

~~3. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.~~

R12-5-106. Assignments; Subleases

A. ~~A person shall not assign~~ The Department shall not recognize or approve an assignment or sublease of any right, entitlement, or interest, in whole or in part, in ~~State land~~ State Trust Land, or possession, occupancy, or right to remove anything therefrom, in whole or in part, from ~~State land~~ State Trust Land unless:

1. The person has ~~made~~ filed a complete application for the assignment or sublease no later than 90 days immediately preceding the expiration of the term; and
2. The person is not in default; and
3. The person is expressly allowed to assign or sublease by the instrument governing the rights and interests it seeks to assign or sublease; and
4. The person has paid rent for the upcoming year if the application has been filed less than 30 days prior to the rent due date; and

~~2.~~ 5. In the case of an assignment, ~~The Commissioner~~ the Department has approved the assignment in writing; or

6. In the case of a ~~or~~ sublease, the Department has approved the sublease in writing, unless a lease expressly permits otherwise.

B. In the event an assignment application is for a partial assignment, the applicant must submit both a description of both the land being transferred and the remaining land by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Department.

C. No assignment shall be made without the consent of all parties of record in the Department

in writing who may have a lien or encumbrance upon the applicable interest in the land. The assignee shall assume all rights and obligations of the assignor.

D. After the Department approves an application for assignment, the assignor and assignee shall execute the assignment pursuant to A.R.S. § 37-281(B).

~~**B**~~**E.** In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease is subject to further conditions and provisions as the ~~Commissioner~~ Department may determine ~~are~~ as necessary to further the best interest of the Trust, including but not limited to provisions relating to ownership of improvements on the lease and disposition of proceeds relating to the improvements.

~~**C**~~**F.** The Department may cancel a lease if a sublessee violates a provision of a lease.

~~**D**~~**G.** The Department shall hold the lessee and sublessee jointly and severally liable for damages arising out of a violation of a provision of a lease by a sublessee.

~~**E**~~**H.** The Department shall not approve a sublease of a sublease ("sub-sublease") for ~~State land~~ State Trust Land.

R12-5-107. Fees; Remittances; Rental Payments

A. A person shall pay fees and other remittances, except for filing fees outlined in R12-5-1201, to the Department by cash, money order, bank draft, or check payable to the "Arizona State Land Department." A person shall pay filing fees pursuant to R12-5-1201 to the Department by cash, credit card, money order, bank draft, or check payable to the "Arizona State Land Department".

B. A person shall pay all billing statements issued by the Department, whether relating to rent, royalty, or other monies owed to the Department, within 30 days of the date of issuance, unless otherwise specified on the billing statement. If payment is not postmarked or is not electronically receipted on or before the close of business on the due date, the Department shall assess penalty and interest as required by law.

C. All rent due under an instrument or contract must be paid annually in advance, except as may be provided in a contract or otherwise authorized and directed in writing by the Department. All rental amounts due under a contract and bills issued that fall under subsection (B) above shall be paid prior to the issuance of a new or renewal contract.

R12-5-110. Real Estate Broker Commissions

A. The Commissioner may offer a commission for the sale or long-term commercial lease of State Trust Land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of State Trust Land at public auction, the Commissioner may consider the following factors:

1. The appraised value of the parcel being offered;
2. The location and size of the parcel being offered;
3. The terms of the sale or lease;
4. The marketability of the land; and
5. The best interest of the State Trust.

B. The Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of State Trust Land and the amount and terms of the commission offered, if any, in the public notice of auction.

C. Upon determination by the Commissioner that a commission will be offered on a sale or long-term commercial lease, a person holding an active real estate broker license in this State is

eligible to receive the commission, from the Department, by registering with the Department their representation of an applicant or bidder and certifying the licensed salesperson or broker is the procuring cause of the transaction according to the following: A broker that represents an applicant bidder shall register their representation with the Department no later than 7 days following acceptance of an application by the Department; and a broker that represents a non-applicant bidder shall register their representation with the Department no later than three business days before the auction. The broker shall register in writing and include the following:

1. Name and address of the brokerage;
2. Name and real estate license number of the designated broker and any real estate salesperson or broker acting as an agent for the broker at the public auction;
3. Name and address of the potential purchaser or lessee;
4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and
5. Signature of the broker and salesperson, if applicable, and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser of lessee and that together they have inspected the land to be auctioned for sale or lease.

D. A broker shall submit registration meeting all the requirements of subsection (C) by electronic delivery to the Department's public counter. A broker shall not register:

1. A potential purchaser or lessee who is registered with another broker for the same auction;
2. A governmental agency;
3. A State Trust Land Beneficiary; or
4. Themselves.

E. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.

F. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this Section.

ARTICLE 7. SPECIAL LEASING PROVISIONS

R12-5-702. Agricultural Leases

A. Definitions. In this article, terms used herein shall have the meanings as defined in A.R.S. § 37-101 or as below:

1. "Agricultural Development Lease" means a lease for the purpose of developing land into agricultural land on State Trust Land.
2. "Agricultural Lease" means a lease for developed agricultural land on State Trust Land.

~~A.~~B. Land ~~subject to~~ available for an ~~agricultural lease~~ Agricultural Lease; term of ~~lease~~ leases. All ~~state land~~ State Trust Land classified as agricultural land are ~~subject~~ available to lease for agricultural ~~leasing~~ purposes for such term as may be established by the ~~Commissioner~~ Department, ~~but in no event for a term of more than ten years.~~ provided the term does not exceed:

1. Ten years for an agricultural lease or a renewal of an agricultural development lease; and

2. Two years for an initial agricultural development lease.

~~a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.~~

~~B. Application for lease of land not classified as agricultural. An application for an agricultural lease of land not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state land.~~

~~C. Application for agricultural lease~~

~~1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state land.~~

~~a. Each application shall be limited to the land in one section or part thereof.~~

~~D.~~ C. ~~Rental rates; appraisal~~ Appraisal. Farm areas are geographically determined within the State and appraised by farm area every 10 years, or as market and other conditions dictate pursuant to A.R.S. § 37-282.01(G).

~~1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than $1.00 per acre per annum.~~

~~2. Minimum rental for each agricultural lease shall be $10.00 per annum; provided, however, that the minimum rental of $10.00 per annum shall apply to each section or portion thereof covered by the lease.~~

~~E. Number of leases issued on farm unit~~

~~1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural land within the lessee's farm unit.~~

~~a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.~~

~~i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.~~

~~ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.~~

~~F. Agricultural lease form; provisions. Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.~~

~~G.~~ D. Sequence of development and improvement of land ~~under~~ an ~~agricultural development lease~~ agricultural development lease.

1. ~~The first allowable acts of development on the leased premises under an agricultural development lease shall include only those~~ The lessee of an agricultural development lease must initially only develop the leased land to the extent necessary and incident to the acquisition of a water supply adequate for the development of the leased ~~acreage~~ land. The lessee must apply to the Department to make an improvement for said development of the leased land.

2. To make an improvement on the leased land which is not necessary to the accomplishment of subsection (D)(1) above, the lessee of an agricultural development

lease must apply to the Department. ~~The placing of any improvement not necessary to the accomplishment of subsection (A) above shall~~ The Department may not ~~be approved~~ approve an application to place an improvement which is not necessary to the accomplishment of subsection (D)(1) above until after the acquisition of such water supply has been accomplished or assured. ~~and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.~~

~~3.~~E. Compliance with regulations made by other state and federal agencies; remedies for non-compliance. When rules and regulations promulgated by state or federal regulatory agencies would affect ~~state land~~ State Trust Land under an agricultural lease or an agricultural development lease or crops grown thereon, ~~and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner~~ the Department may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the ~~Commissioner~~ Department may have the required remedial work accomplished and bill the lessee the amount ~~due the Department~~ expended for the remedial work. Failure by the lessee to pay for such remedial work ~~will~~ shall, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.

~~H.~~F. ~~Application for renewal; right of renewal; developmental lease~~ Preferred right of renewal of an agricultural developmental lease; Denial of renewal of an agricultural development lease.

~~1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state land.~~

~~a. A separate application form shall be submitted for each section of land or portion thereof within the lease.~~

~~b. The filing fee for each application shall be the same as for an initial application.~~

~~2.~~ A lessee of an agricultural developmental lease shall not have ~~A~~ a preferred right of renewal ~~of an agricultural development lease shall not extend to a lessee who~~ if the lessee has not acquired a water supply deemed by the ~~Commissioner~~ Department to be adequate. The Department may deny a renewal application of an agricultural developmental lease if the lessee has not completed substantial due diligence toward complete agricultural subjugation and the development of the land beyond the acquisition of an adequate water supply, as determined solely by the Department.

~~3. Proper diligence on the part of the lessee toward complete agricultural subjugation and development of the land under lease shall be the measure for the Commissioner's determination as to whether renewal of an agricultural development lease is in the best interests of the State.~~

~~I. Application to assign lease~~

~~1. Application to assign and application for assumption of lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state land.~~

~~a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.~~

R12-5-703. Commercial Leases

A. Scope of commercial leasing rules. An applicant for a commercial lease shall be subject to the general leasing rules enumerated, supra. Such applicant shall also be subject to the commercial leasing rules set out, infra. In a commercial leasing situation where the general leasing rules and the commercial leasing rules conflict, the latter rules shall be controlling.

B. Land subject to commercial lease. All state land classified as suitable for commercial purposes are subject to a commercial lease. Unless it is deemed to be for the best interests of the state, it is not the policy of the State Land Department to allow and issue commercial leases which will seriously interfere with, damage, or break up operations of an established ranch or farm unit. There is no limit to the amount of commercial land that may be leased to any one individual, corporation, partnership or association.

C. Term of commercial lease. State land suitable for commercial purposes may be leased for a period of not more than ten years without advertising, or subject to such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interests of the state.

D. Applications to lease state land not classified as commercial. Applications to lease land not classified as commercial shall be accompanied by a petition for reclassification as provided by the general leasing rules.

E. Application for commercial lease; application for commercial lease renewal. All applications for commercial leases and all applications for renewal of commercial leases shall be made on such form or forms as may from time to time be prescribed by the Commissioner and provided by the Commissioner. A commercial lease before the time of execution or renewal will be subject to the provisions and supplemental conditions and restrictions as may be added thereto and the provisions of law and these rules.

F. Additional conditions for commercial leases.

1. Unless otherwise directed by the Commissioner in writing, the lessee shall:

a. Notify the Commissioner in writing as to the number of any license issued by the state Tax Commission of Arizona to the lessee, any sublessee, any concessionaire or any assignee; such notice shall also include the exact name in which license is issued.

b. Keep and maintain an accounting system satisfactory to the Commissioner.

c. Allow access to accounting records during business hours where the same are kept for the purpose of inspecting and auditing the same.

d. File with the Commissioner, if requested by the Commissioner, a statement of the total gross sales made for the period specified. Unless otherwise directed by the Commissioner, this report may be made by filing with the Commissioner the requested information on the form used by the state Tax Commission.

e. Acquire consent in writing from the Commissioner for any improvements made on the site.

f. Acquire consent in writing for moving buildings from other premises onto the leased premises. All buildings and structures shall be of acceptable construction.

g. Keep any gas, electric, power, telephone, water, sewer, cable television and other utility or service lines under ground unless prohibited by law.

h. File with the Commissioner, prior to the approval of any application to place improvements, plans and specifications showing the nature, location, cost, quality of proposed material, size, area, height, color, shape and design of the proposed improvements. The Commissioner may also require a perimeter survey of the leased premises upon which shall be shown the location of the completed improvements. The lessee shall also submit grading plans.

2. The above conditions shall apply to any assignee, sublessee or concessionaire of the original lessee.

G. Maps required as part of application for commercial lease. The applicant shall furnish such information map of the land to be leased as the Commissioner may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition, the Commissioner may require an aerial photograph or photographs of such land as he may specify in a request therefor.

H. Minimum rental rates for commercial leases. No commercial lease shall provide for an annual rental of less than the appraised rental value of the land and in no event shall the rent be less than 5¢ per acre per annum or less than $10.00 per annum per lease.

I.A. Division of leases. The State Land Commissioner Department may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject land or would result in separating one commercial use from another. The rent for the lease year in which such division is made shall be allocated to the separate leases.

J. Sublease of commercial lease by lessee. No commercial lessee shall sublet his lease without the written permission of the Commissioner. Approval of a sublease may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease, with the Commissioner's approval and any limitation to such approval endorsed by the Commissioner thereon will be returned to the lessee, one copy thereof being retained in the files of the Department.

K. Application to assign lease. Application to assign and application for assumption of lease and transfer shall be made upon such forms as may from time to time be prescribed by the Commissioner; upon the approval of the application, the action taken by the Commissioner will be noted upon the lease and made of record in the Department.

L. Use of state land; failure to use. No lessee or permittee shall use land under permit or lease except for the uses and purposes specifically set forth in the lease or other such uses or purposes as may be subsequently authorized by the Commissioner in writing.

M. Rights of commercial lessee or permittee. All leases or permits granted by the Commissioner are only a license or permit to use the land described in the lease or permit for commercial purposes in a manner compatible with the terms of said lease or permit. The state of Arizona reserves the right to grant other leases or permits for the use of said land or the removal of natural products therefrom.

No lessee or permittee has the authority or right to issue any person any right to the use of said land or the removal of any products therefrom, but such right to use vests solely in the Commissioner and must be granted by the Commissioner in writing.

R12-5-705. Grazing leases

A. Definitions. Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit: In this article, terms used herein shall have the meanings as defined in A.R.S. § 37-101 and § 37-285 and as below:

1. "Grazing land" means land which can be used only for the ranging of animals.
"Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves,

in the states of Arizona , New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington, and Oregon, as determined by the United States Department of Agriculture, and, if that service is not available, from such sources as the Department determines best to establish said price.

2. "Carrying capacity" ~~or "average annual carrying capacity"~~ means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.

~~3. "A section of land" for appraisal of carrying capacity purposes means an area of land consisting of 640 acres.~~

~~4. "Animal unit" means one weaned beef animal over six months of age, or one horse, five goats, or five sheep, or the equivalent thereof.~~

~~5. "Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, as determined by the Bureau of Agricultural Economics, United States Department of Agriculture, and, if that service is not available, from such sources as the Commissioner determines best to establish said price.~~

~~B. Qualifications to leasing grazing land. Any person of the age of 21 years or over, a citizen of the United States, or who has declared an intention to become a citizen of the United States, or any firm, association or corporation which has complied with the laws of the state, shall be qualified to lease state land for grazing purposes.~~

~~C.~~ B. Applications for grazing lease ~~and~~ renewals. ~~Application for a grazing lease shall be made upon Land Division form and an application for renewal thereof shall be made upon Land Division form in accordance with the general rules and regulations relating to the leasing of state land. Only one section or subdivision thereof may be applied for on one application for an initial lease.~~ Application for renewal of an existing grazing lease may include an entire ranch unit or any part thereof~~; provided, however, the filing fees must be paid in the same manner as in the original application~~.

~~An applicant for an initial lease shall fill out the form in complete detail. An applicant for a renewal of an existing lease, if he has an up-to-date and current statement of his holdings within the ranch unit used in connection with the land sought to be leased, will not be required to fill out in detail answers to questions concerning his holdings appearing on the applicant form.~~

~~D.~~ C. Land subject to grazing lease; ~~and~~ term of lease. ~~All state land classified as grazing land, not under lease, are subject to grazing lease for a period of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state.~~ Upon receipt of an application for a grazing lease, the Department may issue a grazing lease for any State Trust Land, which are classified as grazing land and are not already subject to a grazing lease, for a term of one to ten years, as determined by the Department. However, if an application for a grazing lease includes State Land which are within the boundaries of ~~It is the policy of the Department not to offer open land for lease within~~ an established ranch unit, the Department shall first offer such land ~~without first offering said land~~ to the owner ~~or the person having control~~ of the

land in ~~such~~ the ranch unit. There is no limit to the amount of grazing land that may be leased to any ~~one individual, corporation, partnership or association~~ person.

~~E. Application to lease land not classified as grazing. Applications to lease land not classified as grazing shall be accompanied by a petition for reclassification as provided by the general rules and regulations relating to the leasing of state land.~~

~~F.~~ D. Rental rates of grazing land; appraisal. No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of $2.50 per annum per lease, said minimum of $2.50 per annum per lease applying to one section or portion thereof.

~~The Commissioner shall appraise all grazing land on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount found by multiplying the carrying capacity of the land by the annual rental rate per animal unit. The annual rental rate per animal unit shall be 22% of the average market price of beef for the preceding year. The annual carrying capacity is determined by a field appraisal by the Department, and the basis for said appraisal is the average carrying capacity of the land over a ten-year period. Notice of the appraised rental of the land will be contained in the annual billing statement which will be sent to the lessee by registered mail unless he has previously signified his acceptance of said carrying capacity together with the Commissioner's final decision regarding the appraised rental. Prevailing annual rental schedules will be published annually and furnished each lessee at the time of mailing the notice of appraised rental.~~

~~An appeal from any final decision of the Commissioner relating to the appraisal of land may be taken to the Board of Appeals as provided in the general rules and regulations relating to state land.~~

~~G. Number of leases issued on ranch unit. Leases issued by the Department will include all state grazing land within the ranch unit in one lease unless a hardship results therefrom to the lessee, in which case the lessee may at his election divide the state land in his ranch unit in not more than four separate leases in such a manner that lease rentals will not become due and payable at the same time but will be payable on an approximate quarterly or semi-annual basis. To divide a ranch unit it is necessary for the lessee to apply in writing or in person to the Department, supplying sufficient information in order that a division of the state land in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state land in a ranch unit being issued, additional leases may be issued with different dates of payment of rentals.~~

~~H. Form of grazing lease and provisions thereof. The form of grazing lease offered by the Department to an applicant will be on Land Division form No. A-11 and will be subject to the provisions and supplemental conditions therein contained and such other conditions as may be added thereto and the provisions of law and these rules and regulations.~~

~~I.~~ E. Rights of ~~grazing lessee~~ the Department to issue non-grazing leases for leased grazing land. All grazing leases granted by the ~~Commissioner~~ Department are only a ~~license~~ non-exclusive right to graze livestock and to use the land ~~described in the lease~~ in a manner compatible with the terms of the lease. The ~~state of Arizona~~ Department ~~reserves the right to~~ may grant ~~other forms of leases or permits~~ instruments for ~~the use of said land~~ uses other than grazing on leased grazing land or for the removal of natural products therefrom. ~~No~~ A grazing lessee ~~has~~

~~the authority or right to~~ shall not issue to any person any rights to ~~the~~ use of ~~said~~ land leased grazing land or ~~the removal of~~ to remove any products therefrom~~, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing~~.

~~J. Sublease or pasturage agreement. No grazing lessee shall sublet his lease, sell or lease pasturage of land embraced in his lease without the written permission of the Commissioner. Approval of a sublease or pasturage agreement may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease or pasturage agreement executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease or pasturage agreement, with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon, will be returned to the lessee, one copy thereof being retained in the files of the Department.~~

~~K. Carrying capacity and application to exceed the same. No grazing lessee, sublessee or users under a pasturage agreement shall graze, without permission of the Commissioner, in excess of 110% of the carrying capacity as previously determined by the Commissioner upon state land under lease within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. Approval to exceed the carrying capacity may be obtained by submitting a written request therefor. The request should contain the number of head of animals the lessee, sublessee or user desires to place upon the leased land in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased land. If the Commissioner approves said request, the lessee, sublessee or user will be notified of such approval of increase in the carrying capacity and the period granted therefor. In the event of the approval of any such excess the Commissioner shall assess and collect the rental for such excess as provided by law and these rules and regulations.~~

~~L~~F. Cultivation and growing of crops on grazing land. ~~State land under grazing lease is limited to the ranging of animals only and may be cultivated and crops grown thereon only with the approval of the Commissioner. Upon approval of the Commissioner the land may be cultivated and crops grown thereon provided such crops are forage crops in nature that are pastured by animals or, if severed from the land, are fed to animals upon the ranch unit. Under no circumstances may the~~ A grazing lessee may not grow crops commercially under the provisions of a grazing lease. ~~In the event any crops are grown with the approval of the Commissioner which will be pastured or removed from the land for use at other times of the year upon the ranch unit, the carrying capacity will be adjusted in accordance with the forage crops grown.~~

~~M~~G. Cutting of timber, standing trees or posts.

1. ~~The~~ A grazing lessee shall not cut or waste, nor allow to be cut or wasted, any timber or standing trees growing on the leased land without the written consent of the ~~Commissioner~~ Department, except for fuel for domestic uses or for the necessary improvements upon the land; provided, however, that nothing herein contained shall be construed to permit the cutting of saw timber for any purpose ~~except with the written consent of the Commissioner~~.

2. Posts cut primarily from cedar, mesquite and juniper trees may be used for the ~~erection~~ construction and use of improvements by ~~the~~ a grazing lessee upon ~~state land~~ State Trust Land without cost, ~~provided the~~ with the prior written consent of the

~~Commissioner is first obtained~~ Department; however,~~. Such~~ such posts may not be used on ~~other than state~~ non-leased land without payment ~~therefor~~ by the grazing lessee to the Department.

3. ~~The~~ When applicable, a grazing lessee ~~is required to~~ must file an affidavit with the Department indicating the number of posts cut, the number used for improvement ~~of state~~ on the leased land, and the number used ~~on other than state land~~ elsewhere or stockpiled for future use. At the time approval to cut posts is granted by the ~~Commissioner, the price will be determined by him,~~ Department, the Department will determine the price, which will be comparable to the price of posts from the United States Forest Service~~, and the~~. The price will then be payable at the time the affidavit indicating the number of posts cut is filed with the Department.

4. The ~~Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time~~ Department may visit ~~the~~ a grazing lessee at any time to ~~determine~~ inspect the number of posts cut. ~~The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing land is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state land.~~

5. ~~In the event the~~ If a grazing lessee does not desire to purchase the trees as above provided, the ~~Commissioner, if he deems it for the best interest of the state,~~ Department may sell the ~~same under such terms and conditions that he may require~~ trees.

A purchaser other than a grazing lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the leased land, ~~under lease to him~~ and a purchaser may be required to file a surety bond with the ~~Commissioner~~ Department in such amount and under such conditions as to indemnify the lessee for any damage which may result due to ~~his~~ the removal of the trees.

~~N. Application to assign lease. Applications to assign and application for assumption of lease and transfer shall be made upon Land Division form No. A-13-1 and in accordance with the general rules and regulations relating to the leasing of state land. Upon approval of the application, the assignment of the lease will be made by the Commissioner upon the lease where indicated and made of record in the Department.~~

~~O~~H. Use of state land~~; failure to use~~. No lessee or permittee shall use land under a grazing lease or permit ~~to him~~ except for grazing purposes ~~unless authorized by the Commissioner in writing. Applications for a special use of land under permit or lease to a lessee or permittee for purposes other than grazing shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department. Failure of any lessee or~~

~~permittee to use the land for the purposes for which he holds a lease or permit, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease or permit to forfeiture or to cancellation as provided by law and these rules and regulations~~.

~~P~~I. Posting to prohibit hunting and fishing on ~~state land~~ leased grazing land. ~~State land under lease or permit may not be posted~~ A grazing lessee may not post signage on leased grazing land to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

ARTICLE 8. ~~RIGHTS-OF-WAY~~ RIGHT-OF-WAY

R12-5-801. ~~Rights-of-way~~ Linear Right-of-Way

~~A. Definitions~~

~~1. "Commissioner" means State Land Commissioner.~~

~~2. "Department" means State Land Department.~~

~~3. "Right-of-way" for the purpose of these rules means a right of use and passage over or through state land for such purpose as the Commissioner may deem necessary.~~

~~4. "Lease" means any lease on state land in existence at the time applicant applies for right-of-way, or granted thereafter for either surface or subsurface use.~~

~~5. "Patent" means a document used by the State Land Department to convey title to land.~~

~~6. "Site" means a reservoir for storage of water; a location for a dam, a power plant or an irrigation plant, and for other purposes for public uses. (Not to include workings for the removal of sand, gravel and other road materials.)~~

~~B. Miscellaneous rules~~

~~1. Scope. These rules and regulations are general rules implementing Article 10, Title 37-461, Arizona Revised Statutes, providing for grants of rights-of-way and sites for public purposes, and shall prevail over and supersede any existing policy or procedure of the Department to the extent that they are in conflict therewith.~~

~~2. State land subject to application. Any state-owned land shall be subject to application, provided that the proposed use does not unalterably conflict with other existing rights~~.

~~C. Application for right-of-way~~

~~1. Qualifications of applicant~~

~~a. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and who are authorized to transact business in the state, and any governmental agency of the state or political subdivision and municipal corporations thereof, may apply to the Department for a right-of-way on, over or through state land.~~

~~b. Application for right-of-way shall be made upon forms provided by the State Land Department.~~

~~2. Area covered by application and right-of-way. Separate application shall be made for each county crossed. Data for each section will be shown separately.~~

~~3. Information to be furnished by the applicant~~

~~a. The application for a right-of-way shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or by an authorized agent for the applicant, and shall be required to furnish the Department~~

~~the following information as the Commissioner may prescribe.~~

~~i. Name and address of applicant.~~

~~ii. Statement whether applicant is an individual, partnership or corporation, or governmental agency of the state or political subdivision and municipal corporation thereof.~~

~~iii. Statement of citizenship, when applicable.~~

~~iv. If a corporation:~~

~~(1) Name.~~

~~(2) State of incorporation.~~

~~(3) Arizona business address.~~

~~(4) Affirmation of authority to do business in Arizona.~~

~~v. Age and marital status, when applicable.~~

~~vi. Description, according to the public land survey of the land for which application is being made.~~

~~vii. Width of the right-of-way.~~

~~viii. The nature of the right-of-way (the right-of-way is temporary or permanent; the right-of-way requires exclusive use or to what extent; a right-of-way through a given area).~~

~~ix. A survey of the land for which application is being made showing distance and direction from a known cadastral survey point in each section.~~

~~x. Location of improvements or crops on land under application over which proposed routes of right-of-way will pass (information required in (ix) and (x) shall be conveyed by means of accurate plat or drawing accompanying the application form).~~

~~xi. The applicant shall furnish evidence from surface lessee and all other right holders in the land applied for giving consent to the new right-of-way or objection thereto.~~

~~b. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information as the Commissioner may deem necessary.~~

~~4~~A. Rights of surface and subsurface lessees or permittees

~~a~~1. The ~~Commissioner~~ Department ~~has the right to~~ may grant rights-of-way without the consent of ~~the~~ a surface or subsurface lessee.

~~b~~2. When the applicant for a right-of-way and any existing right holder do not agree on the appraised value of damages to the right holder, the applicant for right-of-way may apply to the ~~Commissioner~~ Department to appraise the value of any improvements that may be injured or damaged. The cost of any such appraisal shall be paid by the applicant for right-of-way.

~~C~~3. In cases where ~~to utilize the right-of-way applied for,~~ it is necessary to cut a fence belonging to ~~the~~ a surface lessee or permittee or otherwise enter through a fence, the Department may require the installation of a standard cattle guard or other facilities by the right-of-way grantee ~~in accordance with such specifications as the Commissioner may prescribe, may be required by the Commissioner~~ as a condition to the granting of the right-of-way.

~~5. Filing application for right-of-way; fees; rejection; withdrawal~~

~~a. Each application filed with the Department shall be accompanied by a filing fee.~~

~~b. Each application filed shall first be checked for its completeness and when it meets the requirements shall be made of record in the Department.~~

~~c. Rental or other payment for each right-of-way shall be determined by the Commissioner after appraisal.~~

~~i. Rental for rights-of-way granted without public auction sale shall be determined by the Commissioner after appraisal.~~

~~ii. Rights-of-way for exclusive use or perpetual in nature (except rights-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of state land after appraisal.~~

~~iii. Rights-of-way for governmental agencies of the state or political subdivisions and municipal corporations thereof may be granted by the Department for an indefinite period for so long as used for the purpose granted after full payment of the appraised value of the right-of- way has been made to the State Land Department.~~

~~(1) All appraisals of rights-of-way shall be established by the State Land Commissioner.~~

~~(2) The appraised value of the right-of-way shall be determined in accordance with the principles established in A.R.S. §§ 12-1122 and 37-132.~~

~~6. Right of applicant to use of land~~

~~a. The filing of an application for a right-of-way shall not confer upon the applicant any right to use the area applied for.~~

~~b. A right of entry to map and survey or for any other purpose in the area to be applied for may be obtained from the Commissioner on forms provided by the Department.~~

~~7~~D. Termination of use; abandonment

~~a~~1. When a right-of-way holder ~~has no further use of the area, he may surrender the contract to the Commissioner~~ is no longer used by the grantee for which the right-of-way was granted, the right-of-way shall be terminated.

~~b~~2. The ~~Commissioner~~ Department may determine that a right-of-way ~~is~~ has been abandoned when the proper showing is made that the area under right-of-way is no longer needed or used for the purpose ~~applied for~~ granted. In such case,

~~c~~. ~~The Commissioner~~ the Department shall give right-of-way ~~holder~~ grantee 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way ~~holder~~ grantee fails to ~~correct the defect~~ respond, the ~~Commissioner~~ Department may issue an order of ~~abandonment~~ cancellation.

~~8. Issuance of a right-of-way~~

~~a. Upon the compliance by the applicant with the requirements set forth by the Commissioner, the right-of-way contract shall be issued.~~

~~b. The failure of the applicant to execute and return the right-of-way contract with all~~

monies required within 60 days from the date of mailing by the Department, the Commissioner may issue a cancellation order for non-completion of the contract.

c. The date of the right-of-way contract shall commence on the date the contract is mailed by the Department to the applicant.

9F. Right-of-way provisions.

1. Term of right-of-way. The term of the right-of-way shall be determined by the Department and shall be set forth on the right-of-way contract.

2. Right-of-way rentals or other payments. The rental or any other payments required for rights-of-way shall be determined by the Commissioner after appraisal.

2. Right-of-way subject to public auction. Rights-of-way for exclusive uses, perpetual in nature, or for a term exceeding fifty years (except Rights-of-way for transportation purposes granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of State Land.

3. Possession and right of use of right-of-way area. The right is granted for the use of the area described in the right-of-way contract subject to any existing prior rights and subject to any rights the Department shall grant hereafter thereafter.

4. Provisions of the right-of-way

a. Every right-of-way contract shall provide for:

ia. Payment to the Department of the rental amount established by the Commissioner after determination of the true appraised value.

iib. The right to installation and construction of install and construct necessary machinery, equipment and facilities with the right of removal to remove the same within 90 days after expiration or termination of the right-of-way.

iiic. Fencing The obligation of the grantee to install and maintain fencing, gates, cattleguards, and other protective requirements measures deemed necessary by the Commissioner Department.

ivd. That the grantee shall The obligation of the grantee to restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner Department.

ve. That The obligation of the grantee will to indemnify, hold and save grantor harmless against all loss, damage, liability, expenses, costs and charges incident to or resulting in any way from the use, condition or occupation of the land.

vif. A statement of the purpose for which the right-of-way was granted use provision.;

viig. The right of the grantee to assign the right-of-way, provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.;

viiih. The right of termination of the grantee to terminate the right-of-way by the grantee at any time during its term by giving the Commissioner Department 30 days' notice of termination in writing, provided that if the grantee is not delinquent in any payments and has complied with all conditions on the date of termination.

5. Assignment of right-of-way; sublease prohibited

a. Grantee of each right-of-way contract, if not in default of rental or other payments, and who has kept and performed all the conditions of his lease, may, with written approval of the Commissioner, assign the right-of-way.

~~i. Application for assignment, the assignment and the assumption of the right-of-way will be on such forms as the Commissioner may prescribe.~~

~~ii. An assignment shall not become effective unless and until it is approved by the Commissioner.~~

~~iii. The assignee shall succeed to all the rights and shall be subject to the obligations of the assignor.~~

~~iv~~a. A sub-grant of the right-of-way contract is prohibited.

6. Right-of-way renewal. Upon application to the Commissioner, not less than 30 days, nor more than ~~60 days~~ 1 year prior to the expiration of the right-of-way contract, the grantee of a right-of-way contract, shall have a preferred right to renew the right-of-way contract if ~~he~~ the grantee is not delinquent in the payment of rental or of monies due the ~~State Land~~ Department on the date of expiration of the contract~~,~~. ~~shall have a preferred right to renew the right-of- way contract bearing even date with the expiration of the old contract~~ The renewal right-of-way contract shall commence on the day following the expiration of the former contract.
7. Bonds
   ~~a. The Commissioner may require the grantee to post a cash deposit or surety bond to guarantee the payment of all monies due under the contract.~~

   ~~b~~a. The ~~Commissioner~~ Department may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, ~~conditioned~~ guaranteeing that the grantee will ~~guarantee restoration of~~ restore the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.

   ~~c~~b. The Department may require the ~~lessee~~ grantee to file with the Department a surety bond in ~~the~~ such form~~, amount, and with surety~~ approved by, and for such amount determined by, the ~~Commissioner~~ Department, which approval shall be conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the ~~state land~~ State Trust Land covered by the right-of-way~~, for~~. A surety bond required under this subsection shall cover any loss to ~~such owner or~~ a lessee from damage or destruction to grasses, forage, crops, and improvements upon such lands which is caused by the construction or use of the right-of-way~~, his or its agents, or employees, to grasses, forage, crops and improvements upon such land~~.

   ~~d~~c. Assignment of any or all of the right-of-way contract will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under bond may be effected through the posting of a replacement bond by the assignee and subsequent, ~~but then only after~~ approval by the ~~Commissioner~~ Department and ~~subsequent~~ notification of the release by the ~~Commissioner~~ Department in writing to the principal and surety.

   ~~e~~d. The ~~Commissioner~~ Department, in ~~his~~ its discretion, may reduce or increase the principal amount of the bond.

   ~~f~~e. Immediately after determination by the ~~Commissioner~~ Department that full discharge of the conditions of the obligations under any bond has been effected, ~~he~~ it will~~, in writing,~~ notify in writing the principal and surety held by the bond so that it may be formally terminated.

   ~~g~~f. Surety on the bond shall have the right to cancel the bond and be relieved of

further liability after the period of notice, by giving 30 days' notice to the Department of its desire to ~~so~~ cancel.

~~i.~~ Upon receipt of such notification, the Department will ~~immediately~~ notify the grantee by certified mail within 14 days of the impending action by surety.

~~ii.~~ Failure by the grantee to post a replacement bond before the expiration of the 30 days' mentioned next above, shall constitute a default by the grantee and cause for cancellation of the right-of-way.

~~8. Principal payments. Each right-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof for exclusive use or perpetual use shall provide for payment of principal in the full amount of the appraised value as provided by the Commissioner after appraisal.~~

E. Reports of completed Facilities and Construction

~~1. Report of improvements~~

~~a. Applications for and reports of improvements placed shall be presented to the Commissioner on forms provided by the Department.~~

~~b. Grantee of every right-of-way shall submit to the Department an application to place any improvement to be placed on the right-of-way and shall secure written approval from the Commissioner to place the improvement before any work is commenced toward the improvement.~~

c. ~~The~~ A right-of-way grantee shall report any completed ~~improvements~~ facilities and construction to the ~~Commissioner~~ Department ~~and secure approval from the Commissioner~~.

~~R12-5-802.~~ ~~Reservoir, Dam, and Other Sites~~ Repealed

~~A. Definitions~~

~~1. "Site lease" shall mean a lease issued upon state land by the Department for reservoir or dam sites primarily used for purposes other than stock watering on land leased for grazing purposes, and power or irrigation plant sites requiring more width than general rights-of-way leases for transmission lines or canals, or for such other purposes not classified as commercial.~~

~~2. "Surface lessee" means the holder of a lease on the surface of any state land for grazing, agricultural, commercial, homesite or natural products.~~

~~3. "Subsurface lessee" means the holder of a lease on the subsurface of any state land for oil and gas, mineral or natural products.~~

~~B. Land subject to site lease and term of lease. All state land are subject to site lease for a term of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. Site leases in excess of ten years are required by law to be advertised and sold at public auction to the highest bidder.~~

~~No lease for a site will be granted where damage or injury to improvements owned by a surface or subsurface leaseholder would result from the granting of the site by the Department without giving rise to a cause of action by the owner of said improvements, unless compensation for the value or damage or injury to said improvements has first been determined and a settlement made.~~

~~C. Application for site lease. An application for a site lease shall be made upon Land Division form No. A-82, and in accordance with the general rules and regulations relating to the leasing of state land.~~

~~The application shall be accompanied by a map showing in detail the survey of the site applied for, or, if not surveyed, a map of reasonable accuracy so that the site may be located upon the land itself by either a survey or protraction. The Commissioner reserves the right to require a survey to be made by a regularly licensed registered engineer or land surveyor at any time. The map need be of no particular scale but should be of sufficiently large enough scale that improvements upon the surface of the land applied for may be shown. The map is considered a part of the application to lease as a line of definite location which will bind the applicant in the same manner as the lease application itself to the statements made therein.~~

~~An application for a site lease over or across state land, the surface or subsurface of which is leased and in use, should be accompanied by a statement from such surface or subsurface lessee that he has no objection to the granting of the site lease, or, if such consent cannot be obtained, a statement from the applicant stating the reasons why such consent has not been obtained.~~

~~D. Renewal application for site lease. Application for renewal of a site lease shall be made upon Land Division form No. A-13-3 and in accordance with the general rules and regulations relating to state land.~~

~~If the applicant has not used the land for the purpose for which the initial lease was granted to him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and the rules and regulations of the Department.~~

~~E. Rights of surface and subsurface lessees. Under the law the Commissioner has the right to grant sites without the consent of the surface or subsurface lessee. However, in many instances the surface or subsurface lessee owns improvements upon the land desired for a site lease and these improvements are protected by law. In the event the site applicant and the surface or subsurface lessee are unable to arrive at the value of any improvements which may be injured or damaged by the grant of a site lease and the consent of the surface or subsurface lessee cannot be secured, the Commissioner may, if it is to the best interest of the state, appraise the improvements as provided by law and grant the lease upon evidence of tender to the owner of improvements of the appraised value of the same. The owner of the improvements may appeal from the appraisal of the improvements to the Appeal Board of the Department as authorized by law and these rules and regulations.~~

~~F. Rental. No site lease shall provide for an annual rental of less than the appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of $10.00 per annum per lease.~~

~~G. Form of site lease and provisions thereof. The form of site lease offered by the Department to an applicant will be on Land Division form No. A-83 and will be subject to the provisions and supplemental conditions therein contained, and such other conditions as may be added thereto,~~

~~and the provisions of law and these rules and regulations.~~

~~H. Effect of a site lease. No lessee shall use land under lease to him except for site purposes unless authorized by the Commissioner in writing.~~

~~Applications for a special use of land under lease to a lessee for purposes other than which the lease was issued shall be made in writing in triplicate and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.~~

~~Failure of any lessee to use the land for the purposes for which he holds a lease, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease to forfeiture or to cancellation as provided by law and these rules and regulations.~~

~~I. Rights of site lessee. All leases granted by the Commissioner are only a license to use the land described in the lease for site purposes in a manner compatible with the terms of said lease. The state reserves the right to grant other leases for the use of said land or the renewal of natural products therefrom. No site lessee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.~~

ARTICLE 9. EXCHANGES

~~R12-5-902. Definitions~~ Repealed

~~Unless the context otherwise requires:~~
~~1. "Commissioner" means the State Land Commissioner.~~
~~2. "Selection board" means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by A.R.S. § 37-202.~~
~~3. "Private owner" means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.~~
~~4. "Department" means the State Land Department.~~

R12-5-904. Application

~~The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The~~ An application for exchange shall set forth such information ~~as is required by law and these rules~~, including but not limited to the following~~: the name, age, and residence of the applicant;~~ a description of all land sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the land of applicant offered in exchange, and applicant's estimated value thereof; the number of

acres contained in the ~~state land~~ State Trust Land applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the land to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the lease-holder or owner of improvements on the land to be exchanged; a map or maps of the land to be exchanged, coded as to ownership in a suitable manner, as to evaluate the application and assist in making an appraisal; and aerial photographs of the land to be exchanged ~~shall be attached to the application and filed therewith~~.

~~R12-5-910. Maps and Photographs~~ Repealed

~~The applicant shall furnish such map or maps of the land to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such land as it may specify in a request therefor.~~

ARTICLE 11. SPECIAL USE PERMITS

R11-5-1101. Policy; Use of Land

~~It is the policy of the Commissioner in the administration of state land to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by existing law or the rules and regulations of the Land Division and the leasing of state land. Permits for such special use will not be issued, however, in any case where the provisions of existing state land laws may be invoked.~~

~~The contemplated use must not be in conflict with any federal or state laws.~~

~~An applicant must state in his application the use to which he intends to put the land and he will not be permitted to devote them to any other use unless he secures an additional permit.~~

~~1. Qualification of applicants. Any person of the age of 21 years or over, a citizen of the United States or who has declared an intention to become a citizen of the United States or any firm, association or corporation which has complied with the laws of the state, shall be qualified to apply for a special use permit.~~

~~2. Application for special use permit; renewal thereof; application fee. An application for general special use permit shall be made on Land Division form. Such application shall describe with particularity the land applied for, and shall state in detail the use to which the applicant intends to put the land and the period for such use.~~

~~A renewal of a general special use permit shall be made on Land Division form.~~

~~If an applicant for renewal of a special use permit has not used the land for the purpose for which the initial permit was granted him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and these rules and regulations.~~

~~3. Form of special use permit. The form of a general special use permit will be prepared by the Department and will be subject to the provisions and supplemental conditions therein contained and the provisions of law and these rules and regulations.~~

~~4. Term of permit. A special use permit shall not be issued for a period to exceed ten years or such lesser term as may be established by the Commissioner if he deems such lessor term to be in the best interest of the state. An application for an initial special use permit shall not be approved for a period of longer than two years. Unless it is deemed to be in the best interest of the state, it is not the policy of the Department to allow and issue a special use permit which will seriously interfere with the operations of an established lessee or permittee holding a lease or permit from the Department to the surface or subsurface rights to the land.~~

~~5. Minimum fee. No special use permit shall provide for an annual fee for less than appraised rental value of the land and in no event for less than 5¢ per acre annum or a minimum of $10.00 per annum per permit.~~

~~6. Failure to use land for purposes authorized. Any permittee who shall fail to use the land for the purpose for which he holds a permit during the term of his permit, unless for good cause such failure has been authorized or ratified by the Commissioner in writing, may subject his permit to forfeiture or cancellation as provided by law and these rules and regulations.~~

~~7. Rights of permittee. All permits granted by the Commissioner are only a license or permit for the use of land described in the permit for the purpose for which the permit is issued and in a manner compatible with the terms of said permit. The Commissioner reserves the right to grant other permits for the use of said land for the removal of natural products therefrom. No permittee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.~~

~~8. Use of state land. No permittee shall use land under permit to him except for the purpose for which the permit is issued, unless authorized by the Commissioner in writing.~~

~~Applications for a special use of land under permit to a permittee for the purposes other than which~~

~~the permit was issued shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for applications for permit. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the permittee, one copy thereof being retained in the files of the Department. Failure of any permittee to use the land for the purposes for which he holds a permit, without having been authorized to do so by the Commissioner in writing, may, in the discretion of the Commissioner, subject said permit to forfeiture or to the cancellation as provided by law and these rules and regulations.~~

A. The Department may issue Special Land Use Permits, as a non-exclusive right to use the land and not as a grant of any vested or unvested interest in the land, for any purpose otherwise authorized by statute or law for leases and other grants, including without limitation, grazing, agriculture, commercial, homesite, mineral exploration, and recreation.

~~9.~~ B. Advertising displays and signage on ~~state land without permits unauthorized~~ State Trust Land. The erection or maintenance on ~~state land~~ State Trust Land of advertising displays and signage, without ~~permission~~ the Department's issuance of a Permit, is unauthorized and shall be deemed a trespass, except as to the following: ~~by law. Any person erecting or maintaining one or more advertising displays on state land, except under authority of a permit issued by the Commissioner as hereinafter provided, shall be deemed a trespasser.~~

~~10. Advertising displays defined. The words "advertising displays" as used in this Article shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes but shall not include:~~

~~a~~1. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;

~~b~~2. Danger, precautionary, and information signs erected by officials of the Federal Government or officials of the state or any subdivision thereof, or any non-profit organization in the state~~, relating to the premises, or~~ warning of the conditions of travel on a highway, or of forest fires, ~~or~~ road symbols, or speed limits, and including all civil defense directional signs;

~~c~~3. Highway markers or sings relating to any city, town, village, ~~or~~ historic place, or shrine;

~~d~~4. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;

~~e~~5. Official signs, notices, or symbols for the information of aviators, as to location, direction, or landings, and conditions affecting safety in aviation;

~~f~~6. ~~Signs containing 16 square feet or less bearing an annocuncement of any town, village, or city, or non-profit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit; providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved;~~

~~g.~~ Signs erected by Red Cross or other organizations that serve the public during emergency events and which relate ~~authorities relating~~ to Red Cross Emergency Station the emergency events; and

7. Any other circumstances approved in advance by the Department.

~~11. Applications for advertising display permits. Applications for permits must be executed upon Land Division form No. A-73-3. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size and lighting effect, if any, to enable its substantial production from the description. A sketch showing the location on which the display is to be placed with respect to adjacent physical features should be furnished. The applications should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys.~~

~~12. Fees and rentals for advertising display permits.~~

~~a. A fee of $1.00 must accompany each application for an advertising display permit.~~

~~b. The initial and annual charges for advertising displays shall be as follows: not less than 10¢ per annum for each square foot of sign surface and not less than $2.50 per annum for each display. The amount of the charge, subject to such minima, will be fixed by the Commissioner, which in no event will be less than the appraised rental value for such use.~~

~~c. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned land similarly~~

~~situated.~~

~~d. When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.~~

~~13. Form of advertising display permit and terms. Special use permits to erect and maintain advertising displays on state land may be issued by or under authority of the Commissioner on forms provided by the Department, or, in his discretion, will be issued on Land Division form and will be subject to the provisions and supplemental conditions therein contained and to such other conditions as may be added thereto, and the provisions of law and these rules and regulations. The term thereof shall be for periods of not exceeding ten years and the permits will be revocable in the discretion of the Commissioner at any time.~~

~~14. Renewal of advertising display permits. An advertising display permit issued pursuant to these rules and regulations may be renewed, in the discretion of the Commissioner, upon the filing of an application for renewal not more than 60 nor less than 30 days prior to its expiration.~~

~~15~~C. Identification of authorized advertising displays. Each advertising display or signage erected or maintained under a permit issued pursuant to these rules ~~and regulations~~ shall, for convenient identification, have the serial number of such permit marked or painted thereon.

~~16. Unauthorized advertising displays~~

~~a. Persons who heretofore have erected advertising displays on state land must either obtain permits to continue such displays, if authorized by these rules and regulations, or must remove the displays as promptly as possible.~~

~~b. Where unauthorized advertising display on state land is found, the Commissioner will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected without permission prior to January 1, 1953, must be removed within three months from and after the date of the approval of these rules and regulations, unless application for a permit is made within that period. Displays erected prior to January 1, 1953, for which applications for permits are made but for permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the Commissioner. If the owner fails to remove the display within the time allowed, it may be removed by the Commissioner and the owner will be held liable to the Department for~~

~~expense incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the Commissioner without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.~~

~~15~~D. Restrictions on advertising displays and signage.

~~a~~1. No advertising display or signage shall be permitted which, in the opinion of the ~~Commissioner~~ Department, would mar the landcape, hide road intersections or crossings, or ~~which, in his opinion,~~ is otherwise objectionable. At any time, the Department may determine that signage or displays may impose unsafe or imprudent risk to the public or other authorized users of State Trust Land and may prohibit placement or require modification or removal.

~~b~~2. No advertising display or signage shall be affixed to~~,~~ or painted on any tree or rock situate on ~~state land~~ State Trust Land or on any other natural object on such land.

~~c~~3. All advertising displays and signage shall conform to ~~the~~ applicable state laws and local ordinances or regulations.