DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7

Amend: R9-7-902, R9-7-904

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7

Amend: R9-7-902, R9-7-904

Summary:

This Expedited rulemaking from the Department of Health Services (Department) seeks to amend two (2) rules in Title 9, Chapter 7 related to Particle Accelerators. Specifically, rule 902 relates to Definitions and rule 904 relates to Registration of Particle Accelerators Used in the Practice of Medicine. A.R.S. §§ 30-671(B) and 30-672 requires registration of sources of radiation and A.R.S. § 30-654 specifies requirements for the Department to regulate sources of radiation and those using these sources to protect health and safety of the public.

The Department has indicated that some hospitals are having difficulty obtaining and retaining medical professionals qualified to provide radiation therapy. With this rulemaking, the Department is revising some requirements related to the type of supervision that may be provided, under specific circumstances, to a radiation therapy technologist providing radiation therapy in a critical access hospital.

This rulemaking does not establish or increase a fee and portions of this rulemaking relate to a five-year-review report approved by the Council on August 4, 2020.

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)(5) and (6) as the rulemaking addresses the concerns of some critical access hospitals, which are having difficulty in retaining qualified medical professionals by allowing radiation therapy technologists to provide radiation therapy under general supervision.

In addition, in an email to Staff, the Department provides that under the current rules, a registrant would have to hire a qualified medical professional to be onsite to provide supervision for a radiation therapy tech whenever therapy is provided. The qualified medical professional would still be developing policies and procedures for a radiation therapy technologist to follow, even when the medical professional was onsite. In the proposed rules, a critical access hospital could choose to reduce its financial and regulatory burden and still provide quality care to patients, as well as ensure patient safety, by following the requirements in the rules. The requirements take the place of having the qualified medical professional onsite and, essentially, provide the framework for what the medical professional should be requiring of a radiation therapy tech even when onsite.

Finally, the Department states that the relevant requirements in the current rules were inherited by the Department when the Arizona Radiation Regulatory Agency was consolidated with the Department pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, which allows this rulemaking to qualify for an expedited rulemaking under A.R.S. § 41-1027(A)(8).

2. 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.

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

The Department received one letter from the American Society for Radiation Oncology (ASTRO) in support of the rulemaking and one email in support of this rulemaking from Cobra Valley Regional Medical Center.

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

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 indicates that there is no corresponding federal law to this rulemaking.

7. 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 a general permit is not required as allowed under A.R.S. § 41-1037(A)(3) because the registration of a particle accelerator specifies the person, device, and facility location authorized by the registration, as well as the scope of practice.

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 Department of Health Services seeks to amend two rules in Title 9, Chapter 7 related to Particle Accelerators. As indicated above, the Department is revising some requirements related to the type of supervision that may be provided, under specific circumstances, to a radiation therapy technologist providing radiation therapy in a critical access hospital. 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

December 19, 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. 7, Article 9, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: December 18, 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 procedural rights of regulated persons. The rulemaking addresses the concerns of some critical access hospitals, which are having difficulty in obtaining and retaining qualified medical professionals. They revise some requirements related to the type of supervision that may be provided, under specific circumstances, to a radiation therapy technologist providing radiation therapy in a critical access hospital, to include those circumstances under which radiation therapy technologists may provide radiation therapy under general supervision. Thus, the rulemaking meets the requirements in A.R.S. § 41-1027(A)(5) and (6). The relevant requirements in the current rules were inherited by the Department when the Arizona Radiation Regulatory Agency was consolidated with the Department pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, so this rulemaking also meets the requirements for expedited rulemaking in A.R.S. § 41-1027(A)(8). In addition, other clarifying changes are being made, consistent with the most recent five-year-review report on these rules, although the rulemaking falls outside the time specified in A.R.S. § 41-1027(A)(7).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
Portions of the rulemaking for 9 A.A.C. 7, Article 9, relate to a five-year-review report approved by the Council on August 4, 2020.

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
c. Current rule

The Department is requesting that the rules be heard at the Council meeting on February 6, 2024.

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 Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Siman Qaasim
Director's Designee

SQ:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES

RADIATION CONTROL

ARTICLE 9. PARTICLE ACCELERATORS

PREAMBLE

1. **Article, Part or Sections Affected (as applicable)** — **Rulemaking Action**

R9-7-902	Amend
R9-7-904	Amend

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

Authorizing statutes: A.R.S. §§ 30-654(B)(5), 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, and 30-673

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* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 3586, November 17, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 3726, December 8, 2023

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

Name: Brian D. Goretzki, Chief, Bureau of Radiation Control

Address: Arizona Department of Health Services
Public Health Licensing Services
4814 South 40th Street
Phoenix, AZ 85040

Telephone: (602) 255-4840

Fax: (602) 437-0705

E-mail: Brian.Goretzki@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
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, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) §§ 30-671(B) and 30-672 specify that the Department may require registration of sources of radiation. A.R.S. § 30-654 specifies requirements for the Department to regulate sources of radiation and those using these sources to protect health and safety. The Department has learned that some critical access hospitals are having difficulty in obtaining and retaining qualified medical professionals. These hospitals are generally located in remote areas of the State with few other sources of medical treatment, so patients may have to travel long distances to obtain radiation therapy if the radiation therapy cannot be provided at the critical access hospital. After obtaining approval for the rulemaking under A.R.S. § 41-1039(A), the Department is revising some requirements related to the type of supervision that may be provided, under specific circumstances, to a radiation therapy technologist providing radiation therapy in a critical access hospital, to include those circumstances under which radiation therapy technologists may provide radiation therapy under general supervision. To ensure patient safety while receiving radiation therapy, the Department is including additional requirements for a critical access hospital registrant planning to provide radiation therapy under general supervision. The Department believes that these changes will reduce the regulatory burden on critical access hospitals while protecting the health and safety of patients, staff, and the general public. In addition, other clarifying changes are being made, consistent with the most recent five-year-review report on these rules.

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 public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

The Department received one letter from the American Society for Radiation Oncology (ASTRO) in support of the rulemaking. The Department thanks ASTRO for their support.

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

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

The Department believes the registration of a particle accelerator issued to a person is a specific permit, under A.R.S. § 41-1037(A)(3), in that registration specifies the person, device, and facility location authorized by registration, as well as the scope of practice, which are necessary to protect health and safety, according to A.R.S. § 30-672.

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:

No business competitiveness analysis was received by the Department.

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

Not applicable

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall

state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

ARTICLE 9. PARTICLE ACCELERATORS

Section

ARTICLE 9. PARTICLE ACCELERATORS

R9-7-902. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

"Added filter" (See ~~Article 6~~ R9-7-602)

"Arc therapy" means radiation therapy that uses electrons to treat large, superficial volumes that follow curved surfaces, as in postmastectomy patients.

"Authorized medical physicist" means an individual who meets the requirements in R9-7-711. For purposes of ensuring that personnel are adequately trained, an authorized medical physicist is a "qualified expert" as defined in Article 1.

"Beam-limiting device" (See ~~Article 6~~ R9-7-602)

"Beam-monitoring system" means a ~~system~~ set of devices that will monitor the useful beam, as defined in R9-7-602, during irradiation and terminate irradiation when a preselected number of monitor units has been accumulated.

"Collimator" (See R9-7-602)

"Control panel" (See ~~Article 6~~ R9-7-602)

"Full beam detector" means a radiation detector of such size that the total cross section of the maximum size useful beam is intercepted.

"Gantry" means that part of a linear accelerator that supports the radiation source so that it can rotate about a horizontal axis.

"General supervision" means that a radiation therapy technologist is furnished with a procedure for performing therapy under an authorized user's overall direction and control, and the authorized user is responsible for ensuring that the procedure is followed, but the authorized user's presence is not required in a medical institution during the performance of the procedure.

"Intensity-Modulated Radiation Therapy (IMRT)" means an advanced mode of high-precision radiotherapy that uses computer-controlled linear accelerators to deliver precise radiation doses to a tumor or specific areas within the tumor.

~~"Interlock" (See Article 1)~~

"Isocenter" means the point of intersection of the collimator axis and the axis of rotation of the gantry.

"Monitor unit" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

"Moving beam therapy" means radiation therapy in which there is displacement of the useful beam relative to the patient. Moving beam therapy includes arc therapy, skip therapy, and

rotational beam therapy.

"Radiation therapy technologist" means an individual certified according to 9 A.A.C. 16, Article 6, whose scope of practice is specified according to A.A.C. R9-16-608(D).

"Rotational beam therapy" means radiation therapy that is administered to a patient from a radiation source that rotates around the patient's body or the patient is rotated while the beam is held fixed.

"Skip therapy" means rotational beam therapy that is administered in a way that maximizes the dose to an area of interest and minimizes the dose to surrounding healthy tissue.

"Special procedure" means a type of therapy through which radiation is delivered to a patient through five or fewer fractions or with a dose per fraction greater than 6 Gy.

"Spot check" (See ~~Article 6~~ R9-7-602)

"Stationary beam therapy" means radiation therapy that involves a beam from a radiation source that is aimed at the patient from different directions. The distance of the source from the isocenter remains constant irrespective of the beam direction.

"Virtual source" means a point from which radiation appears to originate.

R9-7-904. Registration of Particle Accelerators Used in the Practice of Medicine or Human Research

A. The requirements in this Section supplement the registration requirements in R9-7-903.

B. An applicant that is a "medical institution," as defined in ~~9 A.A.C. 7,~~ Article 7 of this Chapter, and performing human research shall appoint a radiation safety committee that ~~meets the following requirements~~:

1. ~~The committee shall consist~~ Consists of at least four individuals ~~and shall include~~ including:
   a. An authorized user of each type of use permitted by the registration,
   b. The Radiation Safety Officer,
   c. A representative of the nursing service, ~~and~~
   d. A representative of management who is neither an authorized user nor a Radiation Safety Officer, and
   e. Any other members the registrant selects;
2. ~~The committee shall meet~~ Meets at least once in each 12-month period, unless otherwise specified by registration condition;
3. ~~To conduct~~ Only conducts business if at least 50 percent of the membership of the committee ~~shall be~~ are present~~,~~ including the Radiation Safety Officer and the

management representative;

4. ~~The~~ Includes in the minutes of each radiation safety committee meeting ~~shall include~~ a reference ~~of~~ to any discussion or documents related to the review required in R9-7-407(C);
5. ~~Review~~ Reviews the radiation safety program for all sources of radiation as required in R9-7-407(C);
6. ~~Establish~~ Establishes a table that contains investigational levels for occupational and public dose that, when exceeded, will initiate an investigation and consideration of actions by the Radiation Safety Officer; and
7. ~~Establish~~ Establishes the safety objectives of the quality management program required by subsection (E).

C. The applicant shall ensure that an individual designated as an authorized user is an Arizona licensed physician~~;~~, approved by the radiation safety committee, if applicable~~;~~, ~~and is~~ who has documentation that the individual is either:

1. Certified in radiation oncology by the:
   a. ~~Radiology, therapeutic radiology, or radiation oncology by the~~ American Board of Radiology; ~~or~~
   b. ~~Radiation oncology by the~~ American Osteopathic Board of Radiology; or
   ~~c. Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or~~
   ~~d.~~c. ~~Therapeutic radiology by the Canadian~~ Royal College of Physicians and Surgeons of Canada; or
2. Engaged in the active practice of therapeutic radiology~~;~~ and has completed:
   a. At least 200 hours of instruction in basic techniques applicable to the use of a particle accelerator, ~~500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.~~ including
      ~~a.~~ ~~To satisfy the requirement for instruction, the~~ classroom and laboratory training ~~shall include~~ in all of the following subjects:
      i. Radiation physics and instrumentation,
      ii. Radiation protection,
      iii. Mathematics pertaining to the use and measurement of radiotherapy, and
      iv. Radiation biology~~;~~.
   b. ~~To satisfy the requirement for~~ At least 500 hours of supervised work experience~~;~~ ~~training shall occur~~ under the supervision of an authorized user at a medical

institution, ~~and shall include~~ including:

i. Reviewing full calibration measurements and periodic spot checks,

ii. Preparing treatment plans and calculating treatment times,

iii. Using administrative controls to prevent misadministration,

iv. Implementing emergency procedures to be followed in the event of the abnormal operation of a particle accelerator, and

v. Checking and using survey meters~~.~~;

c. ~~To satisfy the requirement for a period of supervised clinical experience, training shall include~~ A minimum of three years of supervised clinical experience:

i. Consisting of:

(1) At least one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and

(2) At least an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution~~. The supervised clinical experience shall include:~~; and

ii. Including:

~~i.~~(1) Examining individuals and reviewing their case histories to determine their suitability for treatment, noting any limitations or contraindications;

~~ii.~~(2) Selecting the proper dose and how it is to be administered;

~~iii.~~(3) Calculating the therapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses, as warranted by patients' or human research subjects' reaction to radiation; and

~~iv.~~(4) Post-administration follow up and review of case histories; and

d. Is qualified to independently act as an authorized user, signed by the individual supervising the clinical experience in subsection (C)(2)(c).

D. With the application the applicant shall provide the name of each authorized user to the Department so the names can be listed on the registration form, and so that the Department can

determine whether the authorized user's training and experience satisfies the requirements in subsection (C).

E. Each registrant shall establish and maintain a written quality management program to provide high confidence that the radiation produced by the particle accelerator will be administered as directed by an authorized user. The quality management program shall include, at minimum, the tests and checks listed in Appendix A.

F. Each registrant shall ensure that a particle accelerator is calibrated by an authorized medical physicist who meets the training and experience qualifications in R9-7-711.

G. At the time of application for registration or when a therapy program is expanded to multiple sites, each applicant or registrant shall provide the Department with:

1. ~~a~~ A description of the quality management program, developed, maintained, and implemented according to the American Society for Radiation Oncology's 2019 "Safety is No Accident: A Framework for Quality Radiation Oncology Care," incorporated by reference, available under R9-7-101, and containing no future editions;
2. ~~a~~ A listing of the professional staff assigned to the facility~~,~~; and
3. ~~the~~ The expected ratio of patient workload to staff member ~~for programs involving multiple therapy sites~~.

H. If the staffing ratio exceeds the recommended levels in ~~Radiation Oncology in Integrated Cancer Management, Report of the Inter-Society Council for Radiation Oncology, December 1991~~ the document incorporated by reference in subsection (G)(1), the applicant shall provide to the Department for approval the justification for the larger ratio and the safety considerations that have been addressed in establishing the program. ~~This report is incorporated by reference and available under R9-7-101. The incorporated material contains no future editions or amendments. The report is available from the American Association of Physicists in Medicine: online at http://www.aapm.org/pubs/reports; print copies may be purchased from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705; toll free at (800) 442-5778.~~

I. A registrant shall ensure that:

1. Two radiation therapy technologists are at the treatment console for all procedures;
2. An authorized user and authorized medical physicist are:
   a. At the treatment console for all single fraction special procedures, such as stereotactic radiosurgery (SRS), a method of external beam radiotherapy that delivers a precisely targeted high dose of radiation in a single session;
   b. At the treatment console for the first fraction of all special procedures using multiple fractions, such as:

i. Stereotactic radiotherapy (SRT), a method of external beam radiotherapy in which radiotherapy is delivered from many different angles around the body of a patient, with the beams meeting at the tumor in such a manner that the tumor receives a high dose of radiation and the tissues around the tumor receive a much lower dose; or

ii. Stereotactic body radiation therapy (SBRT), a method of external beam radiotherapy that delivers a precisely targeted high dose of radiation to an extracranial target in five or fewer fractions; and

c. On-site and within range for patient care access for subsequent fractions of the special procedures specified in subsection (I)(2)(b);

3. For all Intensity-Modulated Radiation Therapy (IMRT), the planned doses are verified by direct measurement;

4. Except as provided in subsection (J), an authorized user is on-site and available for consultation about patient care; and

5. The health and safety of a patient are maintained.

J. If a registrant meets the requirements of a Critical Access Hospital, according to 42 CFR, Part 485, Subpart F, Conditions of Participation: Critical Access Hospitals, the registrant may allow a radiation therapy technologist to perform a procedure under general supervision if the registrant ensures that:

1. The registrant or an authorized user:

a. Has established a written protocol for the application of radiation to a patient for each procedure that may be conducted by a radiation therapy technologist under the general supervision of an authorized user, including follow-up instructions for the patient;

b. Reviews and, as necessary, revises the written protocols in subsection (J)(1)(a) at least annually; and

c. Documents the review in subsection (J)(1)(b) with a signature and date of signature;

2. The procedure is not a special procedure;

3. A radiation therapy technologist follows the applicable written protocol established according to subsection (J)(1)(a) when delivering radiation to a patient; and

4. At least every six months, an authorized user:

a. Observes each radiation therapy technologist, while the radiation therapy technologist is performing a procedure, for adherence to the applicable written

protocol in subsection (J)(1)(a); and

b. Documents the observation and the assessment in subsection (J)(4)(a);

5. An authorized user is on-site and available for consultation about patient care at least once every five working days, as shown in documentation maintained by the registrant; and

6. The health and safety of a patient are maintained.

K. A registrant that uses the general supervision in compliance with subsection (J) shall develop, maintain, and implement policies and procedures to monitor:

1. The performance of a procedure by a radiation therapy technologist under general supervision, and

2. The quality of patient care.

Statutory Authority for Rules in 9 A.A.C. 7, Article 9

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before

it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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; definition

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. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. 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 obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods 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.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. 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 food for commercial purposes pursuant to paragraph 4 of this subsection.

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. For the purposes of this section, "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.

ASTRO
TARGETING CANCER CARE

AMERICAN SOCIETY
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December 15, 2023

Brian D. Goretzki, Chief, Bureau of Radiation Control
Arizona Department of Health Services
Public Health Licensing Services
4814 South 40th Street
Phoenix, AZ 85040

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

Dear Mr. Goretzki and Ms. Gravito:

The American Society for Radiation Oncology[1] (ASTRO) appreciates the opportunity to provide comments on the Arizona Department of Public Health Services Notice of Proposed Expedited Rulemaking for changes to Title 9, Chapter 7, Article 9, Particle Accelerators, of the Arizona State Regulations. We believe the proposed rule offers critical access hospitals appropriate flexibility under supervision requirements for radiation therapy treatments.

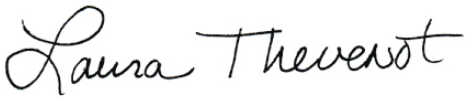
Specifically, the proposed rule changes the supervision requirements for all radiation therapy practices by requiring a "minimum of one radiation oncologist present during treatment hours." The Arizona Department of Public Health Services correctly observed that it is often difficult for critical access hospitals, especially those in rural areas, to satisfy supervision requirements to treat cancer patients. Therefore, the proposed rule grants critical access hospitals additional flexibilities for radiation therapy treatments, that do not fall under the definition of "special procedures", while still maintaining high standards of patient safety and patient care. The proposed rule defines "special procedures" as "a type of therapy through which radiation is delivered to a patient through five or fewer fractions or with a dose per fraction greater than 6 Gy." Therefore, critical access hospitals

[1] ASTRO is the largest radiation oncology society in the world, with more than 10,000 members who specialize in treating patients with radiation therapies. As the leading organization in radiation oncology, biology and physics, the Society is dedicated to improving patient care through education, clinical practice, advancement of science and advocacy. ASTRO's highest priority has always been ensuring patients receive the safest, most effective treatments.

would be able to take advantage of the supervision flexibilities for more standard radiation therapy treatments, such as IMRT.

ASTRO believes that these changes will ensure that patients receive high quality, safe radiation treatment in Arizona in all practice settings, and supports expedited rulemaking. Should you have any questions, please contact Cindy Tomlinson, Senior Manager of Patient Safety and Regulatory Affairs at cindy.tomlinson@astro.org or 703.839.7366.

Sincerely,



Laura I. Thevenot
Chief Executive Officer

Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Notice of Proposed Expedited Rulemaking

1 message

Stacie Gravito <stacie.gravito@azdhs.gov> Thu, Dec 28, 2023 at 11:18 AM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

---------- Forwarded message ---------
From: **Neal Jensen** <njensen@cvrmc.org>
Date: Mon, Dec 18, 2023 at 4:00 PM
Subject: Notice of Proposed Expedited Rulemaking
To: Brian.Goretzki@azdhs.gov <Brian.Goretzki@azdhs.gov>, Stacie.Gravito@azdhs.gov <Stacie.Gravito@azdhs.gov>

Mr. Goretzki & Ms. Gravito;

Good afternoon, thank you for your work on the proposed changes to the Bureau of Radiation Controls regulations. The regulation is critical to provide access to radiation treatment in rural areas, making Radiation Oncology regulations in AZ consistent with CMS regulations.

As you are aware, there is national shortage of doctors, it is imperative to leverage any safe path possible in providing quality Radiation Oncology for rural communities. We have purchased a state-of-art radiation oncology technology, capable of delivering more precise, more effective cancer treatments designed with remote physician oversight in mind. The simple adjustment will allow rural CAH hospitals to deliver cancer treatments, ***WITH*** the general supervision of a qualified physician. Ultimately, these changes are good people of rural Arizona giving them the same access to cancer treatments as their urban counterparts.

Thank you for your assistance with these changes.

Neal

Neal Jensen, CEO
Cobre Valley Regional Medical Center
928-402-1122 Office
928-425-7903 Fax

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Stacie C. Gravito
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Administrative Counsel and Rules
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Health and Wellness for Arizonans

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Gmail

Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Request for Placement on Agenda for Radiation Therapy in CAHs

1 message

Stacie Gravito <stacie.gravito@azdhs.gov> Thu, Dec 28, 2023 at 11:52 AM
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

---------- Forwarded message ---------
From: **Phyllis Haddon** <phaddon@cvrmc.org>
Date: Tue, Dec 19, 2023 at 3:20 PM
Subject: Request for Placement on Agenda for Radiation Therapy in CAHs
To: brian.goretzki@azdhs.gov <brian.goretzki@azdhs.gov>, stacie.gravito@azdhs.gov <stacie.gravito@azdhs.gov>, Neal Jensen <njensen@cvrmc.org>

Dear Mr. Goretzki, Ms Gravito:

I hope this email finds you both doing very well.

Neal Jensen, CEO of Cobre Valley Regional Medical Center, is requesting Placement on Agenda at the February 6, 2024 GRRC meeting in regards to Radiation Therapy in CAHs.

Thank you for your attention to this matter. Is there anymore we need to provide prior to the January 23, 2024 date to submit Final Materials to Council?

All My Best,

Phyllis Haddon

Executive Assistant to CEO, Neal Jensen

COBRE VALLEY REGIONAL MEDICAL CENTER

5880 S. Hospital Dr.

Globe, Az 85501

Phone: (928) 402-1126

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phaddon@cvrmc.org www.cvrmc.org

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Stacie C. Gravito
she/her/hers (what's this?)
Office Chief || Administrative Counsel
Administrative Counsel and Rules
Policy and Intergovernmental Affairs
Arizona Department of Health Services
150 N. 18th Ave., Suite 200, Phoenix, AZ 85007
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Health and Wellness for Arizonans

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Responses to GRRC Questions about Rulemaking in 9 A.A.C. 7, Article 9

What requirements do other states have?

All states have standards for radiation safety in radiation therapy. Many have similar quality assurance requirements as well, although Arizona has been a leader in the area of radiation safety. All providers using radioactive materials must comply with federal NRC requirements; however, the vast majority of radiation therapy is done using linear accelerators, and these fall under state regulatory authority.

The Department reached out to several states to get additional information to address the Council's question. The responses received so far are summarized below:

- In New York, Radiation Therapy providers must be accredited by the American College of Radiology (ACR), American College of Radiation Oncology (ACRO), or an equivalent organization. Accreditation requires direct/personal supervision depending on the procedure.
- Nevada requires the operation of a therapeutic x-ray system solely under the direct supervision of an authorized user.
- Minnesota allows general supervision under certain criteria.

It should be noted that Medicare allows for reimbursement of treatment procedures carried out under general supervision.

Why is radiation therapy under general supervision still safe?

The Department is recommending general supervision only under specific circumstances where the treatments are high fraction and low dose. This means that the entire therapeutic dose of radiation is broken up into many smaller portions at relatively low radiation levels that are provided through short, daily treatments for consecutive weeks or months. Typically, it is a radiation therapy technician that gets the patient ready, positions the patient, and may push the button, even if qualified medical professionals are at the console.

In R9-7-904(I), the rules specify that two radiation therapy technicians are at the treatment console for all procedures and describes the types of procedures for which an authorized user and authorized medical physicist must also be at the console and when they may just be on-site and within range for patient care access. Thus, for many types of procedures, it is one of the two radiation therapy technologists who would be administering the dose of radiation. This is the standard under the current rules, but it is being clarified in the new rules to highlight the differences for radiation therapy under general supervision.

Under R9-7-904(J), the new rules state that there must be an established written protocol for the application of radiation to a patient for each procedure that may be conducted by a radiation therapy technologist under general supervision, developed by an individual with knowledge and experience to know what is safe. This written protocol must be reviewed and updated at least annually by an individual with knowledge and experience to know what is safe.

The radiation therapy technologist may only provide radiation therapy under general supervision for these specific procedures described above, must follow the applicable written protocol, and must be observed by a knowledgeable and experienced individual while performing the procedure at least every six months. In addition, an authorized user must be on-site and available for consultation about patient care at least once every five working days. There must also be policies and procedures to monitor performance and the quality of patient care.

With these restrictions and controls in place, the Department believes that radiation therapy under general supervision is safe. As shown by the letter of support provided to the Council, the American Society for Radiation Oncology agrees.

BOARD OF PODIATRY EXAMINERS
Title 4, Chapter 25

Amend: R4-25-103

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **BOARD OF PODIATRY EXAMINERS**
Title 4, Chapter 25

Amend: **R4-25-103**

Summary:

This regular rulemaking from the Board of Podiatry Examiners (Board) seeks to amend one (1) rule in Title 4, Chapter 25 related to its annual license renewal fee. The Board licenses and regulates doctors of podiatric medicine who specialize in the diagnosis and treatment of the foot, ankle and lower leg. The Board evaluates the professional competency of podiatrists seeking to be licensed in the State of Arizona. Further, the Board promotes continued competency and fitness by investigating complaints against podiatrists, holding hearings, monitoring the activities of its licensees and enforcing the standards of practice for the podiatric profession as set forth by law.

Under ARS § 41-1052 (E), the Council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule. A.R.S. §32-830(3)(4), allows the Board to collect up to five hundred dollars for annual renewal of a license. The current renewal fee is $275 and this fee has not increased since 2003. With the rulemaking, the Board seeks to increase the annual license renewal fee to $375 to assist with rising operating costs and the cost of statutorily mandated training.

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

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

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

The rules do not establish a new fee, but do contain a fee increase from $275 to $375.

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:

The Board is proposing to increase its annual license renewal fee from $275 to $375. The justification for a fee increase is to continue to generate sufficient revenue to fund vital operations (e.g., licensure, investigation of complaints, public board meetings) of the Agency, without which the public would not be protected. Furthermore, a fee increase would proliferate the State's general fund as the Board is required to submit 10% of all revenue to the general fund. Without increasing the annual renewal fee, the Board's ending fund balance is expected to decrease by approximately 4% each year assuming that revenues are consistent and expenses continue to grow. This puts the Board at risk of being unable to meet its operational costs. The increase in the annual renewal fee will correct the Board's fund structural balance which will support the Board's operations and help it better fulfill its mandate of protecting the public.

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

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

6. What are the economic impacts on stakeholders?

According to the Board, there are approximately 450 licensees that will be affected by the renewal fee increase. A licensee may bear additional costs in the form of regular fees with the exception of those not renewing their license.

Consumers, patients, licensees and the Board will benefit from continued protection of the public through efficient and effective rules regarding practice and education of practitioners.

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

Although the Board states no substantive changes were made, the Board clarified that actually no changes were made to the rulemaking between the proposed and final rules.

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

The Board states no comments were received 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?

Although the rules require a license, the Board indicates that an exception to a general license is allowed under A.R.S. §41-1037(A)(2) as an alternative type of license (Podiatry license) is specifically authorized by statute.

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

The Board indicates this is not applicable as there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Board of Podiatry Examiners seeks to amend one rule in Title 4, Chapter 25 related to its annual license renewal fee. The Board seeks to increase its annual renewal fee from $275 to $375. As indicated above, the Board has not indicated this fee since 2003 and needs to do so to assist with rising operating costs and the cost of statutorily mandated training 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.

Katie Hobbs,
Governor

Arizona State Board of
Podiatry Examiners
"Protecting the Public's Health"

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December 13, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

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

Dear Ms. Sornsin:

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

A. Close of record date:
The rulemaking record was closed on December 11, 2023, following a period for public comment. This rule package is being submitted within the 120 days provided by A.R.S. §41-1024(B).

B. Relation of the rulemaking to a five-year-review report:
The rulemaking does not relate to a five-year-review report.

C. New fee:
The rulemaking does not establish a new fee.

D. Fee increase:
The rulemaking is to increase the annual renewal fee.

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

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

G. Certification that the preparer of the EIS notified the JLBC of the number of new fulltime employees necessary to implement and enforce the rule:
I certify that none of the rules in this rulemaking will require the Agency to employ a new full-time employee; therefore, no notification was required to be provided to JLBC.

H. List of documents enclosed:
   a. Cover letter signed by the Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   c. Economic, Small Business, and Consumer Impact Statement
   d. Final approval from the Governor's Office
   e. Supporting documentation; fund chart and renewal fee chart

Sincerely,
Heather Broaddus
Heather Broaddus
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 25. BOARD OF PODIATRY EXAMINERS

PREAMBLE

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

R4-25-103 Amend

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

Authorizing statute: A.R.S. § 32-801

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

3. The effective date of the rule:

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

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 3536 (November 10, 2023)
Notice of Proposed Rulemaking: 26 A.A.C. 3513 (November 10, 2023)

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

Name: Heather Broaddus, Executive Director

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

Telephone:(602) 542-8151

Fax: (602) 926-8102

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

Website: https://podiatry.az.gov

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

The Board is proposing an increase in its annual license renewal fee. According to Board statute (A.R.S. §32-830(3)(4), the Board can collect up to five hundred dollars for annual renewal of a license. The annual renewal fee has not been increased since at least 2003; however, there is a rising need to increase this fee. Operating costs including, but not limited to, rent, information technology, salary increases and other state agency fees (Central Services Bureau and shared services) have steadily increased over the years. Additionally, statute now mandates that all Board members undergo Board member training. The cost of training per Board member ranges from $250.00 to $620.00. Currently, the Board is awaiting two Board appointments; once appointed the new Board members will be required to undergo training, incurring the "per Board member" cost each time. The Board is self-funded by its licensees and does not receive funds or appropriations from the State. The justification for a fee increase is to continue to generate sufficient revenue to fund vital operations (e.g., licensure, investigation of complaints, public board meetings) of the Agency without which, the public would not be protected. Furthermore, a fee increase would proliferate the State's general fund as the Board is required to submit 10% of all revenue to the general fund. The Board is proposing to raise the annual renewal fee by $100.00.

Without increasing the annual renewal fee the Board's ending fund balance is expected to decrease by approximately 4% per year assuming that revenues are consistent and expenses continue to increase. This puts the Board at risk of being unable to meet its operational costs. The increase in the annual renewal fee will correct the Board's fund structural balance which will support the Board's operations and help it better fulfill its mandate of protecting the public.

In the interim, in an effort to reduce costs to the Board, its Executive Director has begun to furlough one day per month.

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

None.

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

Not applicable.

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

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

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

No substantive changes have been made to the rules.

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

No comments were received by the public.

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

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

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

> *If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the call are substantially similar in nature unless any of the following applies:*
>
> > *The issuance of an alternative type of permit, license or authorization is specifically authorized by statute.*

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

Not applicable.

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

None.

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

None.

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

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 25. BOARD OF PODIATRY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

ARIZONA ADMINISTRATIVE CODE (Rules)

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 25. BOARD OF PODIATRY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

R4-25-103. Fees

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

1. Application for license according to A.R.S. §§ 32-822(A) and 32-825, $450.00.
2. Application for license according to A.R.S. § 32-827, $450.00.
3. License issuance, $225.00.
4. Annual renewal, ~~$275.00~~ $375.00.
5. Penalty fee for late renewal after July 30, $150.00 in addition to the regular renewal fee.
6. Certification of a licensee to authorities of another state or country, $10.00.
7. For initial registration to dispense drugs and devices, $200.00.
8. For annual renewal of registration to dispense drugs and devices, $100.00.
9. Application for temporary license and issuance of license, $100.00
10. Application for telehealth registration and issuance of registration, $50.00.

Katie Hobbs,
Governor

Arizona State Board of Podiatry Examiners

"Protecting the Public's Health"

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Arizona Board's and various other jurisdictions renewal fees.

JURISDICTION	# of Licensees	Renewal Fee
California	2,194	$1,318.00 - biennial
Florida	2,096	$355.00 - biennial
Texas	1,152	700.00 - biennial
Oregon	233	$243.00 - annual
New York	2,448	$210.00 - triennial
Utah	282	113.00 - biennial
Colorado	236	Colorado would not disclose to me as the renewal fee changes yearly
Ohio	1,011	$305.00 - biennial
Michigan	757	$270.00 - triennial
Georgia	515	$150.00 - biennial
North Carolina	463	Not more than $200.00 annually
Pennsylvania	1,504	$395.00 - biennial
Virginia	569	$337.00 - biennial
Massachusetts	545	$86.00 - annually
Illinois	1,169	Called/emailed - biennial
Indiana	440	$100.00 0 biennial

Arizona Boards	Renewal Fee
Arizona Medical Board	$500.00 – biennial
Arizona Pharmacy Board	$180.00 – biennial
Arizona Optometry Board	$450.00 – biennial
Arizona Chiropractic Board	$250.00 – annual
Arizona Naturopathic Board	$165.00 – annual
Arizona Dental Board	$510.00 – triennial
Arizona Osteopathic Board	$636.00 – biennial
Arizona Acupuncture Board	$275.00 – annual
Arizona Psychology Board	$500.00 – biennial
Arizona Homeopathic Board	$1,000.00 - annual

Katie Hobbs,
Governor

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Fund chart generated by the Board's OSPB Anaylst reflecting the Board's fund increase if the renewal fee is increased by $100.00

	Fees Unchanged			Renewal Fee Raised $100	
	FY 2023 Actual	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate
Beginning Balance	**$ 205,890**	**$212,723**	**$203,923**	**$212,723**	**$248,923**
Revenues	$ 192,471	$ 193,700	$ 193,700	$ 238,700	$ 238,700
Expenditures	$ 185,637	$ 202,500	$ 202,500	$ 202,500	$ 202,500
Ending Balance	**$ 212,723**	**$203,923**	**$195,123**	**$248,923**	**$285,123**

Gmail

Patricia Grant <patricia.grant@azdoa.gov>

Additional information requested by GRRC

1 message

Heather Broaddus <heather.broaddus@podiatry.az.gov> Wed, Jan 31, 2024 at 10:45 AM
To: Patricia Grant <patricia.grant@azdoa.gov>

Dear Ms. Grant:

As you know, GRRC reviewed the Board's rule package at its January 30, 2024, Study Session. GRRC requested additional information, specifically what the Board's projected revenue would be with a $50.00 and $75.00 annual renewal fee increase. Additionally, GRRC asked what dollar increase would project the Board to "break even" each year. The Board's OSPB analyst compiled the requested data. I have attached the excel spreadsheet. Please note that the excel spreadsheet does not contemplate the 10% that is reverted back to the general fund.

Also, after speaking with the Board's OSPB analyst today, it is recommended that the Board increase the annual renewal fee to "support the Board's operations for two years, if not more". On average personnel services (PS) and employee related expenses (ERE) increase by 2-4% each year. If the Board pursued a $50.00 increase, assuming that the PS and ERE increases by 2-4% each year, the Board would be at a "break even" point likely by FY2026, in which the Board would need to pursue another fee increase. Additionally, there may be other unexpected expenditures such as unanticipated Formal Hearings, risk management fee increase, technology improvement expenses, and so forth.

I hope this information is helpful. Please let me know if you require anything further. I would appreciate it if you could confirm receipt of this email.

Thank you for your help and for all that you do!

Sincerely,

Heather Broaddus
Executive Director
Arizona Board of Podiatry Examiners
1740 W. Adams St., Ste. 3004
Phoenix, AZ 85007
Phone: 602-542-8151
Fax: (602) 926-8102

POA_DRAFT Fee Increase Sensitivity Model_01-29-2024.xlsx
18K

				Renewal Fee Raised $50.00		Renewal Fee Raised $75.00		Renewal Fee Raised $100.00		Renewal Fee Raised to Break-Even*	
	FY 2023 Actual	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate
Beginning Balance	**$ 205,889.56**	**$ 212,723**	**$ 203,923**	**$ 212,723**	**$ 203,923**	**$ 212,723**	**$ 203,923**	**$ 212,723**	**$ 203,923**	**$ 212,723**	**$ 203,923**
Revenues	$ 192,470.84	$ 193,700	$ 193,700	$ 216,200	$ 216,200	$ 227,450	$ 227,450	$ 238,700	$ 238,700	$ 202,502	$ 202,502
Expenditures	$ 185,637.34	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500
Ending Balance	**$ 212,723.06**	**$ 203,923**	**$ 195,123**	**$ 226,423**	**$ 217,623**	**$ 237,673**	**$ 228,873**	**$ 248,923**	**$ 240,123**	**$ 212,725**	**$ 203,925**

**Break-even point assumes increase to renewal fee of $19.56*

				Renewal Fee Raised $50.00		Renewal Fee Raised $75.00		Renewal Fee Raised $100.00		Renewal Fee Raised to Break-Even*	
	FY 2023 Actual	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate	FY 2024 Estimate	FY 2025 Estimate
Beginning Balance	**$205,889.56**	**$212,723**	**$203,923**	**$212,723**	**$203,923**	**$212,723**	**$203,923**	**$212,723**	**$203,923**	**$ 212,723**	**$ 203,923**
Revenues	$ 192,470.84	$ 193,700	$ 193,700	$ 216,200	$ 216,200	$ 227,450	$ 227,450	$ 238,700	$ 238,700	$ 202,502	$ 202,502
Expenditures	$ 185,637.34	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500	$ 202,500
Ending Balance	**$212,723.06**	**$203,923**	**$195,123**	**$226,423**	**$217,623**	**$237,673**	**$228,873**	**$248,923**	**$240,123**	**$ 212,725**	**$ 203,925**

**Break-even point assumes increase to renewal fee of $19.56*

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

TITLE 32. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. PODIATRY

1. An identification of the proposed rulemaking.

The Board is proposing to increase its annual license renewal fee. According to Board statute (A.R.S. §32-830(3)(4), the Board can collect up to five hundred dollars for annual renewal of a license. The annual renewal fee has not been increased since at least 2003; however, there is a rising need to increase this fee. Operating costs including, but not limited to, rent, information technology and other state agency fees (CSB and shared services) have steadily increased over the years. Additionally, statute now mandates that all Board members undergo Board member training. The cost of training per Board member ranges from $250.00 to $620.00. Currently, the Board is awaiting two Board appointments; once appointed the new Board members will be required to undergo training, incurring the "per Board member" cost each time. The Board is self-funded by its licensees and does not receive funds or appropriations from the State. The justification for a fee increase is to continue to generate sufficient revenue to fund vital operations (e.g., licensure, investigation of complaints, public board meetings) of the Agency without which, the public would not be protected. Furthermore, a fee increase would proliferate the State's general fund as the Board is required to submit 10% of all revenue to the general fund. The Board is proposing to raise the annual renewal fee by $100.00. Without increasing the annual renewal fee the Board's ending fund balance is expected to decrease by approximately 4% per year assuming that revenues are consistent and expenses continue to grow. This puts the Board at risk of being unable to meet its operational costs. The increase in the annual renewal fee will correct the Board's fund structural balance which will support the Board's operations and help it better fulfill its mandate of protecting the public.

Anticipated changes include:

a. Increasing the annual license renewal fee.
b. Minor technical and conforming corrections as needed.

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

Persons affected:

The rulemaking impacts licensed podiatrists and the Board.

Cost Bearer:

The costs of these rule changes will be borne by the Arizona Board of Podiatry Examiners. A licensee may bear additional costs in the form of regular fees with the exception of those not renewing their license.

Beneficiaries:

Consumers, patients, licensees and the Board.

3. A cost benefit analysis of the following:

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

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

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

None apparent.

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

None apparent.

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

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

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

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

None apparent.

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

The Arizona State Board of Podiatry Examiners is the only state agency affected by this rule making. The fee increase will affect only the revenue and does not cost the Board to implement. The rue making is not expected to create cost to the Agency or the State.

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

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

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

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

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

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

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

Nominal cost to licensees ($0.27/day each year); There are approximately 450 licensees that will be affected by the renewal fee increase. None to the public/consumers; 100% benefit of continued protection of the public through efficient and effective rules regarding practice and education of practitioners.

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

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

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

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

§ 32-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of podiatry examiners.

2. "Electrical treatment" means using electricity in diagnosing or treating an ailment of the foot or leg by electrodes, lights, rays, vibrators or a machine run by electricity.

3. "Leg" means that part of the lower limb between the knee and the foot.

4. "Letter of concern" means an advisory letter to notify a podiatrist that while there is insufficient evidence to support a disciplinary action the board believes the podiatrist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the podiatrist's license.

5. "License" means a license to practice podiatry.

6. "Manipulative treatment" means using the hand or machinery in treating the foot or leg.

7. "Mechanical treatment" means applying a mechanical appliance of whatever material to the foot or leg, or to the shoe or other footgear.

8. "Medical treatment" means recommending, prescribing or locally applying a therapeutic agent for relief of a foot or leg ailment.

9. "Podiatric medical assistant" means an unlicensed person who has completed an education program approved by the board, who assists in a podiatric medical practice under the supervision of a podiatrist and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of podiatric medicine.

10. "Podiatrist" is synonymous with podiatric physician and surgeon and means a person who, within the limits of this chapter, is registered and licensed to practice podiatry by means of performing full body physical examinations within the profession's scope of practice and diagnosing or medically, surgically, mechanically, manipulatively or electrically treating ailments of the human foot and leg but not amputating the leg or entire foot or administering an anesthetic other than local.

11. "Podiatry" is synonymous with chiropody and means diagnosing or medically, surgically, mechanically, manipulatively or electrically treating ailments of the human foot and leg but not amputating the leg or entire foot or administering an anesthetic other than local.

12. "Surgical treatment" means using a cutting instrument to treat an ailment of the foot or leg.

History:

Amended by L. 2021, ch. 301,s. 1, eff. 9/29/2021. Amended by L. 2017, ch. 82,s. 1, eff. 8/9/2017.

§ 32-802. State board of podiatry examiners; compensation; employees; immunity

A. The state board of podiatry examiners is established consisting of five members who are appointed by the governor. Each member shall be appointed for a term of five years, to begin and end on February 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. Three members of the board shall have practiced podiatry continuously in this state for not less than two years immediately preceding appointment and shall have valid licenses to practice podiatry. Two members of the board shall be lay persons. All members of the board shall be citizens of the United States.

D. A vacancy on the board occurring other than by the expiration of a term shall be filled by appointment by the governor for the unexpired term.

E. All appointments shall be made promptly, and in the case of the vacancy of a professional member or members, appointment shall be made no later than ninety days from the expiration of the term or vacancy.

F. The term of any member, at the discretion of the board, may end and the office be declared vacant for the member's failure to attend three consecutive meetings of the board.

G. Members of the board shall receive compensation of fifty dollars for each day of actual service in the business of the board.

H. Subject to title 41, chapter 4, article 4, the board may employ personnel, including trained investigators, as it deems necessary to carry out the purposes of this chapter.

I. Members and personnel of the board are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

History:

Amended by L. 2018, ch. 71,s. 1, eff. 8/3/2018. Amended by L. 2017, ch. 327,s. 5, eff. 8/9/2017. L12, ch 321, sec 46.

§ 32-803. Organization; meetings

A. The board shall annually elect from its membership a president and a secretary at the annual meeting which shall be held in January.

B. The board shall meet at least twice each year at such times and places as it determines. Special meetings may be called by the president or any three members.

§ 32-804. Rule making powers

The board may adopt rules and regulations consistent with and necessary to carry out the provisions of this chapter.

§ 32-805. Secretary of board; duties

A. The secretary of the board shall receive compensation as determined pursuant to section 38-611.

B. The secretary shall:

1. Receive and disburse monies of the board.

2. Keep minutes of board meetings.

3. Keep a record of licenses issued, refused, suspended and revoked, and of applications for licensure.

4. Perform other duties the board prescribes.

History:

Amended by L. 2018, ch. 71,s. 2, eff. 8/3/2018.

§ 32-806. Podiatry fund

A. At the end of each calendar month, the board shall deposit, pursuant to sections 35-146 and 35-147, the ten percent of all monies received by the board in the state general fund and the remaining ninety percent in the podiatry fund.

B. All monies deposited in the podiatry fund are subject to section 35-143.01.

History:

Amended by L. 2018, ch. 71,s. 3, eff. 8/3/2018.

§ 32-821. Persons not required to be licensed

This chapter shall not apply to:

1. Commissioned physicians and surgeons, osteopaths and podiatrists of a United States military branch of service, public health or veterans administration personnel in the actual performance of their official duties.

2. Licensed physicians and surgeons, osteopaths, chiropractors or naturopaths while lawfully practicing their professions.

3. A visiting podiatrist called into consultation from a state in which he is qualified to practice podiatry.

4. A manufacturer of or dealer in shoes or corrective appliances for prevention, correction or relief of foot ailments, if such manufacturer or dealer is not engaged in the practice of podiatry.

5. A student of an accredited podiatry school whose standards are recognized by the American podiatry association who is engaged, in an official hospital-based or office-based externship or clerkship training program approved by the podiatry school and the board, in the actual performance of the student's duties.

6. A graduate of an accredited podiatry school whose standards are recognized by the American podiatry association who is engaged, in an official hospital-based internship or residency training program approved by the American podiatry association, in the actual performance of such internship or residency duties.

§ 32-822. Application for licensure

A. An applicant for a podiatry license shall file with the state board of podiatry examiners an application that is accompanied by the required fee on a form prescribed and furnished by the board. The application shall contain evidence of the applicant's necessary qualifications as the board requires and shall be signed and sworn to by the applicant.

B. An applicant for a license pursuant to section 32-827 shall file with the board an application for a license pursuant to section 32-827 that is accompanied by the required fee on a form prescribed and furnished by the board. The application shall contain evidence of the applicant's necessary qualifications as the board requires and shall be signed and sworn to by the applicant.

C. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted is true and correct.

2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.

3. The applicant has read and understands the board's statutes and rules.

D. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

E. The board shall inform an applicant, promptly and in writing, of any deficiency existing in the application for licensure under this article that prevents the application from being processed.

F. An applicant who disagrees with the board's denial of a license shall be granted a hearing on request before the board at its next regular meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies that are the basis of the denial do not exist.

History:

Amended by L. 2018, ch. 71,s. 4, eff. 8/3/2018.

§ 32-823. Qualifications of applicant

A. An applicant shall prove to the board that the applicant:

1. Is a graduate of an accredited podiatry school whose standards are recognized by the American podiatry medical association.

2. Has the physical and mental capability to engage safely in the practice of podiatry.

3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter if the applicant has previously engaged in the practice of podiatry.

4. Has a professional record that indicates that the applicant has not had a license to practice podiatry refused, revoked, suspended or restricted in any way by any other state, federal jurisdiction or country for reasons that relate to the ability to competently and safely practice podiatry if the applicant has previously engaged in the practice of podiatry.

5. Has passed a national board written examination.

B. The board may require an applicant to submit such credentials or other evidence, written and oral, and may investigate as it deems necessary to adequately inform itself with respect to the applicant's ability to meet the requirements prescribed by this section, including a requirement that the applicant for licensure undergo a physical examination, a mental evaluation or an oral competence examination and interview, or any combination thereof, as the board deems proper.

C. Beginning September 1, 2022, an applicant for initial licensure, license renewal, license reinstatement or temporary licensure shall possess a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

History:

Amended by L. 2022, ch. 59,s. 49, eff. 9/23/2022. Amended by L. 2021, ch. 301,s. 2, eff. 9/29/2021. Amended by L. 2018, ch. 71,s. 5, eff. 8/3/2018.

§ 32-826. Issuance of license

A. The board shall issue a license to practice podiatry to every person who pays the required fee and furnishes satisfactory proof of successfully completing a thirty-six-month residency program.

B. Each license shall be signed by the president and secretary of the board and bear the seal of the board.

C. The board shall deny a license to an applicant who satisfies all of the licensing requirements of this article if that applicant does not submit the license issuance fee within twelve months after the date of application. An applicant who fails to submit the fee within this time shall reapply for licensure pursuant to this article.

History:

Amended by L. 2021, ch. 301,s. 3, eff. 9/29/2021. Amended by L. 2018, ch. 71,s. 7, eff. 8/3/2018.

§ 32-827. Comity

The board may issue a license to an applicant if the applicant has been licensed to practice podiatry in another state or country from which the applicant applies if:

1. The requirements in the other state or country, at the date of registration or licensing, were substantially equal to those then in force in this state.

2. The applicant has lawfully practiced podiatry in the other state or country for at least five years within the seven years immediately preceding the application for a license in this state.

3. The applicant complies with all other requirements set forth in this chapter for a license.

History:

Amended by L. 2018, ch. 71,s. 8, eff. 8/3/2018.

§ 32-829. Renewal or cancellation of license; change of address; continuing education

A. Except as provided in section 32-4301, a license to practice podiatry expires on June 30 of each year. To renew the license the licensee shall submit the renewal fee prescribed in section 32-830 and present evidence satisfactory to the board that in the year preceding the application for renewal the licensee attended at least twenty-five hours of board approved continuing education courses or programs. A licensee who does not renew a license on or before July 30 shall also pay a penalty fee as prescribed in section 32-830 for late renewal. The board shall cancel a license if the licensee does not renew it on or before August 31. A person who practices podiatry in this state after the person's license is cancelled is in violation of this chapter.

B. A person whose license is cancelled may reapply for a license to practice podiatry as provided in this chapter.

C. On written application the board may waive the requirement provided in subsection A of this section for those licensees who submit satisfactory proof that they were prevented from attending educational programs because of disability, military service or absence from the continental United States.

D. Each licensee shall promptly and in writing inform the board of the licensee's current office address and of each change in office address within thirty days.

E. If the board finds that an applicant for license renewal has not met the board's continuing education requirements, it may allow the licensee an additional sixty days to meet those requirements after which time the applicant is ineligible for license renewal.

§ 32-830. Fees

A. The board shall establish and collect fees not to exceed:

1. For initial application for licensure, which includes the initial registration to dispense drugs and devices, $1,000.

2. For application for a license pursuant to section 32-827 by a podiatrist from another state or country, which includes the initial registration to dispense drugs and devices, $500.

3. For issuing a license, $500.

4. For annual renewal of a license, which includes the annual renewal of registration to dispense drugs and devices, $500.

5. For certifying a licensed podiatrist to authorities of another state or country, $50.

6. For late renewal of a license after July 30 through August 31, $150.

B. The board may establish and collect fees for the following:

1. Providing a duplicate wallet card.

2. Providing a duplicate wall certificate.

3. Copying records, documents, letters, minutes, applications, files and policy statements.

4. Providing a licensee list.

5. Providing audio files.

History:

Amended by L. 2021, ch. 301,s. 4, eff. 9/29/2021. Amended by L. 2018, ch. 71,s. 9, eff. 8/3/2018.

§ 32-851. Practicing podiatry without license prohibited

It is unlawful for a person to practice podiatry, or to hold himself out to be or assume or attempt to act as a podiatrist, without a valid unrevoked license to practice podiatry.

§ 32-852. Revocation or suspension of or refusal to issue license; civil penalty

A. The board, after notice and a hearing, may suspend, revoke or refuse to issue a license on proof against the applicant or licensee of any of the following:

1. That the applicant or licensee wilfully revealed a privileged communication except as required by law. This paragraph does not prevent members of the board from the full and free exchange of information with licensing and disciplinary boards of other states or jurisdictions of the United States, with foreign countries or with any podiatry society of this state or any other state, county, district, territory or country.

2. That the applicant or licensee knowingly made a false or fraudulent statement, written or oral, required for application or licensing or in connection with the practice of podiatry.

3. That the applicant or licensee had a professional association with or loaned the use of the applicant's or licensee's name to an unlicensed podiatrist or an illegal practitioner of any of the healing arts.

4. That the licensee violated a provision of section 32-854.

5. That the applicant or licensee is guilty of other conduct that disqualifies the applicant or licensee to practice podiatry with regard to the safety and welfare of the public.

6. That the licensee is guilty of unprofessional conduct as defined in section 32-854.01.

B. The board may impose against a licensee determined by the board to be in violation of this section a civil penalty of not more than two thousand dollars. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties it imposes pursuant to this section in the state general fund.

History:

Amended by L. 2018, ch. 71,s. 10, eff. 8/3/2018.

§ 32-852.01. Investigations; duty to report; unprofessional conduct hearing; decision of board; appeal

A. The board on its own motion may investigate any evidence that appears to show that a podiatrist is or may be guilty of a violation of section 32-852. Any podiatrist or the Arizona podiatry association shall, or any other person may, report to the board any information the podiatrist, association or person may have that appears to show that a podiatrist is or may be guilty of unprofessional conduct or is or may be guilty of practice without regard for the safety and welfare of the public. A podiatrist conducting a medical examination pursuant to section 23-1026 is not subject to a complaint of unprofessional conduct based on a disagreement with the findings and opinions expressed by the podiatrist as a result of the examination. Any podiatrist, association, health care institution or other person that reports or provides information to the board in good faith is not subject to civil liability and the name of the reporter shall not be disclosed unless the information is essential to the investigative proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any podiatrist to fail to report as required by this subsection. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a podiatrist to practice in that health care institution are denied, revoked, suspended or limited because of actions by the podiatrist that appear to show that the podiatrist is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of podiatry, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a podiatrist under investigation resigns or if a podiatrist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

B. Based on information received pursuant to subsection A of this section, the board may order a summary suspension of a license pending formal proceedings for license revocation or other disciplinary action if the board finds that the protection of the public health or safety requires emergency action. The board shall serve the licensee with a written notice that states the

charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

C. If the board finds after completing its investigation that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit direct action against the license of the podiatrist, it may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern.

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

D. If the board finds after completing its investigation that the information is or may be true, the board may request an informal hearing with the licensee. If the licensee refuses the invitation or accepts the invitation and the results of the hearing indicate suspension or revocation of the license might be in order, the board shall issue a complaint and conduct a formal hearing pursuant to title 41, chapter 6, article 10. If the board finds at the informal hearing that the information provided under subsection A of this section is true but is not of sufficient seriousness to merit suspension or revocation of the license, it may take one or more of the following actions:

1. File a letter of concern.

2. Issue a decree of censure.

3. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. If a licensee fails to comply with the terms of probation the board may file a complaint and hold a formal hearing pursuant to this section.

4. Impose a civil penalty of not more than two thousand dollars for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to this paragraph in the state general fund.

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

E. If the board believes that the charge is or may be true, the board shall serve on the licensee a summons and complaint that fully states the conduct or inability concerned and the time and place of the hearing. The board shall schedule the hearing not less than thirty days after the date of the summons and complaint.

F. The board may require that the licensee under investigation undergo any mental and physical examination and may conduct any investigation, including the taking of depositions, necessary to fully inform itself with respect to the complaint.

G. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board a written and verified answer to the charges within twenty days after service of the summons and complaint. A licensee who complies with this subsection may be present at the hearing with any witnesses of the licensee's choice.

H. The board may issue subpoenas for any witnesses, documents and other evidence it may need and for any witnesses, documents and other evidence the licensee may request. The superior court may hold a person who refuses to obey a subpoena in contempt of court.

I. Service of the summons and complaint shall be as provided for service of the summons and complaint in civil cases.

J. Service of subpoenas for witnesses shall be as provided by law for the service of subpoenas generally.

K. The board may administer the oath to all witnesses, shall keep a written transcript of all oral testimony submitted at the hearing and shall keep the original or a copy of all other evidence submitted. The board shall make copies of the transcript available to the licensee at that person's expense and without charge to the court in which the appeal may be taken. At all hearings the board may waive the technical rules of evidence.

L. A licensee who, after a hearing held pursuant to this section, is found to be guilty of a violation of section 32-852 or this section is subject to censure, probation as provided in this section, suspension of a license or revocation of a license, or any combination of these, for a period of time or permanently and under any conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may file a letter of concern if it finds that the violation is not of sufficient seriousness to merit censure, probation or suspension or revocation of a license. 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.

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 the 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.

N. 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.

O. This section and any other law relating to a privileged communication do not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

P. If the board acts to modify any podiatrist's prescription writing privileges, it shall immediately notify the state board of pharmacy of the modification.

Q. A letter of concern is a public document and may be used in future disciplinary actions against a podiatrist.

§ 32-853. Certain acts exempt from chapter

Nothing in this chapter shall prohibit the fitting, recommending, advertising, adjusting or sale of appliances, foot remedies or foot gear by retail dealers or manufacturers, provided that they shall not be made or fabricated by means of plaster casts or molds or by any other means for specific individual persons except on the prescription of a licensed podiatrist or physician.

§ 32-854. Unauthorized practice

A license to practice podiatry shall not be issued to a corporation, partnership or association, but two or more licensed podiatrists may occupy and practice in the same office space.

§ 32-854.01. Unprofessional conduct

Unprofessional conduct includes the following conduct, whether it occurs in this state or elsewhere:

1. Requesting, listing, accepting or receiving any rebate or commission for prescribing or recommending any footwear, drug, medicine, or other article to the licensee's patients.

2. Prescribing, dispensing or pretending to use, in treating any patient, any secret remedial agent, or manifesting or promoting its use in any way, or guaranteeing or implying to guarantee any treatment, therapy or remedy.

3. Representing that a disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

4. Practicing podiatry under a trade name, under the name of another podiatrist, under any other name than that which appears on the practitioner's license, or under any title that misrepresents the practice of podiatry.

5. Advertising in a false, deceptive or misleading manner or advertising the quality of podiatric service.

6. Employing a solicitor to obtain business.

7. Fee splitting under any guise whatsoever.

8. Failing to report as required in section 32-852.01, subsection A.

9. Failing to obtain written informed consent from a patient before the licensee performs any surgical procedure on the patient.

10. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction is conclusive evidence that the licensee committed the crime.

11. Failing or refusing to maintain adequate records on:

(a) A patient who is eighteen years of age or older for at least six years.

(b) A patient who is under eighteen years of age for the later of either:

(i) Three years after the patient's eighteenth birthday.

(ii) Six years after the last date the patient received medical or health care services from the licensee.

12. Failing or refusing to make a patient's records available to a physician or another podiatrist within twenty-one days after a request and the receipt of proper authorization.

13. Habitual intemperance in the use of alcohol or habitual substance abuse.

14. Using controlled substances or prescription-only drugs except if provided by a physician for use during a prescribed lawful course of treatment.

15. Prescribing controlled substances to members of the podiatrist's immediate family.

16. Providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

17. Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-3248.03.

18. Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

19. Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in treating a disease, injury, ailment or infirmity.

20. Violating any federal or state law applicable to the practice of podiatry.

21. Having the licensee's license refused, revoked or suspended by any other licensing jurisdiction for inability to safely and skillfully practice podiatry or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this section or any act under section 32-852.

22. Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient.

23. Violating any formal order, probation or stipulation issued by the board pursuant to this chapter.

24. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

25. Charging or collecting a clearly excessive fee. In determining the reasonableness of a fee, the fee customarily charged in the locality for similar services shall be considered in light of modifying factors, such as the time required, the complexity of the service and the skill requisite to perform the service properly. This paragraph does not apply if there is a clear written contract for a fixed fee between the podiatrist and the patient that has been entered into before the licensee provides the service.

26. Obtaining a fee by fraud, deceit or misrepresentation.

27. Charging a fee for services not rendered.

28. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

History:

Amended by L. 2023, ch. 42,s. 1, eff. 10/30/2023. Amended by L. 2021, ch. 301,s. 5, eff. 9/29/2021. Amended by L. 2018, ch. 1,s. 10, eff. 8/3/2018.

§ 32-855. Violations; classification; injunctive relief

A. A person is guilty of a class 5 felony who:

1. Practices or advertises or holds himself out as practicing or entitled to practice podiatry, or who in a sign or advertisement uses the term "chiropodist", "foot specialist", "podiatrist" or "practapedist" or any other term or letter indicating or implying that the person practices podiatry or foot correction, without having at the time a valid unrevoked license to practice podiatry.

2. Otherwise violates this chapter.

B. The superior court is vested with jurisdiction to restrain any actual or threatened violation of this chapter by an action filed by the board in the county where the cause of action arises.

History:

Amended by L. 2021, ch. 301,s. 6, eff. 9/29/2021.

§ 32-856. Podiatric medical assistants; rules

A podiatric medical assistant may assist a podiatrist pursuant to rules adopted by the board.

History:

Added by L. 2021, ch. 301,s. 7, eff. 9/29/2021.

§ 32-871. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A podiatrist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the podiatrist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing podiatrist'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 podiatrist enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing podiatrist 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 podiatrist 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 podiatrist or by a pharmacy of your choice."

D. A podiatrist shall dispense for profit only to the podiatrist's own patient and only for conditions being treated by that podiatrist. The podiatrist 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 podiatrist is present and makes the determination as to the legitimacy or the 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 podiatrist 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.

History:

Amended by L. 2018, ch. 1,s. 11, eff. 8/3/2018.

D-3.

ARIZONA LIVESTOCK LOSS BOARD
Title 12, Chapter 2

New Chapter: Chapter 2

New Article: Article 1

New Section: R12-2-101, R12-2-102, R12-2-103, R12-2-104

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **ARIZONA LIVESTOCK LOSS BOARD**
Title 12, Chapter 2

New Chapter: Chapter 2

New Article: Article 1

New Section: R12-2-101, R12-2-102, R12-2-103, R12-2-104

Summary:

This regular rulemaking from the Arizona Livestock Loss Board (Board) seeks to add one (1) new chapter, one (1) new article, and four (4) new sections in Title 12, Chapter 2 related to Definitions and General Provisions. The Board is charged with addressing the depredation of Mexican wolves on livestock operations in Arizona and established the Livestock Compensation Fund to provide compensation for livestock producers that incur costs to their operations in the process of preventing or reducing interactions with Mexican wolves. With this rulemaking, the Board is able to compensate ranchers in the amount of $250 for each carcass that is made by the wolves.

This rulemaking is not related to a prior Five Year Review Report and the Board is not establishing or increasing a fee.

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 states the rules do 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 Board states no study was reviewed or relied upon during the course of this rulemaking.

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

The Board indicates that its intent with the proposed rule is to formally establish operational approaches to implement the changes imposed by the 2015 legislation when the Board was established. The Board indicates that the primary benefactors with the proposed rule are livestock producers that are experiencing adverse economic impacts from Mexican wolves' depredation on their livestock. The Board states there are no additional costs associated with the rulemaking than what exists with the interim rule which guides the Board at this time.

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 there are no alternative methods of achieving the objectives of the proposed rulemaking. The Board holds that the benefits of the proposed rulemaking outweigh the costs.

6. What are the economic impacts on stakeholders?

The Board states that, in Arizona, most livestock producers are small, family-owned businesses. Without the ability of the Board to provide compensation for either direct loss of livestock through depredation or to provide funding for producers to implement avoidance, these small businesses will experience measurable adverse economic impacts, which in turn, have adverse impact on other small businesses in the area occupied by the Mexican wolf. The Board anticipates that those in the business of livestock production will continue to receive compensation for direct costs associated with depreciation of their livestock by Mexican wolves. As such, the Board anticipates that a positive benefit to the economy of both producers and local businesses in the area occupied by Mexican wolves will benefit.

The Board anticipates the rulemaking will have little to no impact to private persons and consumers because the proposed rulemaking is simply implementing the Board's interim policy.

The Board also anticipates the proposed rulemaking will not have a significant impact, if any, on political subdivisions of this state. The Board anticipates the proposed rulemaking will not create additional costs for compliance.

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

The Board states there are 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 states that no comments were received in response to this rulemaking.

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

The Board indicates that no permits or licenses are required to administer the livestock compensation fund.

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 the rules are not more stringent than corresponding federal law.

11. Conclusion

This regular rulemaking from the Arizona Livestock Loss Board seeks to add one new chapter, one new article, and four new sections in Title 12, Chapter 2 related to Definitions and General Provisions. As indicated above, the rules do not establish or increase a fee but allow compensation for livestock producers that incur costs to their operations in the process of preventing or reducing interactions with Mexican wolves. The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

STATE OF ARIZONA LIVESTOCK LOSS BOARD
P.O. Box 74975
Phoenix, AZ 85087
(623) 236-7279
https://live-azlivestocklossboard.pantheonsite.io/

December 12, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Livestock Loss Board, 12 A.A.C., Chapter 2, Article 1, Regular Rulemaking]

Dear Nicole Sornsin:

1. **The close of record date:** December 11, 2023
2. **Does the rulemaking activity relate to a Five Year Review Report: No**
   a. **If yes, the date the Council approved the Five Year Review Report:**
3. **Does the rule establish a new fee: No**
   a. **If yes, what statute authorizes the fee:**
4. **Does the rule contain a fee increase: No**
5. **Is an immediate effective date requested pursuant to A.R.S. 41-1032: No**

The Arizona Livestock Loss Board certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. The Arizona Livestock Loss Board certifies that the preamble states that it **did not** rely on it in the Arizona Livestock Loss Board's evaluation of or justification for the rule.

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

The following documents are enclosed:

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

4. **<u>If applicable</u>: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.**

Sincerely,

Charles I. Kelly, Chairman

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 2. STATE OF ARIZONA LIVESTOCK LOSS BOARD

PREAMBLE

1.	**Chapters, Article, Part, or Section Affected (as applicable)**	**Rulemaking Action**
	Chapter 2	New Chapter
	Article 1	New Article
	R12-2-101	New Section
	R12-2-102	New Section
	R12-2-103	New Section
	R12-2-104	New Section

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

Authorizing statute: A.R.S. § 17-492 (B)(7)

Implementing statute: A.R.S. §§ 17-491, 17-492, and 17-493

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 652, March 3, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 637, March 3, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 3490, November 3, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 3473, November 3, 2023

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

Name: Chairman of the Board

Address: State of Arizona Livestock Loss Board

P.O. BOX 74975

Phoenix, AZ, 85087
Telephone: (623) 236-7279
Fax: (623) 236-7299

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

In compliance with A.R.S. § 41-1039(A), prior written approval for this rulemaking was provided by Buchanan Davis, Natural Resource Policy Advisor, Governor's Office, in an email dated November 15, 2022.

In compliance with A.R.S. § 41-1039(B), written approval to file the final rulemaking with the Governor's Regulatory Review Council was provided by Will Greene, Policy Advisor, Governor's Office, in an email dated December 5, 2023.

The Agricultural Act of 2014 (2014 Farm Bill - P.L. 113–79) authorized the Livestock Indemnity Program to provide compensation for livestock deaths caused by attacks from animals reintroduced into the wild by the federal government or protected by federal law, including wolves and avian predators.

The Mexican gray wolf was listed as endangered in 1976 under the Endangered Species Act of 1973 and U.S. Fish and Wildlife Service (USFWS) approved the initial Mexican Gray Wolf Recovery Plan in 1982. A revised recovery plan adopted in 2017 "…was developed with Arizona, New Mexico, Colorado and Utah; the Forest Service; and federal agencies in Mexico to enable recovery of the Mexican wolf…in a manner that minimizes effects on local communities, livestock production, native ungulate herds, and recreation."

Laws 2015, Ch. 172, created the State of Arizona Livestock Loss Board (Board) and established the Livestock Compensation Fund to provide compensation for livestock losses due to wolf depredation. The Board is charged with addressing the depredation of Mexican wolves on livestock operations in Arizona. The program is designed to provide compensation for livestock producers that incur costs to their operations in the process of preventing or reducing interactions with Mexican wolves on the landscape (e.g. depredations, reduction in livestock production, transportation costs, range riders, fencing, etc.). The funding is to reduce the need for management removals of wolves. Laws 2020, Ch. 66 modified the powers and duties of the Board by expanding the use of monies in the Livestock Compensation Fund to include compensation to landowners, lessees, and/or livestock operators who implement non-lethal avoidance measures designed to prevent wolf depredation on their livestock.

As part of the program, the Board will compensate ranchers in the amount of $250 for each carcass that is made unavailable to wolves. A substantial benefit is gained when depredations decline. When livestock producers experience reduced economic loss, this benefits the local economy as well as the individual's financial status. In turn, this tends to help build social tolerance to the Mexican wolf recovery program.

Public support for the recovery and management of healthy wildlife populations is an important aspect of wildlife conservation. Support for wildlife can diminish when people experience negative interactions with wildlife and damage to private property. The intent of the department is to provide technical advice and assistance to property owners to prevent and mitigate damages caused by wildlife. Compensation may be necessary in situations where preventative measures are not successful or when circumstances, outside the control of the private property owner, get in the way of resolving negative wildlife interactions.

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

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

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

No stakeholder or public comments were received in response to the rulemaking.

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

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

The rules do not require the issuance of a general permit. The proposed rules establish the general provisions necessary to administer the livestock compensation fund which is intended to compensates landowners, lessees, and livestock operators for wolf depredations on livestock.

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:

7 C.F.R. 109A, § 8355 Losses of livestock due to predation by federally protected species is applicable to the rules. The Board has determined the rule is not more stringent than the corresponding federal regulation.

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 has not received an analysis.

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

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

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

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 2. STATE OF ARIZONA LIVESTOCK LOSS BOARD

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Sections

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-2-101. Definitions.

In addition to the definition established under A.R.S. § 17-492, the following definitions are applicable to this Article:

"Board" means the State of Arizona Livestock Loss Board.

"Claim" means an application to the Board for compensation under this chapter.

"Claimant" means the landowner, lessee, or livestock operator who has filed a wolf predation claim for compensation.

"Compensation" means a cash payment, materials, or service.

"Guard dog" means dogs trained for the purpose of protecting livestock from attack by wildlife or for herding livestock.

"Livestock" means bison, cattle, goats, horses, llamas, mules and asses, sheep, and swine.

"Range rider" means a person who monitors, scouts for, and identifies signs of wolf activity in areas where livestock will graze.

"NFWF" means the National Fish and Wildlife Foundation.

"USDA Wildlife Field Representative" means a person who has successfully completed the training necessary to assist landowners in preventing or controlling problems caused by negative wildlife interactions.

"Wildlife interaction" means the interaction and the resultant damage between wildlife and livestock.

R12-2-102. Compensation for Mexican Wolf Depredation on Livestock; Eligibility; Application

A. The Board may compensate a landowner, lessee, or livestock operator for the loss of livestock caused by Mexican gray wolf depredation. Cash compensation for livestock losses from wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages. The Board shall:

1. Consider claims in the order received, and
2. Award compensation until eligible funds are exhausted.

B. Landowners, lessees, and livestock operators should take care in operations so to reduce and, where possible, to avoid a circumstance that increases the potential for increasing Mexican wolf depredations. However, a landowner, lessee, or livestock operator whose livestock has been killed in an area in Arizona and who suspects the kill is from a wolf is eligible to submit a claim to the Board.

1. A claimant may pursue a claim for wolf depredations occurring no earlier than September 1, 2015.
2. A claimant who initiated a claim for compensation under the Board's interim policy is prohibited from seeking compensation for the same animal under this Section.

C. A landowner, lessee, or livestock operator who suspects a wolf depredation shall contact a USDA Wildlife Services Field Representative (Wildlife Field Representative) to report the suspected wolf depredation incident and request an investigation by the U.S. Department of Agriculture, Wildlife Services.

1. The landowner, lessee, or livestock operator shall provide access to the Wildlife Field Representatives or their agents to investigate the cause of death to eligible livestock or guard dogs and use reasonable measures

to protect evidence at the depredation site.

2. A Wildlife Field Representative shall conduct a depredation investigation and provide a determination of the cause of death of the livestock in Arizona.
3. If the Wildlife Field Representative determines the cause of death was the result of Mexican wolf depredation, the Wildlife Field Representative shall provide the landowner, lessee, or livestock operator (claimant) with a Request for Depredation Compensation Form (form).

D. To receive compensation for the death of livestock, the claimant shall submit the form to the Board no less than seven days prior to its next regularly scheduled meeting. The claimant shall mail the form to the State of Arizona Livestock Loss Board at, P.O. BOX 74975, Phoenix, AZ, 85087. The claimant shall provide all of the information on the form, including:

1. The claimant's:
   a. Name,
   b. Mailing address,
   c. Contact number, and
   d. Email address.
2. The Board shall review claims submitted in compliance with subsection (D) during a regularly scheduled public meeting. The Board shall:
   a. Notify the claimant if the claim is approved, and
   b. Notify the NFWF, or other Board-approved payment agent, of the approved amount, authorizing payment to the claimant.
3. The payment of a claim included on the list maintained by the Board under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement.

E. The decision of the Board is not subject to reconsideration and shall be the final administrative decision.

1. Monetary compensation as determined by the Board using standardized methods and shall constitute full and final payment for a claim.
2. If the Board is unable to make a payment for livestock losses due to lack of funding, the claim shall be held over until the Board receives additional eligible funding.
3. Claims that are carried over shall have priority and receive payment before any new claims are paid.

R12-2-103. Compensation for Carcass Removal; Eligibility; Application

A. The Board may compensate a landowner, lessee, or livestock operator for removal of a livestock carcass from the areas where the landowner, lessee, or livestock operator maintains livestock to reduce the potential for Mexican wolves (wolf, wolves) to feed on the carcass and remain in the area proximate to additional livestock. The Board has established a compensation rate of $250 per carcass removed from wolf-occupied areas.

B. To receive compensation, the claimant shall submit an Obtaining Carcass Removal Program Compensation Request Form (form) to the Board no less than seven days prior to its next regularly scheduled meeting. The claimant shall mail the form to the Arizona Livestock Loss Board at, P.O. BOX 74975, Phoenix, AZ, 85087. The

claimant shall provide all of the information on the form, including:

1. Producer name,
2. Producer mailing address,
3. Ranch/Allotment,
4. Photographic documentation and a description of the circumstances regarding the carcass and its removal from any area where the carcass is available to access by wolves, and
5. Manner of disposal:
    a. Buried,
    b. Disposed of at a landfill, or
    c. Removed outside wolf occupied area. The claimant shall describe the location where the carcass was placed.

C. The Board shall review and consider the request at its next regularly scheduled public meeting.

D. The decision of the Board is not subject to reconsideration and shall be the final administrative decision.

R12-2-104. Livestock Depredation Prevention Compensation Funding; Eligibility

A. The Arizona Livestock Loss Board (Board), in its sole discretion, may make funds available to landowners, lessees, or livestock operators who implement livestock management techniques or nonlethal wolf deterrence techniques designed to prevent wolf and livestock interactions and reduce wolf depredations, which may include but is not limited to:

1. Fencing,
2. Guard dogs,
3. Range riders,
4. Reduction in livestock production, and
5. Transportation costs to relocate livestock.

B. The Board shall consider compensation applications in the order received, except that preference shall be given to applicants who:

1. Employ range rider strategies or other non-lethal conflict avoidance measures,
2. Projects on ranches that have experienced depredation(s), and
3. Projects on ranches where wolf packs are known to be present.

C. An applicant seeking funding shall submit to the Board an Application for Mexican Wolf Depredation Prevention Compensation Form (application form) no less than seven days prior to its next regularly scheduled meeting. The claimant shall mail the form to the State of Arizona Livestock Loss Board at, P.O. BOX 74975, Phoenix, AZ, 85087. An applicant who is applying for multiple projects shall submit a separate application for each project. The applicant shall provide all of the information on the application form, including:

1. The applicant's:
    a. Name;
    b. Mailing address;

c. Telephone number;

d. Fax number, if available;

e. Email address, if available;

2. Primary Contact's:

a. Name;

b. Mailing address;

c. Telephone number;

d. Fax number, if available; and

e. Email address, if available; and

3. Description of the project area shall be a map or a description of the project area to include the Township, Section, Range, and the Allotment Name, if available;

4. Livestock information:

a. Types of livestock being protected by the project;

b. Number of livestock owners within the project area;

c. Estimated number of livestock covered by the project;

5. A detailed description of the proposed depredation prevention measure(s);

6. An itemized cost report showing how the applicant intends to use compensation funds (e.g. fencing, range riders, alternative ranges, guard dogs etc.).

7. Previous funded projects completed by the applicant that reduced wolf and livestock interactions, if applicable:

a. Compensation funds received for each project;

b. Total funding for each project;

c. Project start and end dates;

d. For a project exceeding one year, indicate the period estimated to complete the project;

e. For an existing project, provide the year the project began;

8. Total compensation funds requested;

9. Total matching funds, to include the total cash and non-cash match;

10. Affirmation that the information provided on the application is true and accurate; and

11. Signature and date. The person signing the application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the agreement on behalf of the applicant.

D. Submission of an application does not guarantee the Board will award compensation. The Board shall award compensation funding based upon available funds and whether the proposed project will effectively prevent wolf and livestock interactions and reduce wolf depredations.

1. The Board shall review each application for completeness, accuracy, and consistency with this Section.

2. Incomplete applications may be returned for correction or completion.

3. Applications not meeting the standards established in these rules may be denied.

E. The awarding of funding is within the Board's sole discretion and is based on the Board's determination of the

proposed measures effectiveness at preventing wolf depredation. After reviewing all applications, the Board may make any one of the following decisions:

1. Approve funding for the full amount requested;
2. Approve funding of partial amount requested. In this instance, the Board may elect to fund a portion of the requested amount;
3. Defer request for further consideration based upon submission of additional information;
4. Deny request.

F. An applicant awarded compensation funding shall:

1. Provide an Arizona State W-9 to NFWF, or other Board-approved payment agent, before any funds may be dispersed, unless the person already has a W-9 on file with NFWF.
2. Provide approved dollar-for-dollar match in the form of cash, in-kind contributions, or third-party contributions on behalf of the applicant.
3. Surrender any unexpended livestock compensation funds to the Board.

G. The Applicant assumes all liabilities for actions implemented by the Livestock Depredation Prevention Compensation Funding.

H. The Board is not responsible for any injuries, taxes, fees, or other costs, resulting from a Livestock Depredation Compensation Funding.

TITLE 12. NATURAL RESOURCES

CHAPTER 2. STATE OF ARIZONA LIVESTOCK LOSS BOARD

ARTICLE 1. DEFINITIONS AN GENERAL PROVISIONS

R12-2-101, R12-2-102, R12-2-103, AND R12-2-104

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

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

1. Identification of the proposed rulemaking:

In compliance with A.R.S. § 41-1039(A), prior written approval for this rulemaking was provided by Buchanan Davis, Natural Resource Policy Advisor, Governor's Office, in an email dated November 15, 2022.

In compliance with A.R.S. § 41-1039(B), written approval to file the final rulemaking with the Governor's Regulatory Review Council was provided by Will Greene, Policy Advisor, Governor's Office, in an email dated December 5, 2023.

The Agricultural Act of 2014 (2014 Farm Bill - P.L. 113–79) authorized the Livestock Indemnity Program to provide compensation for livestock deaths caused by attacks from animals reintroduced into the wild by the federal government or protected by federal law, including wolves and avian predators.

The Mexican gray wolf was listed as endangered in 1976 under the Endangered Species Act of 1973 and U.S. Fish and Wildlife Service (USFWS) approved the initial Mexican Gray Wolf Recovery Plan in 1982. A revised recovery plan adopted in 2017 "…was developed with Arizona, New Mexico, Colorado and Utah; the Forest Service; and federal agencies in Mexico to enable recovery of the Mexican wolf…in a manner that minimizes effects on local communities, livestock production, native ungulate herds, and recreation."

Laws 2015, Ch. 172, created the State of Arizona Livestock Loss Board (Board) and established the Livestock Compensation Fund to provide compensation for livestock losses due to wolf depredation. The Board is charged with addressing the depredation of Mexican wolves on livestock operations in Arizona. The program is designed to provide compensation for livestock producers that incur costs to their operations in the process of preventing or reducing interactions with Mexican wolves on the landscape (e.g. depredations, reduction in livestock production, transportation costs, range riders, fencing, etc.). The funding is to reduce the need for management removals of wolves. Laws 2020, Ch. 66 modified the powers and duties of the Board by expanding the use of monies in the Livestock Compensation Fund to include compensation to landowners, lessees, and/or livestock operators who implement non-lethal avoidance measures designed to prevent wolf depredation on their livestock.

As part of the program, the Board will compensate ranchers in the amount of $250 for each carcass that is made unavailable to wolves. A substantial benefit is gained when depredations decline. When livestock producers experience reduced economic loss, this benefits the local economy as well as the individual's financial status. In turn, this tends to help build social tolerance to the Mexican wolf recovery program.

Public support for the recovery and management of healthy wildlife populations is an important aspect of wildlife conservation. Support for wildlife can diminish when people experience negative interactions with wildlife and damage to private property. The intent of the department is to provide technical advice and assistance to property owners to prevent and mitigate damages caused by wildlife. Compensation may be necessary in situations where preventative measures are not successful or when circumstances, outside the control of the private property owner, get in the way of resolving negative wildlife interactions.

The Board proposes to adopt the following rules:

R12-2-101. Definitions: The objective of the rule is to establish definitions to assist the persons regulated by the rule and members of the public in understanding the unique terms used throughout Article 1 in an effort to facilitate consistent interpretation of the rules and to prevent persons regulated by the rule from misinterpreting the intent of the Board's rules.

R12-2-102. Compensation for Mexican Wolf Depredation on Livestock; Eligibility; Application: The objective of the rule is to establish the process through which a landowner, lessee, or livestock operator may seek compensation for livestock killed by Mexican gray wolves from the State of Arizona Livestock Loss Board.

R12-2-103. Compensation for Carcass Removal; Eligibility; Application: The objective of the rule is to establish the process through which a landowner, lessee, or livestock operator may seek compensation for the removal of a livestock carcass from the State of Arizona Livestock Loss Board. As part of the program, the Board will compensate ranchers in the amount of $250 for each carcass that is made unavailable to wolves. A substantial benefit is gained when depredations decline. When livestock producers experience reduced economic loss, this benefits the local economy as well as the individual's financial status. In turn, this tends to help build social tolerance for the Mexican wolf recovery program.

R12-2-104. Livestock Depredation Prevention Compensation Funding; Eligibility: The objective of the rule is to establish the process through which a landowner, lessee, or livestock operator may seek compensation for the implementation of projects intended to prevent and/or reduce negative wildlife interactions.

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

Not applicable; this rulemaking is undertaken to comply with legislation adopting A.R.S. §§ 17-491, 17-492, and 17-493.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Not applicable; this rulemaking is undertaken to comply with legislation adopting A.R.S. §§ 17-491, 17-492, and 17-493.

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

Not applicable; this rulemaking is undertaken to comply with legislation adopting A.R.S. §§ 17-491, 17-492, and 17-493.

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

The Boards rulemaking outlines the process that they will use in meeting the statutory requirements imposed by the 2015 legislature when the Board was established. This will include identification of the impacts and benefits of implementing the proposed rule. This assessment will include the impacts to the public, agencies of the State of Arizona, and the positive impact to all livestock producers that operate in areas where depredations by Mexican wolves occur. In essences, the proposed rule will have no additional burden and will yield a positive benefit to the rural economy in Arizona.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Chairman of the Board
Address: State of Arizona Livestock Loss Board
P.O. BOX 74975
Phoenix, AZ, 85087
Telephone: (623) 236-7279
Fax: (623) 236-7299

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

1. Identification of the proposed rulemaking:

The Board's intent with the proposed rule is to formally establish operational approaches to implement the charges imposed by the 2015 legislature when the Board was established.

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

The primary benefactors with the proposed rule are livestock producers that are experiencing adverse economic impacts as Mexican wolves depredation on their livestock. There are no additional costs associated with the rulemaking than what exists with the interim rule, which guides the Board at this time.

3. Cost benefit analysis:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

Members of the Board do not receive compensation for their participation in Board business and support from the AZGFD is not at a cost to the Board but rather part of the ongoing recovery and management of the Mexican wolf and hence there is no additional cost imposed by the proposed rule. As such, the

cost-revenue will remain the same as under operations according to the Interim Rule that has guided the Board since its formation and hence, no additional costs are anticipated.

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

The Board anticipates the proposed rulemaking will not have a significant impact, if any, on political subdivisions of this state.

(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 Board anticipates that those in the business of livestock production will continue to receive compensation for direct costs associated with depreciation of their livestock by Mexican wolves. As such, it is anticipated that a positive benefit to the economy of both producers and local business in the area occupied by Mexican wolves will benefit.

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:

In Arizona, most livestock producers are small, family-owned businesses. Without the ability of the Board to provide compensation for either direct loss of livestock through depredations or to provide funding for producers to implement avoidance, these small businesses will experience measurable adverse economic impacts, which will in turn, have adverse impact on other small businesses in the area occupied by the Mexican wolf.

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

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

In Arizona, most livestock producers are small, family-owned businesses. Without the ability of the Board to provide compensation for either direct loss of livestock through depredations or to provide funding for producers to implement avoidance, these small businesses will experience measurable adverse economic impacts, which will in turn, have adverse impact on other small businesses in the area occupied by the Mexican wolf.

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

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

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Board believes establishing less stringent compliance requirements for small businesses is not necessary because the proposed rulemaking is simply implementing the Board's interim policy.

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

The Board anticipates the proposed rulemaking will have little or no impact to private persons and consumers because the proposed rulemaking is simply implementing the Board's interim policy.

6. Statement of the probable effect on State revenues:

The Board anticipates the proposed rulemaking will not significantly impact state revenues.

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 nonselected alternatives:**

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

8. **Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.**

   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.

   In essence, the Board is reliant on two data sources. The first is the number of depredations that occur in Arizona on an annual basis. These data are provided by members of the Interagency Field Team (IFT), an organization of both federal and state agencies charged with management/recovery of the Mexican wolf. Each depredation incident is recorded by the IFT in a database maintained by the U. S. Fish and Wildlife Service, which has data verification rules in place ensure that the number of depredations are accurately recorded. The second data source used by the Board to assess the value of all depredation compensation requests is the published database maintained by the U. S. Department of Agriculture. In both instances, the Board has complete assurances that the data used are accurate.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

The assessment of the Board is that all of the data needed to implement the operational elements imposed by ARS 17-491, 17-492, and 17-493 are both readily available and are robust.

17-491. Livestock loss board; members; terms; compensation; annual report

A. The livestock loss board is established to address the depredation of wolves on livestock operations. The livestock loss board consists of the following members:
   1. The director of the Arizona department of agriculture or the director's designee.
   2. The director of the Arizona game and fish department or the director's designee.
   3. Three members who represent the livestock industry, who have knowledge and experience with wildlife impacts and management and who are appointed by the governor pursuant to section 38-211.
   4. Two members who represent wildlife conservation or wildlife management, who have knowledge and experience with livestock production or management and who are appointed by the governor pursuant to section 38-211.
   5. One member who is a livestock auction market owner and who is appointed by the speaker of the house of representatives.
   6. One member who is a faculty member at a university under the jurisdiction of the Arizona board of regents, who has expertise in agricultural and life sciences and who is appointed by the president of the senate.

B. The initial members of the livestock loss board who are appointed pursuant to subsection A, paragraphs 3, 4, 5 and 6 of this section shall assign themselves by lot to terms of two and four years in office. All subsequent members serve four-year terms of office. The chairperson shall notify the governor's office, the president of the senate and the speaker of the house of representatives of these appointments.

C. A majority of the members constitute a quorum.

D. The livestock loss board shall annually elect a chairperson from its members.

E. Members of the livestock loss board are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

F. The livestock loss board shall submit to the governor, the president of the senate and the speaker of the house of representatives on or before December 31 of each year a report of the number of applications for compensation, the total amount of monies provided to landowners, lessees and livestock operators that year and any recommendations. The livestock loss board shall provide a copy of this report to the secretary of state.

17-492. Powers and duties; definition

A. The livestock loss board shall:
   1. Establish and implement procedures to compensate landowners, lessees or livestock operators for wolf depredation on livestock.
   2. Establish requirements for landowners, lessees and livestock operators to report and demonstrate wolf depredation on livestock.
   3. Establish eligibility and application requirements to receive compensation for wolf depredation on livestock.
   4. Determine the compensation rate for each livestock animal depredated by wolves.
   5. Research and develop measures to prevent wolf depredation on livestock.

6. Establish procedures for landowners, lessees or livestock operators to appeal decisions of the livestock loss board.

B. The livestock loss board may:

1. Compensate landowners, lessees or livestock operators for wolf depredation on livestock.
2. Compensate landowners, lessees or livestock operators for implementing avoidance measures to prevent wolf depredation on livestock.
3. Implement a pay-for-presence program that provides compensation for the landowners, lessees and livestock operators who allow wolves to be present on private property owned or leased by the landowner, lessee or livestock operator and accept potential wolf depredation on livestock. A pay-for-presence program may not provide compensation for the presence of wolves on public lands.
4. Coordinate with the department in an investigation of wolf depredation on livestock and any corrective measures taken pursuant to section 17-239.
5. Coordinate with state and federal wildlife agencies to verify wolf depredation on livestock.
6. Collaborate with federal farm services agencies in this state to promote livestock compensation programs.
7. Adopt rules pursuant to title 41, chapter 6 as necessary to administer and enforce this section.

C. For the purposes of this section, "avoidance measures" means nonlethal actions taken or education provided by livestock owners to reduce the likelihood of livestock depredation.

17-493. Livestock compensation fund; exemption; definition

A. The livestock compensation fund is established consisting of federal monies, legislative appropriations from the state general fund, public and private grants and private donations received for the purpose of compensating landowners, lessees and livestock operators for the following:

1. Wolf depredation on livestock.
2. Participating in a pay-for-presence program implemented by the livestock loss board pursuant to section 17-492.
3. Implementing avoidance measures to prevent wolf depredation on livestock.

B. The livestock loss board shall administer the livestock compensation fund. Monies in the fund are continuously appropriated. The livestock loss board may accept and spend federal monies, public and private grants, gifts, contributions and devises to assist in carrying out the purposes of this article. These monies do not revert to the state general fund at the end of a fiscal year. Monies in the fund shall be used to supplement, not supplant, monies otherwise appropriated to the department.

C. Monies in the livestock compensation fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. For the purposes of this section, "avoidance measures" has the same meaning prescribed in section 17-492.

D-4.

DEPARTMENT OF LIQUOR LICENSES AND CONTROL
Title 19, Chapter 1

Amend: R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-501, R19-1-504

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **DEPARTMENT OF LIQUOR LICENSES AND CONTROL**
Title 19, Chapter 1

Amend: R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-501, R19-1-504

Summary:

This expedited rulemaking from the Department of Liquor Licenses and Control seeks to amend fourteen (14) rules in Title 19, Chapter 1 related to general provisions, licensing and licensees, and record keeping. The Department was created to "protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently." With this rulemaking, the Department is correcting typographical errors, clarifying language, amending rules that are outdated, and correcting issues identified in the five-year review report approved by Council on August 3, 2021.

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)(3) and (6), because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and amends rules that are outdated or unnecessary for the operation of state government.

2. 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.

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

The Department received four (4) comments regarding this rulemaking and responded by amending R19-1-101(A)(27)(b) to be consistent with other paragraphs, correcting statutory citations, removing R19-1-304 to be amended in a regular rulemaking, and removing the word "domestic" to be consistent with statute.

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

As stated in subsection 4, the Department removed R19-1-304 after reviewing the public comment and evaluating the changes requested, to amend the rule in a regular rulemaking as the Department determined this change would be outside of the scope of the expedited rulemaking.

ARS §41-1057(D)(7) states the Council shall not approve the rule unless "[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices."

ARS § 41-1025(A) states that "An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rulemaking or a supplemental notice filed with the secretary of state pursuant to section 41-1022. However, an agency may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule."

ARS § 41-1025(B) continues with "In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.

2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.

3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead."

Under ARS 41-1022(E), "If, as a result of public comments or internal review, an agency determines that a proposed rule requires a substantial change pursuant to section 41-1025, the agency shall prepare a notice of supplemental rulemaking that contains the change in the proposed rule. The agency shall provide for additional public comment pursuant to section 41-1023 and file the notice with the secretary of state."

If a rule is modified, and the modified rule is not "substantially different from the proposed rule," the rulemaking process may continue. (See Attorney General Handbook Chapter 11, Section 8.7.1) This indicates that the success of a rulemaking package as a whole is dependent on whether each individual rule is substantially different from the proposed rule. If it is determined that a rule is substantially different from what was proposed, the agency may file with the Secretary of State a "Notice of Supplemental Rulemaking," and provide for additional public comment or, an agency may file a Notice of Termination of Rulemaking Proceeding with the Secretary of State and comply anew with all requirements of the APA. (See Attorney General Handbook Chapter 11, Section 8.7.2) Thi

Council staff encourages the Council to determine whether, under ARS § 41-1025(B)(2), a substantial change occurred when the Department removed R19-1-304 from the rulemaking package. Specifically, the Counsel is advised to consider the scope of the impact of the removal of the proposed change on the rule itself, as well as the impact on the overall Notice of Final Expedited Rulemaking package submitted by the Department. The Counsel should also consider whether the public comment in response to the Notice of Proposed Expedited Rulemaking for R19-1-304 satisfies ARS § 41-1025(B)(1) in determining whether the persons affected by the rule should have understood that the published proposed rule would affect their interests and if their interests are impacted with the exclusion of R19-1-304.

If the removal of R19-1-304 is considered a substantial change, as indicated above, the agency shall prepare a notice of supplemental rulemaking that contains the change in the proposed rule and allow for additional public comment, or file a Notice of Termination of Rulemaking Proceeding with the Secretary of State. If the removal of R19-1-304 is not considered a substantial change, the rulemaking process can continue.

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 the rules are not more stringent than corresponding federal law.

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

The Department indicates that they do not issue general permits but individual licenses to qualified persons pursuant to statute as allowed under ARS § 41-1037 (A)(2).

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 states it did not review or rely on any study in reference to this rulemaking.

9. Conclusion

This expedited rulemaking from the Department of Liquor Licenses and Control seeks to amend fourteen rules in Title 19, Chapter 1 related to general provisions, licensing and licensees, and record keeping.

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.

As indicated above, Council staff recommends the Council discuss the issue mentioned in subsection 5 above.

STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Katie Hobbs
GOVERNOR

Ben Henry
DIRECTOR

November 10, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, Arizona 85007

Re: A.A.C. Title 19. Alcohol, Horse and Dog Racing, Lottery, and Gaming
Chapter 1. Department of Liquor Licensing and Control

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 November 9, 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).

Exemption from Executive Order 2021-02 and approval to move forward using the expedited rulemaking procedure was provided by Alyssa Salvaggio, of the Governor's Office, in an e-mail dated November 23, 2021. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by John Owens, Operations and Policy Advisor, in an e-mail dated November 9, 2023.

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part to a 5YRR approved by the Council on August 3, 2021.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

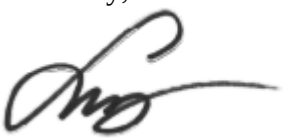
E. Immediate effective date: Under A.R.S. § 41-1027(H) the rulemaking is effective immediately upon filing with the Office of the Secretary of State.

F. Certification regarding studies: I certify that the preamble accurately discloses the studies the Board reviewed in its evaluation of or justification for the rules in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Assistant Director;
   2. Notice of Final Expedited Rulemaking including the preamble, table of contents, and rule text;
   3. Public comments

Sincerely,



Gino A. Duran
Assistant Director

NOTICES OF PROPOSED EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Expedited rulemaking is a rulemaking process that does not increase the cost of regulatory compliance, or increase a fee, or reduce procedural rights of persons regulated. Other requirements to conduct expedited rulemaking are listed under A.R.S. § 41-1027.

Under A.R.S. § 41-1027(C), the Governor's Regulatory Review Council also posts Notices of Proposed Expedited Rulemakings on its website and allows any person to provide written comment for at least 30 days after posting the notice.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules.

Refer to item 4 to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

[R22-291]

PREAMBLE

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

R19-1-101	Amend
R19-1-102	Amend
R19-1-104	Amend
R19-1-105	Amend
R19-1-206	Amend
R19-1-207	Amend
R19-1-209	Amend
R19-1-304	Amend
R19-1-315	Amend
R19-1-316	Amend
R19-1-317	Amend
R19-1-320	Amend
R19-1-501	Amend
R19-1-504	Amend

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

Authorizing statute: A.R.S. § 4-112(B)(1)(a)

Implementing statute: A.R.S. §§ 4-112(B)(1)(d); 4-201(E); 4-202(B); 203(B), (J), (M); 4-203.04(J); 4-205.02(M); 4-205.04(C)(9); 4-206.01; 4-209; 4-210; 4-242; 4-244(3) and (19); 35-142(L); and 41-1072

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: 28 3994, December 30, 2022 (*in this issue*)

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

Name: Wesley Kuhl

Address: Arizona Department of Liquor Licenses and Control
800 W. Washington St., 5th floor
Phoenix, AZ 85007

Telephone: (602) 542-9072

Email: wes.kuhl@azliquor.gov

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

The following Sections are amended to address issues identified in a five-year review report approved by the Governor's Regulatory Review Council on August 3, 2021.

R19-1-101:

1. Definitions for *production and storage spaces* and *public area* are added to reflect the statutory definitions at A.R.S. § 4-205.10.
2. 101(A)(2)(b) and (3)(b) are amended to correct the statutory reference change from A.R.S. § 206.01(F) to 206.01(G).

3. 101(A)(2)(c), (A)(3)(c), (A)(4)(b), (A)(16) and (A)(27) are amended to reflect the statutory reference of A.R.S. § 4-244(32)(c). The statute no longer specifies the container into which a licensee dispenses beer for consumption off-sale is made only of glass.
4. The definition for *special event license* is amended to reflect statutory changes in A.R.S. § 4-203.02(E) regarding the types of entities that can obtain a special event license.
5. 101(16) is amended to reflect the statutory change in A.R.S. § 4-205.08 increasing the maximum amount of beer a microbrewery may produce from 1.24 to 6.2 million gallons.

R19-1-102:

1. 102(D) is deleted because the statutory authority in A.R.S. § 4-213 to issue a new restaurant continuation authorization was repealed. Subsequent subsections are amended to conform.
2. 102 (old G through J) (new F through I) are amended to strike the language *until the date specified* and correct the statutory references to A.R.S. §§ 4-206.01(K) and 35-142(L). The statutes removed the specific date limitation on various license fees.

R19-1-104:

1. 104(C)(1) is amended to reflect the new statutory authority under A.R.S. § 4-205.10(C)(5) regarding distilled spirits shipped by a craft distiller licensee.
2. 104(C)(2)(b) is amended to reflect new statutory authorities under A.R.S. §§ 4-203.04(J), 205.04(C)(7) and (9), 205.08(D) creating exceptions for wine shipped by a domestic farm winery licensee, beer shipped by a domestic microbrewery licensee, and distilled spirits shipped by a craft distiller licensee.

R19-1-105: Subsection (B) is amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(31).

R19-1-206:Subsections (A), (B), and (C) are amended to correct the statutory reference from A.R.S. § 4-205.02(H)(2) to A.R.S. § 4-205.02(M)(2).

R19-1-207:Subsections (A) and (C) are amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(31).

R19-1-209: Subsection (I) is amended to strike the statutory reference of A.R.S. § 4-101(9) as it is not related to the rule.

R19-1-304: Subsection (C) is amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) and(9), a domestic microbrewery under A.R.S. § 4-205.08(D)(5), and a craft distiller under A.R.S. § 4-205.10(C)(5).

R19-1-315: Subsections (A) and (B) are amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9) and craft distiller under A.R.S. § 4-205.10(C)(7).

R19-1-316: Subsection (A) is amended to correct the statutory reference from A.R.S. § 4-206.01(J) to 4-206.01(K).

R19-1-317: Subsection (D) is amended to correct the statutory reference from A.R.S. § 4-205.02(H) to 4-206.02(M).

R19-1-320: Subsection (M)(2) is amended to reflect the new statutory authority regarding the size of samples provided for consumption off a licensed premises.

R19-1-501: Subsection (E) is amended to delete the statutory reference to A.R.S. 4-241(K) as the statute is not relevant to the rule.

R19-1-504: Subsections (A), (C), and (D) are amended to reflect the new statutory authority for domestic farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9) and craft distiller under A.R.S. § 4-205.10(C)(7).

Under A.R.S. § 41-1027(A)(3) and (6), the Board is authorized to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and amends rules that are outdated or unnecessary for the operation of state government.

Exemption from Executive Order 2021-02 and approval to move forward using the expedited rulemaking procedure was provided by Alyssa Salvaggio, of the Governor's Office, in an e-mail dated November 23, 2021.

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

The Department does not intend to review or rely on a study in its evaluation of or justification for any rule in this 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:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1055(D)(2), the Department is not required to prepare an economic, small business, and consumer impact statement.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Wesley Kuhl
Address: Arizona Department of Liquor Licenses and Control
800 W. Washington St., 5th floor
Phoenix, AZ 85007
Telephone: (602) 542-9072
Email: wes.kuhl@azliquor.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:

Date: Thursday, February 23, 2023

Time: 10:00 a.m.

Location: 800 W. Washington St., Auditorium
Phoenix, AZ 85007

The oral proceeding may be attended in person or virtually. Instructions for attending virtually will be posted on the Department's website.

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:

None

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

Under A.R.S. § 41-1037(A)(2), the licenses issued by the Department are not general permits. A.R.S. § 4-202 requires the Department to assess individual qualifications, including possibly a criminal background check, before issuing a license.

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

There are numerous federal laws applicable to alcohol. The rules are consistent with and not more stringent than 27 CFR, Chapter 1, Subchapter A.

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

The Department did not receive an analysis.

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

None

13. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ARTICLE 1. GENERAL PROVISIONS

Section
R19-1-101. Definitions
R19-1-102. Fees and Surcharges; Service Charges
R19-1-104. Shipping Container Labeling; Shipping Requirements
R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

ARTICLE 2. LICENSING

Section
R19-1-206. Criteria for Issuing a Restaurant License
R19-1-207. Extension of Premises
R19-1-209. Licensing Time-frames

ARTICLE 3. LICENSEE RESPONSIBILITIES

Section
R19-1-304. Storing Spirituous Liquor on Unlicensed Premises
R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service
R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee
R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee
R19-1-320. Practices Permitted by a Wholesaler

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Section
R19-1-501. General Recordkeeping
R19-1-504. Record of Delivery of Spirituous Liquor

ARTICLE 1. GENERAL PROVISIONS

R19-1-101. Definitions

A. The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:

1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:

a. Spirituous liquors in individual portions for consumption on the licensed premises;
b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under ~~A.R.S. § 4-206.01(F)~~ A.R.S. § 4-206.01(G); and
c. Beer in ~~a clean glass container that is sealed and labeled as described in~~ accordance with ~~A.R.S. § 4-244(32)~~ A.R.S. § 4-244(32)(c).

3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
a. Beer and wine in individual portions for consumption on the licensed premises;
b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under ~~A.R.S. § 4-206.01(F)~~ A.R.S. § 4-206.01(G); and
c. Beer in ~~a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ accordance with A.R.S. § 4-244(32)(c).
4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and
b. Beer in ~~a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ accordance with A.R.S. § 4-244(32)(c).
5. "Business" means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
6. "Business premises" means real property and improvements from which a business operates.
7. "Catering establishment" means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
8. "Club license" (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
9. "Cocktail mixer" means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.
10. "Conveyance license" (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
11. "Cooler product" means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
12. "Deal" means to sell, trade, furnish, distribute, or do business in spirituous liquor.
13. "Department" means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
14. "Direct shipment license" (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
15. "Domestic farm winery license" (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a domestic farm winery is considered an "other producer."
16. "Domestic microbrewery license" (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than ~~1.24~~ 6.2 million gallons of beer annually and includes authorization to sell beer in a clean ~~glass~~ container that is sealed and labeled as described in A.R.S. § 4-244(32)(c). For the purposed of A.R.S. § 4-243, a domestic microbrewery is considered an "other producer."
17. "Entertainment," as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.
18. "Erotic entertainer," as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.
19. "Government license" (Series 5) has the meaning set forth at A.R.S. § 4-101.
20. "Hotel-motel license" (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.
21. "Incidental convenience," as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.
22. "In-state producer license" (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.
23. "Interim permit" means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.
24. "Licensed" means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.
25. "Licensed retailer" means an on-sale or off-sale retailer.
26. "Limited out-of-state producer license" (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.
27. "Liquor store license" (Series 9) means authorization issued to an off-sale retailer to sell:
a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and
b. Beer in a clean ~~glass~~ container that is sealed and labeled as described in A.R.S. § 4-244(32)(c).
28. "Non-technical error" means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
29. "Nonuse" means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
30. "Out-of-state producer license" (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
31. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.

32. "Physical barrier" means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
33. "Producer" means the holder of an in-state, out-of-state, or limited out-of-state producer license.
34. "Product display" means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.
35. "Production and storage spaces" means the same as in A.R.S. § 4-205.10.
36. "Public area" means the same as in A.R.S. § 4-205.10.
~~35.~~37. "Quota license" means a bar, beer and wine bar, or liquor store license.
~~36.~~38. "Rectify" means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.
~~37.~~39. "Reset" means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.
~~38.~~40. "Restaurant continuation authorization" means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.
~~39.~~41. "Restaurant license" (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.
~~40.~~42. "Second-party purchaser" means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.
~~41.~~43. "Special event license" (Series 15) means ~~authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.~~ the authorization provided under A.R.S. § 4-203.02(E).
~~42.~~44. "Tapping equipment" means beer, wine, and distilled spirit dispensers as stated in R19-1-326.
~~43.~~45. "Technical error" means a mistake on an application that does not mislead regarding the truthfulness of the information provided.
~~44.~~46. "Transfer" means to:
    a. Move a license from one location to another location within the same county; or
    b. Change ownership, directly or indirectly, in whole or in part, of a business.
~~45.~~47. "Wholesaler license" (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.
~~46.~~48. "Wine festival or fair license" (Series 16) means authorization issued for a specified period to a domestic farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19-1-102. Fees and Surcharges; Service Charges

A. Most of the fees and surcharges collected by the Department are established by statute.
B. After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.
C. After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.
~~**D.** After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of $30,000.~~
~~**E.**~~**D.** A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of $150 in addition to the renewal fee.
~~**F.**~~**E.** At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of $20.
~~**G.**~~**F.** ~~Until the date specified in~~ Under A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of $50.
~~**H.**~~**G.** ~~Until the date specified in~~ Under A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed premise to a maximum of $50.
~~**I.**~~**H.** ~~Until the date specified in~~ Under ~~A.R.S. § 4-206.01(J)~~ A.R.S. § 4-206.01(K), the Director establishes and shall collect a fee of $100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and $60 to renew the sampling privilege.
~~**J.**~~**I.** ~~Until the date specified in~~ Under A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of $50.
~~**K.**~~**J.** If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:
    1. As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of $25;
    2. Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
    3. Require the applicant or licensee to pay all future fees to the Department by money order.
~~**L.**~~**K.** As allowed under ~~A.R.S. § 35-142(K)~~ A.R.S. § 35-142(L), the Department may impose a convenience fee for accepting payment made by credit or debit card.

~~M.~~ L. This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and ~~35-142(K)~~ 35-142(L).

R19-1-104. Shipping Container Labeling; Shipping Requirements

A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:
1. Name of the individual or entity consigning or shipping the spirituous liquor,
2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
3. Identification of the spirituous liquor.

B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:
1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
   a. Name and address of the wholesaler,
   b. Name and address of the licensed retailer, and
   c. Quantity and type of the spirituous liquor sold and transported; and
2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.

C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. With the exception of wine that is being shipped by a common carrier under A.R.S. § 4-203.04(J) or by a licensed domestic farm winery under A.R.S. § 4-205.04(C)(7) or (9) ~~by a domestic farm winery licensee, or~~ beer that is being shipped by a licensed domestic microbrewery under A.R.S. § 4-205.08(D)(5) ~~by a domestic microbrewery licensee~~, or distilled spirits that are being shipped by a licensed craft distiller under ARS 4-205.10(C)(5), the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and
2. The spirituous liquor is placed for shipping with:
   a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
   b. The wholesaler to whom the spirituous liquor is consigned with the exception of:
      i. Wine that is being shipped under A.R.S. § 4-203.04(J) by a common carrier or A.R.S. § 4-205.04(C)(7) or (9) by a licensed domestic farm winery,
      ii. Beer that is being shipped under A.R.S. § 4-205.08(D) by a licensed domestic microbrewery, or
      iii. Distilled spirits that are being shipped under ARS 4-205.10(C)(5) by a licensed craft distiller.

D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.

E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.

F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:
1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises;
2. The non-contiguous area does not violate A.R.S. § 4-207;
3. The non-contiguous area will be a permanent part of the licensed premises;
4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
6. Construction of the business premises in the non-contiguous area will comply with all applicable building and safety standards before spirituous liquor is sold or served in the non-contiguous area; and
7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.

B. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(31).

ARTICLE 2. LICENSING

R19-1-206. Criteria for Issuing a Restaurant License

A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2).

B. The following criteria are evidence of an ability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;

3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.

C. The following criteria are evidence of an inability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
1. More than 60 percent of the public seating area consists of barstools, cocktail tables, and similar seating indicating the area is used primarily for consumption of spirituous liquor;
2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
4. Proposed business premises contain bar games and equipment.

D. This Section is authorized by A.R.S. § 4-205.02(E).

R19-1-207. Extension of Premises

A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined ~~at A.R.S. § 4-101(26)~~ in A.R.S. § 4-101(31), without first making application for an extension of premises.

B. An application under subsection (A) is required for either a temporary or permanent extension of premises.

C. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(31) and 4-203(B).

R19-1-209. Licensing ~~Time-frames~~ Time Frames

A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes ~~time-frames~~ time frames that apply to licenses issued by the Department. The licensing ~~time-frames~~ time frames consist of an administrative completeness review ~~time-frame~~ time frame, a substantive review ~~time-frame~~ time frame, and an overall ~~time-frame~~ time frame as defined in A.R.S. § 41-1072.

B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:
1. Every piece of information required by the form prescribed by the Department is provided;
2. All required materials specified on the form prescribed by the Department are attached to the form;
3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
4. If required, a questionnaire and complete set of fingerprints are attached to the form from:
   a. Every individual who is a controlling person of the business to be licensed,
   b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
   c. Every individual who owns at least 10 percent of the business to be licensed,
   d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
   e. The agent and managers of the business to be licensed.

C. Except as provided in subsection (D), the ~~time-frame~~ time frame for the Department to act on a license application is as follows:
1. Administrative completeness review ~~time-frame~~ time frame: 75 days;
2. Substantive review ~~time-frame~~ time frame: 30 days; and
3. Over-all ~~time-frame~~ time frame: 105 days.

D. The ~~time-frame~~ time frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:
1. Administrative completeness review ~~time-frame~~ time frame: 10 days;
2. Substantive review ~~time-frame~~ time frame: 20 days; and
3. Over-all ~~time-frame~~ time frame: 30 days.

E. Administrative completeness review ~~time-frame~~ time frame.
1. The administrative completeness review ~~time-frame~~ time frame begins when the Department receives an application. During the administrative completeness review ~~time-frame~~ time frame, the Department shall determine whether the application is:
   a. Complete,
   b. Contains a technical error, or
   c. Contains a non-technical error.
2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.
4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all ~~time-frames~~ time frames are suspended from the date of the notice referenced under subsection (E)(3) until the date the technical error is corrected.
5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

F. Substantive review ~~time-frame~~ time frame.
1. The substantive review ~~time-frame~~ time frame begins when an application is administratively complete or at the end of the administrative completeness review ~~time-frame~~ time frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review ~~time-frame~~ time frame.
2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the

Department. Both the substantive review and over-all ~~time-frames~~ time frames are suspended from the date of the Department's request until the date that the Department receives the additional information.

3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

G. Within the overall ~~time-frame~~ time frame, the Department shall:

1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.

H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial; and
3. The time for appealing the denial.

I. This Section is authorized by A.R.S. §§ 41-1073, ~~4-101(9)~~, 4-201(E), and 4- 202(B).

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-304. Storing Spirituous Liquor on Unlicensed Premises

A. Except as provided in subsection (B), a licensee shall not accept delivery of or store spirituous liquor at any premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. The Department shall authorize a licensee to accept delivery of or store spirituous liquor at a premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter if:

1. The licensee submits a written request to the Department that:
   a. Identifies the unlicensed premises,
   b. Provides a diagram that shows the geographical location of the unlicensed premises in relation to the business premises, and
   c. Explains how the licensee will safeguard the spirituous liquor at the unlicensed premises; and
2. The Department determines that the licensee will safeguard the spirituous liquor at the unlicensed premises in a manner that protects the public health, safety, and welfare and that authorizing the licensee to store spirituous liquor at the unlicensed premises is consistent with the best interest of the state.

C. Before asking a wholesaler to make delivery of spirituous liquor at an unlicensed premises, ~~A~~ a licensee granted authorization under subsection (B) shall provide evidence of the authorization to ~~a~~ the wholesaler~~,~~ and:

1. Common carrier under A.R.S.§ 203.04(J),
2. Domestic farm winery under A.R.S. § 4-205.04(C)(7) or (9),
3. Domestic microbrewery under A.R.S. § 4-205.08(D), or
4. Craft distiller under ARS 4-205.10(C)(5) ~~before asking the wholesaler to make delivery of spirituous liquor at the unlicensed premises~~.

D. This Section is authorized by A.R.S. § 4-203(B).

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

A. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J), ~~or~~ a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9), a common carrier that delivers wine under A.R.S. § 4-203.04(J), or a licensed craft distiller that delivers distilled spirits under A.R.S. § 4-205.10(C)(7) shall ensure that delivery of spirituous liquor:

1. Is made only to an individual who is at least 21 years old,
2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
3. Is made only during the hours of lawful service of spirituous liquor,
4. Is not made to an intoxicated or disorderly individual, and
5. Is not made to the licensed premises of a licensed retailer.

B. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J), ~~or~~ a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9), a common carrier that delivers wine under A.R.S. § 4-203.04(J), or a licensed craft distiller that delivers distilled spirits under A.R.S. § 4-205.10(C)(7) shall refuse to complete a delivery if the licensee or common carrier believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

C. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(J), ~~and~~ 4-205.04(C)(9), and 4-205.10(C)(7).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

A. Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § ~~4-206.01(J)~~ 4-206.01(K), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.

B. This Section is authorized by A.R.S. § 4-244(19).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

A. If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.

B. If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.

C. If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.

D. In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(M), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(M).

E. To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:

1. Vendor invoices. Sorted by vendor by year;
2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;
3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
5. Transaction privilege tax returns. Sorted by month by year;
6. Income tax returns. Sorted by year; and
7. Payroll records. Sorted by pay period by year.

F. If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.

G. This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

R19-1-320. Practices Permitted by a Producer or Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Participating in a special event.

1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
   a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
   b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
   c. The special event license is not issued to a political committee or organization;
   d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and
   e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.
2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.

D. Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:

1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
2. The item provided has a value less than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;

3. The item provided has a value more than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed $100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:
1. The golf tournament is regulated by a golf association; or
2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:
   a. All sponsorship proceeds are provided to the unlicensed organization, and
   b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, "concert" is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:
1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:
1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),
2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:
1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:
1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:
1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;
2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day if consumed on the licensed premises. If the sample provided is for ~~off-sale~~ consumption off the licensed premises, the producer or wholesaler shall ensure the sample is ~~in an unbroken package~~ limited to 72 ounces of beer and two ounces of distilled spirits per person per day; or
3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:
1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
3. All research participants are of legal drinking age;
4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:
1. Wine. Three liters;
2. Beer. Three gallons; and
3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

Q. Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:
1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and
2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.

R. A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.

S. Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

R19-1-501. General Recordkeeping

A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.

B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.

C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.

D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.

E. This Section is authorized by A.R.S. §§ 4-210(A)(7), and 4-119~~, and 4-241(K)~~.

R19-1-504. Record of Delivery of Spirituous Liquor

A. A retail licensee having off-sale privileges, or a licensed domestic farm winery under A.R.S. § 4-205.04(C)(9), common carrier under A.R.S. § 4-203.04(J), or a licensed craft distiller under A.R.S. § 4-205.10(C)(7) that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) ~~or 4-205.04(C)(9)~~ and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee or common carrier shall ensure that the record provides the following information:
1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and

7. Printed name and signature of the individual making the delivery.

B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:
1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

C. A licensed domestic farm winery under A.R.S. § 4-205.04(C)(9), common carrier under A.R.S. § 4-203.04(J), or licensed craft distiller under A.R.S. § 4-205.10(C)(7) that delivers spirituous liquor~~, as authorized by A.R.S. § 4-205.04(C)(9),~~ may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the requirements in subsection (A).

D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9), or licensed craft distiller that ships distilled spirits under A.R.S. § 4-205.10(C)(7) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9)., and ~~(D)~~ 4-205.10(C)(7).

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R19-1-101	Amend
R19-1-102	Amend
R19-1-104	Amend
R19-1-105	Amend
R19-1-206	Amend
R19-1-207	Amend
R19-1-209	Amend
R19-1-315	Amend
R19-1-316	Amend
R19-1-317	Amend
R19-1-320	Amend
R19-1-327	Amend
R19-1-501	Amend
R19-1-504	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. § 4-112(B)(1)(a)

Implementing statute: A.R.S. §§ 4-112(B)(1)(d); 4-201(E); 4-202(B); 203(B), (J), (M); 4-203.04(J); 4-205.02(M); 4-205.04(C)(9); 4-206.01; 4-209; 4-210; 4-242; 4-244(3) and (19); 35-142(L); and 41-1072

3. The effective date for the rules:

Under A.R.S. § 41-1027(H), the rulemaking is effective immediately on filing with the Office of the Secretary of State.

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

Notice of Rulemaking Docket Opening: 28 A.A.R. 3994, December 30, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3981, December 30, 2022

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

Name: Gino Duran, Assistant Director
Address: Arizona Department of Liquor Licenses and Control
800 W Washington St, 5th floor
Phoenix, AZ 85007
Telephone: 602-364-0646
E-mail: gino.duran@azliquor.gov

6. An agency's explanation why the proposed expedited rule should be made, amended, repealed , or renumbered under A.R.S. § 41-1027(A and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):

The following Sections are amended to address issues identified in a five-year review report approved by the Governor's Regulatory Review Council on August 3, 2021.

R19-1-101:

1. Definitions for *production and storage spaces* and *public area* are added to reflect the statutory definitions at A.R.S. § 4-205.10.
2. 101(A)(2)(b) and (3)(b) are amended to correct the statutory reference change from A.R.S. § 206.01(F) to 206.01(G).
3. 101(A)(2)(c), (A)(3)(c), (A)(4)(b), (A)(16) and (A)(27) are amended to reflect the statutory reference of A.R.S. § 4-244(32)(c). The statute no longer specifies the container into which a licensee dispenses beer for consumption off-sale is made only of glass.
4. The definition for *special event license* is amended to reflect statutory changes in A.R.S. § 4-203.02(E) regarding the types of entities that can obtain a special event license.
5. 101(16) is amended to reflect the statutory change in A.R.S. § 4-205.08 increasing the maximum amount of beer a microbrewery may produce from 1.24 to 6.2 million gallons.

R19-1-102:

1. 102(D) is deleted because the statutory authority in A.R.S. § 4-213 to issue a new restaurant continuation authorization was repealed. Subsequent subsections are amended to conform.

2. 102 (old G through J) (new F through I) are amended to strike the language *until the date specified* and correct the statutory references to A.R.S. §§ 4-206.01(K) and 35-142(L). The statutes removed the specific date limitation on various license fees.

R19-1-104:

1. 104(C)(1) is amended to reflect the new statutory authority under A.R.S. § 4-205.10(C)(5) regarding distilled spirits shipped by a craft distiller licensee.
2. 104(C)(2)(b) is amended to reflect new statutory authorities under A.R.S. §§ 4-203.04(J), 205.04(C)(7) and (9), 205.08(D) creating exceptions for wine shipped by a farm winery licensee, beer shipped by a microbrewery licensee, and distilled spirits shipped by a craft distiller licensee.

R19-1-105: Subsection (B) is amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(31).

R19-1-206: Subsections (A), (B), and (C) are amended to correct the statutory reference from A.R.S. § 4-205.02(H)(2) to A.R.S. § 4-205.02(M)(2).

R19-1-207: Subsections (A) and (C) are amended to correct the statutory reference from A.R.S. § 4-101(26) to A.R.S. § 4-101(31).

R19-1-209: Subsection (I) is amended to strike the statutory reference of A.R.S. § 4-101(9) as it is not related to the rule.

R19-1-315: Subsections (A) and (B) are amended to reflect the new statutory authority for farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9) and craft distiller under A.R.S. § 4-205.10(C)(7).

R19-1-316: Subsection (A) is amended to correct the statutory reference from A.R.S. § 4-206.01(J) to 4-206.01(K).

R19-1-317: Subsection (D) is amended to correct the statutory reference from A.R.S. § 4-205.02(H) to 4-206.02(M).

R19-1-320: Subsection (M)(2) is amended to reflect the new statutory authority regarding the size of samples provided for consumption off a licensed premises.

R19-1-501: Subsection (E) is amended to delete the statutory reference to A.R.S. 4-241(K) as the statute is not relevant to the rule.

R19-1-504: Subsections (A), (C), and (D) are amended to reflect the new statutory authority for farm wineries under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9) and craft distiller under A.R.S. § 4-205.10(C)(7).

Under A.R.S. § 41-1027(A)(3) and (6), the Board is authorized to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and amends rules that are outdated or unnecessary for the operation of state government.

Exemption from Executive Order 2021-02 and approval to move forward using the expedited rulemaking procedure was provided by Alyssa Salvaggio, of the Governor's Office, in an e-mail dated November 23, 2021. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by John Owens, Operations and Policy Advisor, in an e-mail dated November 9, 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 Department did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Board is not required to prepare an economic, small business, and consumer impact statement.

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

Between the proposed and final expedited notices, the Department made the changes described in item 11. Additionally, to be consistent with statute, R19-1-327 was added to the rulemaking and the word "domestic" was removed as an adjective for "farm winery."

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

Four individuals attended the oral proceeding on February 23, 2023, but none made comments. The Department received a written comment from Camila Alarcon of Alarcon

Law and Policy LLC. Her comments and the Department's analysis and response follow:

COMMENT	ANALYSIS	RESPONSE
R19-1-101(A)(27)(b): The language in this subsection is slightly different from that in subparagraphs (c) in paragraphs (2) and (3). We recommend making them consistent.	The Department values consistency and did not intend for the language in the referenced subsection to be different.	R19-1-101(A)(27)(b) was changed to be consistent with subparagraphs (c) in paragraphs (2) and (3).
R19-1-104(C)(1): The reference to A.R.S. § 4-205.08(D)(5) should be A.R.S. § 4-205.08(D)(4).	The Department agrees.	The error was corrected.
R19-1-304: Can a microbrewery make deliveries to an unlicensed storage under its wholesale privileges? If so, please rewrite the lead sentence of subsection (C) to apply to both wholesalers and craft producers.	After evaluating the changes requested regarding R19-1-304, the Department determined the changes were outside the scope of an expedited rulemaking and removed the Section. The requested changes will be addressed in a regular rulemaking initiated very soon.	R19-1-304 was removed from the expedited rulemaking.
The term "domestic" to describe a microbrewery is not correct because statute no longer differentiates between the privileges of an in-state or licensed out-of-state microbrewery.	The Department agrees.	To be consistent with statute, the word "domestic" was removed as an adjective for both a microbrewery and a farm winery.

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:

Under A.R.S. § 41-1037(A)(2), the licenses issued by the Department are not general permits. A.R.S. § 4-202 requires the Department to assess individual qualifications, including possibly a criminal background check, before issuing a license.

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

There are numerous federal laws applicable to alcohol. The rules are consistent with and not more stringent than 27 CFR, Chapter 1, Subchapter A.

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

No analysis was submitted.

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

None

14. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

Chapter 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ARTICLE 1. GENERAL PROVISIONS

Section

ARTICLE 2. Licensing

Section

ARTICLE 3. LICENSEE RESPONSIBILITIES

Section

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Section

ARTICLE 1. GENERAL PROVISIONS

R19-1-101. Definitions

A. The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:

1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:
   a. Spirituous liquors in individual portions for consumption on the licensed premises;
   b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under ~~A.R.S. § 4-206.01(F)~~ A.R.S. § 4-206.01(G); and
   c. Beer in ~~a clean glass container that is sealed and labeled as described in~~ accordance with ~~A.R.S. § 4-244(32)~~ A.R.S. § 4-244(32)(c).
3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
   a. Beer and wine in individual portions for consumption on the licensed premises;
   b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under ~~A.R.S. § 4-206.01(F)~~ A.R.S. § 4-206.01(G); and
   c. Beer in ~~a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ accordance with A.R.S. § 4-244(32)(c).
4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
   a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and

b. Beer in ~~a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)~~ accordance with A.R.S. § 4-244(32)(c).

5. “Business” means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
6. “Business premises” means real property and improvements from which a business operates.
7. “Catering establishment” means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
8. “Club license” (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
9. “Cocktail mixer” means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.
10. “Conveyance license” (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
11. “Cooler product” means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
12. “Deal” means to sell, trade, furnish, distribute, or do business in spirituous liquor.
13. “Department” means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
14. “Direct shipment license” (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
15. ~~“Domestic farm winery license” (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a domestic farm winery is considered an “other producer.”~~
16. ~~“Domestic microbrewery license” (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than 1.24 million gallons of beer annually and includes authorization to sell beer in a clean glass container that is sealed and labeled as~~

~~described in A.R.S. § 4-244(32). For the purposed of A.R.S. § 4-243, a domestic microbrewery is considered an "other producer."~~

~~17.~~15. "Entertainment," as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.

~~18.~~16. "Erotic entertainer," as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.

17. "Farm winery license" (Series 13) means authorization issued to a farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a farm winery is considered an "other producer."

~~19.~~18. "Government license" (Series 5) has the meaning set forth at A.R.S. § 4-101.

~~20.~~19. "Hotel-motel license" (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.

~~21.~~20. "Incidental convenience," as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.

~~22.~~21. "In-state producer license" (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.

~~23.~~22. "Interim permit" means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.

~~24.~~23. "Licensed" means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.

~~25.~~24. "Licensed retailer" means an on-sale or off-sale retailer.

~~26.~~25. "Limited out-of-state producer license" (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.

~~27.~~26. "Liquor store license" (Series 9) means authorization issued to an off-sale retailer to sell:

a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and

b. Beer in ~~a clean glass container that is sealed and labeled as described in~~ accordance with A.R.S. § 4-244(32)(c).

27. "Microbrewery license" (Series 3) means authorization issued to a microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than 6.2 million gallons of beer annually and includes authorization to sell beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32)(c). For the purposed of A.R.S. § 4-243, a microbrewery is considered an "other producer."
28. "Non-technical error" means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
29. "Nonuse" means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
30. "Out-of-state producer license" (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
31. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
32. "Physical barrier" means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
33. "Producer" means the holder of an in-state, out-of-state, or limited out-of-state producer license.
34. "Product display" means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.
35. "Production and storage spaces" means the same as in A.R.S. § 4-205.10.
36. "Public area" means the same as in A.R.S. § 4-205.10.
~~35.~~37. "Quota license" means a bar, beer and wine bar, or liquor store license.
~~36.~~38. "Rectify" means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.
~~37.~~ 39. "Reset" means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.
~~38.~~ 40. "Restaurant continuation authorization" means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.

~~39.~~ 41. "Restaurant license" (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.

~~40.~~ 42. "Second-party purchaser" means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.

~~41.~~ 43. "Special event license" (Series 15) means ~~authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.~~ the authorization provided under A.R.S. § 4-203.02(E).

~~42.~~ 44. "Tapping equipment" means beer, wine, and distilled spirit dispensers as stated in R19-1-326.

~~43.~~ 45. "Technical error" means a mistake on an application that does not mislead regarding the truthfulness of the information provided.

~~44.~~ 46. "Transfer" means to:

a. Move a license from one location to another location within the same county; or

b. Change ownership, directly or indirectly, in whole or in part, of a business.

~~45.~~ 47. "Wholesaler license" (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.

~~46.~~ 48. "Wine festival or fair license" (Series 16) means authorization issued for a specified period to a ~~domestic~~ farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19-1-102. Fees and Surcharges; Service Charges

A. Most of the fees and surcharges collected by the Department are established by statute.

B. After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.

C. After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.

~~**D.** After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of $30,000.~~

~~**E.**~~ **D.** A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of $150 in addition to the renewal fee.

~~**F.**~~ **E.** At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of $20.

~~**G.**~~ **F.** ~~Until the date specified in~~ Under A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of $50.

~~**H.**~~ **G.** ~~Until the date specified in~~ Under A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed premise to a maximum of $50.

~~**I.**~~ **H.** ~~Until the date specified in~~ Under ~~A.R.S. § 4-206.01(J)~~ A.R.S. § 4-206.01(K), the Director establishes and shall collect a fee of $100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and $60 to renew the sampling privilege.

~~**J.**~~ **I.** ~~Until the date specified in~~ Under A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of $50.

~~**K.**~~ **J.** If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:

1. As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of $25;

2. Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
3. Require the applicant or licensee to pay all future fees to the Department by money order.

~~L.~~ **K.** As allowed under ~~A.R.S. § 35-142(K)~~ A.R.S. § 35-142(L), the Department may impose a convenience fee for accepting payment made by credit or debit card.

~~M.~~ **L.** This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and ~~35-142(K)~~ 35-142(L).

R19-1-104. Shipping Container Labeling; Shipping Requirements

A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:

1. Name of the individual or entity consigning or shipping the spirituous liquor,
2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
3. Identification of the spirituous liquor.

B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:

1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
   a. Name and address of the wholesaler,
   b. Name and address of the licensed retailer, and
   c. Quantity and type of the spirituous liquor sold and transported; and
2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.

C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:

1. With the exception of wine that is being shipped by a common carrier under A.R.S. § 4-203.04(J) or by a licensed farm winery under A.R.S. § 4-205.04(C)(7) or (9) ~~by a domestic farm winery licensee, or~~ beer that is being shipped by a licensed microbrewery under A.R.S. § ~~4-205.08(D)(5) by a domestic microbrewery licensee~~ 5-205.08(D)(4), or

distilled spirits that are being shipped by a licensed craft distiller under ARS 4-205.10(C)(5), the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and

2. The spirituous liquor is placed for shipping with:
   a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
   b. The wholesaler to whom the spirituous liquor is consigned with the exception of:
      i. Wine that is being shipped under A.R.S. § 4-203.04(J) by a common carrier or A.R.S. § 4-205.04(C)(7) or (9) by a licensed farm winery,
      ii. Beer that is being shipped under A.R.S. § 4-205.08(D) by a licensed microbrewery, or
      iii. Distilled spirits that are being shipped under ARS 4-205.10(C)(5) by a licensed craft distiller.

D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:

1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a ~~domestic~~ farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.

E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.

F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

R19 1 105. Standards for a Non-contiguous Area of a Licensed Premises

A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:

1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the

non-contiguous area in the licensed premises;

2. The non-contiguous area does not violate A.R.S. § 4-207;
3. The non-contiguous area will be a permanent part of the licensed premises;
4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
6. Construction of the business premises in the non-contiguous area will comply with all applicable building and safety standards before spirituous liquor is sold or served in the non-contiguous area; and
7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.

B. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(31).

ARTICLE 2. Licensing

R19 1 206. Criteria for Issuing a Restaurant License

A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2).

B. The following criteria are evidence of an ability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;
3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.

C. The following criteria are evidence of an inability to operate a restaurant as defined ~~at A.R.S. § 4-205.02(H)(2)~~ in A.R.S. § 4-205.02(M)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. More than 60 percent of the public seating area consists of barstools, cocktail tables,

and similar seating indicating the area is used primarily for consumption of spirituous liquor;

2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
4. Proposed business premises contain bar games and equipment.

D. This Section is authorized by A.R.S. § 4-205.02(E).

R19 1 207. Extension of Premises

A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined ~~at A.R.S. § 4-101(26)~~ in A.R.S. § 4-101(31), without first making application for an extension of premises.

B. An application under subsection (A) is required for either a temporary or permanent extension of premises.

C. This Section is authorized by ~~A.R.S. § 4-101(26)~~ A.R.S. § 4-101(31) and 4-203(B).

R19-1-209. Licensing ~~Time-frames~~ Time Frames

A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes ~~time-frames~~ time frames that apply to licenses issued by the Department. The licensing ~~time-frames~~ time frames consist of an administrative completeness review ~~time-frame~~ time frame, a substantive review ~~time-frame~~ time frame, and an overall ~~time-frame~~ time frame as defined in A.R.S. § 41-1072.

B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:

1. Every piece of information required by the form prescribed by the Department is provided;
2. All required materials specified on the form prescribed by the Department are attached to the form;
3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
4. If required, a questionnaire and complete set of fingerprints are attached to the form

from:

a. Every individual who is a controlling person of the business to be licensed,
b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
c. Every individual who owns at least 10 percent of the business to be licensed,
d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
e. The agent and managers of the business to be licensed.

C. Except as provided in subsection (D), the ~~time-frame~~ time frame for the Department to act on a license application is as follows:

1. Administrative completeness review ~~time-frame~~ time frame: 75 days;
2. Substantive review ~~time-frame~~ time frame: 30 days; and
3. Over-all ~~time-frame~~ time frame: 105 days.

D. The ~~time-frame~~ time frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:

1. Administrative completeness review ~~time-frame~~ time frame: 10 days;
2. Substantive review ~~time-frame~~ time frame: 20 days; and
3. Over-all ~~time-frame~~ time frame: 30 days.

E. Administrative completeness review ~~time-frame~~ time frame.

1. The administrative completeness review ~~time-frame~~ time frame begins when the Department receives an application. During the administrative completeness review ~~time-frame~~ time frame, the Department shall determine whether the application is:
   a. Complete,
   b. Contains a technical error, or
   c. Contains a non-technical error.
2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.

4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all ~~time-frames~~ time frames are suspended from the date of the notice referenced under subsection (E)(3) until the date the technical error is corrected.
5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

F. Substantive review ~~time-frame~~ time frame.

1. The substantive review ~~time-frame~~ time frame begins when an application is administratively complete or at the end of the administrative completeness review ~~time-frame~~ time frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review ~~time-frame~~ time frame.
2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the Department. Both the substantive review and over-all ~~time-frames~~ time frames are suspended from the date of the Department's request until the date that the Department receives the additional information.
3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

G. Within the overall ~~time-frame~~ time frame, the Department shall:

1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.

H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial; and

3. The time for appealing the denial.

I. This Section is authorized by A.R.S. §§ 41-1073, ~~4-101(9)~~, 4-201(E), and 4- 202(B).

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

A. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J)~~.~~ ~~or~~ a licensed ~~domestic~~ farm winery that delivers wine under A.R.S. § 4-205.04(C)(9), a common carrier that delivers wine under A.R.S. § 4-203.04(J), or a licensed craft distiller that delivers distilled spirits under A.R.S. § 4-205.10(C)(7) shall ensure that delivery of spirituous liquor:

1. Is made only to an individual who is at least 21 years old,
2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
3. Is made only during the hours of lawful service of spirituous liquor,
4. Is not made to an intoxicated or disorderly individual, and
5. Is not made to the licensed premises of a licensed retailer.

B. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J)~~.~~ ~~or~~ a licensed ~~domestic~~ farm winery that delivers wine under A.R.S. § 4-205.04(C)(9), a common carrier that delivers wine under A.R.S. § 4-203.04(J), or a licensed craft distiller that delivers distilled spirits under A.R.S. § 4-205.10(C)(7) shall refuse to complete a delivery if the licensee or common carrier believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

C. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(J), ~~and~~ 4-205.04(C)(9), and 4-205.10(C)(7).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

A. Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § ~~4-206.01(J)~~ 4-206.01(K), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.

B. This Section is authorized by A.R.S. § 4-244(19).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

A. If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.

B. If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.

C. If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.

D. In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(M), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at ~~A.R.S. § 4-205.02(H)~~ A.R.S. § 4-205.02(M).

E. To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:

1. Vendor invoices. Sorted by vendor by year;
2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;
3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
5. Transaction privilege tax returns. Sorted by month by year;
6. Income tax returns. Sorted by year; and
7. Payroll records. Sorted by pay period by year.

F. If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the

hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.

G. This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

R19-1-320. Practices Permitted by a Producer or Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Participating in a special event.

1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
    a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
    b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
    c. The special event license is not issued to a political committee or organization;
    d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an

on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and

e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.

2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.

D. Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:

1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
2. The item provided has a value less than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
3. The item provided has a value more than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed $100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent

occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or
2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:
    a. All sponsorship proceeds are provided to the unlicensed organization, and
    b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, “concert” is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. §

4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:

1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),

2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;
2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day <u>if consumed on the licensed premises</u>. If the sample provided is for ~~off-sale~~ consumption <u>off the licensed premises</u>, the producer or wholesaler shall ensure the sample is ~~in an unbroken package~~ <u>limited to 72 ounces of beer and two ounces of distilled spirits per person per day</u>; or
3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with

subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:

1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
3. All research participants are of legal drinking age;
4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:

1. Wine. Three liters;
2. Beer. Three gallons; and
3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

Q. Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:

1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and
2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.

R. A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.

S. Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

R19-1-327. ~~Domestic~~ Farm Winery Sampling

A. A licensed ~~domestic~~ farm winery that conducts sampling of the product of the licensed ~~domestic~~ farm winery on the premises of an off-sale retailer or a retailer with off-sale privileges, as allowed by A.R.S. § 4-244.04, shall ensure that:

1. No more than six ounces of the product of the licensed ~~domestic~~ farm winery is served to each consumer each day,
2. An employee of the licensed ~~domestic~~ farm winery serves or supervises the serving of the product of the licensed ~~domestic~~ farm winery, and
3. There is no violation of A.R.S. Title 4 or this Chapter.

B. As provided in A. R. S. § 4-205.04(C)(2), a licensed ~~domestic~~ farm winery may provide samples of the product of the licensed ~~domestic~~ farm winery on the premises of the ~~domestic~~ farm winery.

C. This Section is authorized by A.R.S. § 4-244.04.

ARTICLE 5. REQUIRED RECORDS AND REPORTS

R19-1-501. General Recordkeeping

A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.

B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.

C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.

D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.

E. This Section is authorized by A.R.S. §§ 4-210(A)(7), and 4-119~~, and 4-241(K)~~.

R19-1-504. Record of Delivery of Spirituous Liquor

A. A retail licensee having off-sale privileges, or a licensed ~~domestic~~ farm winery under A.R.S. § 4-205.04(C)(9), common carrier under A.R.S. § 4-203.04(J), or a licensed craft distiller under A.R.S. § 4-205.10(C)(7) that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) ~~or 4-205.04(C)(9)~~ and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee or common carrier shall ensure that the record provides the following information:

1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and
7. Printed name and signature of the individual making the delivery.

B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:

1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

C. A licensed ~~domestic~~ farm winery under A.R.S. § 4-205.04(C)(9), common carrier under A.R.S. § 4-203.04(J), or licensed craft distiller under A.R.S. § 4-205.10(C)(7) that delivers spirituous liquor~~, as authorized by A.R.S. § 4-205.04(C)(9),~~ may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the requirements in subsection (A).

D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(9), or licensed craft distiller that ships distilled spirits under A.R.S. § 4-205.10(C)(7) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9), and ~~(D)~~ 4-205.10(C)(7).

As of November 10, 2023

4-101. Definitions

In this title, unless the context otherwise requires:

1. "Act of violence":

(a) Means an incident that consists of a riot, a fight, an altercation or tumultuous conduct and that meets at least one of the following criteria:

(i) Bodily injuries are sustained by any person and the injuries would be obvious to a reasonable person.

(ii) Is of sufficient intensity as to require the intervention of a peace officer to restore normal order.

(iii) A weapon is brandished, displayed or used.

(iv) A licensee or an employee or contractor of the licensee fails to follow a clear and direct lawful order from a law enforcement officer or a fire marshal.

(b) Does not include the use of nonlethal devices by a peace officer.

2. "Aggrieved party" means a person who resides at, owns or leases property within a one-mile radius of premises proposed to be licensed and who filed a written request with the department to speak in favor of or opposition to the issuance of the license not later than sixty days after filing the application or fifteen days after action by the local governing body, whichever is sooner.

3. "Beer":

(a) Means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, rice, bran or other grain, glucose, sugar or molasses, or any combination of them, and may include, as adjuncts in fermentation, honey, fruit, fruit juice, fruit concentrate, herbs, spices and other food materials.

(b) Includes beer aged in an empty wooden barrel previously used to contain wine or distilled spirits and as such is not considered a dilution or mixture of any other spirituous liquor.

4. "Biometric identity verification device" means a device authorized by the department that instantly verifies the identity and age of a person by an electronic scan of a biometric of the person, through a fingerprint, iris image, facial image or other biometric characteristic, or any combination of these characteristics, that references the person's identity and age against any record described in section 4-241, subsection K, and that meets all of the following conditions:

(a) The authenticity of the record was previously verified by an electronic authentication process.

(b) The identity of and information about the record holder was previously verified through either:

(i) A secondary, electronic authentication process or set of processes using commercially available data, such as a public records query or a knowledge-based authentication quiz.

(ii) Using a state or federal government system of records for digital authentication.

(c) The authenticated record was securely linked to biometrics contemporaneously collected from the verified record holder and is stored in a centralized, highly secured, encrypted biometric database.

5. "Board" means the state liquor board.

6. "Bona fide guest" means:

(a) An individual who is personally familiar to the member, who is personally sponsored by the member and whose presence as a guest is in response to a specific and personal invitation.

(b) In the case of a club that meets the criteria prescribed in paragraph 8, subdivision (a) of this section, a current member of the armed services of the United States who presents proper military identification and any member of a recognized veterans' organization of the United States and of any country allied with the United States during current or past wars or through treaty arrangements.

7. "Broken package" means any container of spirituous liquor on which the United States tax seal has been broken or removed or from which the cap, cork or seal placed on the container by the manufacturer has been removed.

8. "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made only to members, spouses of members, families of members, bona fide guests of members and guests at other events authorized in this title:

(a) A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary that has been chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes and that has, as the owner, lessee or occupant, operated an establishment for that purpose in this state.

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization that has, as the owner, lessee or occupant, operated an establishment for fraternal purposes in this state. An American national fraternal organization as used in this subdivision shall actively operate in at least thirty-six states or have been in active continuous existence for at least twenty years.

(c) A hall or building association of a local unit mentioned in subdivisions (a) and (b) of this paragraph of which all of the capital stock is owned by the local unit or the members and that operates the clubroom facilities of the local unit.

(d) A golf club that has more than fifty bona fide members and that owns, maintains or operates a bona fide golf links together with a clubhouse.

(e) A social club that has more than one hundred bona fide members who are actual residents of the county in which it is located, that owns, maintains or operates club quarters, that is authorized and incorporated to operate as a nonprofit club under the laws of this state, and that has been continuously incorporated and operating for a period of at least one year. The club shall have had, during this one-year period, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club's membership shall consist of bona fide dues-paying members paying dues of at least $6 per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club, and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one percent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than one hundred eighty days before the filing of the application. The club shall qualify for exemption from the payment of state income taxes under title 43. It is the intent of this subdivision that a license shall not be granted to a club that is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club.

(f) An airline club operated by or for airlines that are certificated by the United States government and that maintain or operate club quarters located at airports with international status.

9. "Company" or "association", when used in reference to a corporation, includes successors or assigns.

10. "Control" means the power to direct or cause the direction of the management and policies of an applicant or licensee, whether through the ownership of voting securities or a partnership interest, by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent or more of the outstanding voting securities of the applicant or licensee or to control in any manner the election of one or more of the directors of the applicant or licensee. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten percent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of an officer, partner, employee or agent of the person or a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant or licensee holds a beneficial interest in ten percent or more of the liabilities of the licensee. The presumptions in this paragraph regarding control are rebuttable.

11. "Controlling person" means a person directly or indirectly possessing control of an applicant or licensee.

12. "Craft distiller" means a distiller in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.10.

13. "Craft producer" means a licensed farm winery, a licensed microbrewery or a licensed craft distiller.

14. "Department" means the department of liquor licenses and control.

15. "Director" means the director of the department of liquor licenses and control.

16. "Distilled spirits" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, fruits preserved in ardent spirits, and any alcoholic mixture or preparation, whether patented or otherwise, that may in sufficient quantities produce intoxication.

17. "Employee" means any person who performs any service on licensed premises on a full-time, part-time or contract basis with consent of the licensee, whether or not the person is denominated an employee or independent contractor or otherwise. Employee does not include a person who is exclusively on the premises for musical or vocal performances, for repair or maintenance of the premises or for the delivery of goods to the licensee.

18. "Farm winery" means a winery in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.04.

19. "Government license" means a license to serve and sell spirituous liquor on specified premises available only to a state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona coliseum and exposition center on application by the governing body of the state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona exposition and state fair board.

20. "Legal drinking age" means twenty-one years of age or older.

21. "License" means a license or an interim retail permit issued pursuant to this title.

22. "Licensee" means a person who has been issued a license or an interim retail permit pursuant to this title or a special event licensee.

23. "License fees" means fees collected for license issuance, license application, license renewal, interim permit issuance and license transfer between persons or locations.

24. "Manager" means a natural person who meets the standards required of licensees and who has authority to organize, direct, carry on, control or otherwise operate a licensed business on a temporary or full-time basis.

25. "Menu food item" means a food item from a regular menu, special menu or happy hour menu that is prepared by the licensee or the licensee's employee.

26. "Microbrewery" means a brewery in the United States or in a territory or possession of the United States that meets the requirements of section 4-205.08.

27. "Mixed cocktail":

(a) Means any drink combined at the premises of an authorized licensee that contains a spirituous liquor and that is combined with at least one other ingredient, which may include additional spirituous liquors, fruit juice, vegetable juice, mixers, cream, flavored syrup or other ingredients except water, and that when combined contains more than one-half of one percent of alcohol by volume.

(b) Does not include a drink sold in an original manufacturer's packaging or any drink poured from an original manufacturer's package without the addition of all of the cocktail's other ingredients at the premises of the licensed bar, liquor store or restaurant.

28. "Off-sale retailer" means any person that operates a bona fide regularly established retail liquor store that sells spirituous liquors, wines and beer and any established retail store that sells commodities other than spirituous liquors and that is engaged in the sale of spirituous liquors only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

29. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

30. "Permanent occupancy" means the maximum occupancy of the building or facility as set by the office of the state fire marshal for the jurisdiction in which the building or facility is located.

31. "Person" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.

32. "Premises" or "licensed premises":

(a) Means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license.

(b) Includes a patio that is not contiguous to the remainder of the premises or licensed premises if the patio is separated from the remainder of the premises or licensed premises by a public or private walkway or driveway not to exceed thirty feet, subject to rules the director may adopt to establish criteria for noncontiguous premises.

33. "Registered alcohol delivery contractor":

(a) Means a person who delivers spirituous liquor to a consumer on behalf of a bar, beer and wine bar, liquor store, beer and wine store or restaurant.

(b) Does not include:

(i) A motor carrier as defined in section 28-5201.

(ii) An independent contractor, a subcontractor of an independent contractor, an employee of an independent contractor or an employee of a subcontractor as provided in section 4-203, subsection J.

34. "Registered mail" includes certified mail.

35. "Registered retail agent" means any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of the person and other retail licensees.

36. "Repeated acts of violence" means:

(a) For licensed premises with a permanent occupancy of two hundred or fewer persons, two or more acts of violence occurring within seven days or three or more acts of violence occurring within thirty days.

(b) For licensed premises with a permanent occupancy of more than two hundred but not more than four hundred persons, four or more acts of violence within thirty days.

(c) For licensed premises with a permanent occupancy of more than four hundred but not more than six hundred fifty persons, five or more acts of violence within thirty days.

(d) For licensed premises with a permanent occupancy of more than six hundred fifty but not more than one thousand fifty persons, six or more acts of violence within thirty days.

(e) For licensed premises with a permanent occupancy of more than one thousand fifty persons, seven or more acts of violence within thirty days.

37. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell and trafficking in.

38. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, that produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent of alcohol by volume.

39. "Tamperproof sealed" means designed to prevent consumption without the removal of a tamperproof cap, seal, cork or closure that has a device, mechanism or adhesive that clearly shows whether a container has been opened.

40. "Vehicle" means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

41. "Vending machine" means a machine that dispenses merchandise through the means of coin, token, credit card or other nonpersonal means of accepting payment for merchandise received.

42. "Veteran" means a person who has served in the United States air force, army, navy, marine corps or coast guard, as an active nurse in the services of the American red cross, in the army and navy nurse corps

in time of war, or in any expedition of the armed forces of the United States, and who has received a discharge other than dishonorable.

43. "Voting security" means any security presently entitling the owner or holder of the security to vote for the election of directors of an applicant or a licensee.

44. "Wine" means the product obtained by the fermentation of grapes, other agricultural products containing natural or added sugar or cider or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four percent of alcohol by volume.

4-111. State liquor board; department of liquor licenses and control; members; director; appointment and removal

A. The department of liquor licenses and control is established consisting of the state liquor board and the office of director of the department.

B. The board consists of seven members to be appointed by the governor pursuant to section 38-211. Five of the members of the board shall not be financially interested directly or indirectly in business licensed to deal with spirituous liquors, one of whom shall be a current elected municipal official. Two members shall currently be engaged in business in the spirituous liquor industry or have been engaged in the past in business in the spirituous liquor industry, at least one of whom shall currently be a retail licensee or employee of a retail licensee. One member shall be a member of a neighborhood association recognized by a county, city or town. The term of members is three years. Members' terms expire on the third Monday in January of the appropriate year. The governor may remove any member of the board for cause. A member may not represent another licensee before the board for a period of one year after the conclusion of the member's service on the board.

C. The board shall annually elect from its membership a chairperson and vice chairperson. A majority of the board constitutes a quorum and a concurrence of a majority of a quorum is sufficient for taking any action. If there are unfilled positions on the board, a majority of those persons appointed and serving on the board constitutes a quorum.

D. The chairperson may designate panels of not less than three members. A panel may take any action that the board is authorized to take pursuant to this title. Such action includes the ability to hold hearings and hear appeals of administrative disciplinary proceedings of licenses issued pursuant to this chapter. A panel shall not, however, adopt rules as provided in section 4-112, subsection A, paragraph 2. The chairperson may from time to time add additional members or remove members from a panel. A majority of a panel may take final action on hearings and appeals of administrative disciplinary proceedings concerning licenses issued pursuant to this chapter.

E. Members of the board are entitled to receive compensation at the rate of $50 per day while engaged in the business of the board.

F. A person shall not be appointed to serve on the board unless the person has been a resident of this state for not less than five years before the person's appointment. Not more than four members may be of the same political party. Persons eligible for appointment shall have a continuous recorded registration pursuant to title 16, chapter 1 with the same political party or as an independent for at least two years immediately preceding appointment. Not more than three members may be appointed from the same county.

G. The governor shall appoint the director, pursuant to section 38-211, who shall be a qualified elector of the state and experienced in administrative matters and enforcement procedures. The director shall serve at the pleasure of the governor.

H. The director is entitled to receive a salary as determined pursuant to section 38-611.

4-112. Powers and duties of board and director of department of liquor licenses and control; investigations; county and municipal regulation; definition

A. The board shall:

1. Grant and deny applications in accordance with the provisions of this title.

2. Adopt rules in order to carry out the provisions of this section.

3. Hear appeals and hold hearings as provided in this section.

B. Except as provided in subsection A of this section, the director shall administer the provisions of this title, including:

1. Adopting rules:

(a) For carrying out the provisions of this title.

(b) For the proper conduct of the business to be carried on under each specific type of spirituous liquor license.

(c) To enable and assist state officials and political subdivisions to collect taxes levied or imposed in connection with spirituous liquors.

(d) For the issuance and revocation of certificates of registration of retail agents, including provisions governing the shipping, storage and delivery of spirituous liquors by registered retail agents, the keeping of records and the filing of reports by registered retail agents.

(e) To establish requirements for licensees under section 4-209, subsection B, paragraph 12.

2. Subject to title 41, chapter 4, article 4, employing necessary personnel and fixing their compensation pursuant to section 38-611.

3. Keeping an index record that is a public record open to public inspection and that contains the name and address of each licensee and the name and address of any person having an interest, either legal or equitable, in each license as shown by any written document that is placed on file in the office of the board.

4. Providing the board with supplies and personnel as directed by the board.

5. Responding in writing to any law enforcement agency that submits an investigative report to the department relating to a violation of this title, setting forth what action, if any, the department has taken or intends to take on the report and, if the report lacks sufficient information or is otherwise defective for use by the department, what the agency must do to remedy the report.

6. Taking steps that are necessary to maintain effective liaison with the department of public safety and all local law enforcement agencies in the enforcement of this title including the laws of this state against the consumption of spirituous liquor by persons under the legal drinking age.

7. Providing training to law enforcement agencies in the proper investigation and reporting of violations of this title.

C. The director shall establish within the department a separate investigations unit that has as its sole responsibility the investigation of compliance with this title including the investigation of licensees alleged to have sold or distributed spirituous liquor in any form to persons under the legal drinking age. Investigations conducted by this unit may include covert undercover investigations.

D. All employees of the department of liquor licenses and control, except members of the state liquor board and the director of the department, shall be employed by the department in the manner prescribed by the department of administration.

E. The director may enter into a contract or agreement with any public agency for any joint or cooperative action as provided for by title 11, chapter 7, article 3.

F. The board or the director may take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken and require by subpoena duces tecum the production of books, papers and other documents that are necessary for the enforcement of this title. Proceedings held during the course of a confidential investigation are exempt from title 38, chapter 3, article 3.1. If a person refuses to obey a subpoena or fails to answer questions as provided by this subsection, the board or the director may apply to the superior court in the manner provided in section 12-2212. The board or director may serve subpoenas by personal service or certified mail, return receipt requested.

G. The director may:

1. Examine books, records and papers of a licensee.

2. Require applicants, licensees, employees who serve, sell or furnish spirituous liquors to retail customers, managers and managing agents to take training courses approved by the director in spirituous liquor handling and spirituous liquor laws and rules. The director shall adopt rules that set standards for approving training courses. The director may suspend or revoke the previous approval of trainers who do not adhere to course administration requirements prescribed by the department or who do not meet course standards. If the director suspends or revokes the previous approval of a trainer pursuant to this paragraph, the trainer may appeal to the board pursuant to section 4-210.02 as if the suspension or revocation was a sanction against a licensee. After January 1, 2019, the rules for on-sale retailer basic training and on-sale retailer management training shall include security procedures for security personnel assigned to monitor admission of patrons, interaction with patrons, calls to law enforcement and strategies for use of force and for the use of de-escalation techniques. If the retailer uses a registered security guard, the retailer shall attempt to verify the validity and status of the security guard's registration certificate. The department's licensed investigators may participate and receive compensation as lecturers at approved training courses within this state's jurisdiction that are conducted by other entities but shall not participate in in-house training programs for licensees.

3. Delegate to employees of the department authority to exercise powers of the director in order to administer the department.

4. Regulate signs that advertise a spirituous liquor product at licensed retail premises.

5. Cause to be removed from the marketplace spirituous liquor that may be contaminated.

6. Regulate the age and conduct of erotic entertainers at licensed premises. The age limitation governing these erotic entertainers may be different from other employees of the licensee.

7. Issue and enforce cease and desist orders against any person or entity that sells beer, wine or spirituous liquor without an appropriate license or permit.

8. Confiscate wines carrying a label including a reference to Arizona or any Arizona city, town or place unless at least seventy-five percent by volume of the grapes used in making the wine were grown in this state.

9. Accept and expend private grants of monies, gifts and devises for conducting educational programs for parents and students on the repercussions of underage alcohol consumption. State general fund monies shall not be expended for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are nonlapsing and do not revert to the state general fund at the close of the fiscal year.

10. Procure fingerprint scanning equipment and provide fingerprint services to license applicants and licensees. The department may charge a fee for providing these services.

11. Accept electronic signatures on all department and licensee forms and documents and applications. The director may adopt requirements that would require facsimile signatures to be followed by original signatures within a specified time period.

12. For use after January 1, 2019, adopt a form that is required to be used by all on-sale retailers that hire or designate employees to serve as security personnel. All security personnel job applicants and employees for on-sale retailers shall complete the form, which shall be notarized, before assignment to a security role. The form shall require the applicant or other person to disclose whether in the previous five years the person has been a registered sex offender or pled guilty, pled no contest or been convicted of any offense that constitutes assault, homicide, domestic violence, sexual misconduct, misconduct involving a deadly weapon or a drug violation that constitutes the illegal sale, manufacturing, cultivation or transportation for sale of marijuana, a dangerous drug or a narcotic drug. A licensee may not hire or assign to a role as security personnel any person who fails to complete the form or if the form discloses one of the listed offenses within the previous five years. The licensee shall maintain on file affidavits of all security personnel hired or designated by the licensee. The form may not be required for a peace officer who is certified by the Arizona peace officer standards and training board or other security personnel who hold a current security guard registration certificate or armed security guard registration certificate issued pursuant to title 32, chapter 26.

H. A county or municipality may enact and enforce ordinances regulating the age and conduct of erotic entertainers at licensed premises in a manner at least as restrictive as rules adopted by the director.

I. For the purposes of this section, "security personnel" includes individuals whose primary assigned responsibilities include the security and safety of employees and patrons of an on-sale retailer premises. Security personnel does not include a person whose primary responsibilities include checking the identification cards of patrons to determine compliance with age requirements.

4-113. Enforcement officer; credentials; peace officer status

Each enforcement officer within the department who is designated by the director shall, for identification purposes, have credentials signed by the director and countersigned by the governor and, when bearing these credentials, has the powers and duties of a peace officer.

4-114. Interest in business prohibited; forfeiture of office

A. Except for a member designated by the governor to be appointed from the industry, no member of the board or the director or any employee of the department shall be financially interested directly or indirectly in any business licensed to deal in spirituous liquors.

B. Violation of this section by the director or any member of the board shall be deemed a resignation by such person, and a violation by an employee of the department shall result in his immediate dismissal.

4-115. Disposition of fees and penalties

A. Unless otherwise provided, all license, registration and other fees and all penalties collected pursuant to this title shall be deposited, pursuant to sections 35-146 and 35-147, in the liquor licenses fund established by section 4-120, except that monies in excess of the annual legislative appropriation to the department shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

B. Two-thirds of the license fees collected pursuant to this title in each county shall be deposited, pursuant to sections 35-146 and 35-147, in the liquor licenses fund established by section 4-120, except that monies in excess of the annual legislative appropriation to the department shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. One-third of the license fees collected in each county with a population of five hundred thousand persons or less as shown by the most recent United States decennial census shall be paid monthly by the director to the county treasurer of that county. For each county with a population of more than five hundred thousand persons as shown by the most recent United States decennial census, the director shall pay monthly to the county treasurer from the remaining one-third of the license fees three thousand dollars for each new license issued for premises in unincorporated areas of that county but not more than one hundred fifty thousand dollars annually. The remainder of the one-third of the license fees collected for premises in each county with a population of more than five hundred thousand persons as shown by the most recent United States decennial census shall be deposited in the state general fund.

4-116. Receipts from club licenses and applications

Notwithstanding any provision of law to the contrary, all receipts derived from club licenses and applications therefor are appropriated to the department of economic security for buildings, equipment or other capital investments. All revenue so received by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the economic security capital investments fund.

4-116.01. Receipts from sampling privilege and growler permits

Notwithstanding any other law, all receipts derived from sampling privilege and growler permit applications are appropriated to the department. The department shall deposit monies received pursuant to this section in the liquor licenses fund established by section 4-120. The amount deposited into the liquor licenses fund pursuant to this section shall be without regard to the amount appropriated to the department by the legislature.

4-118. Inspection of premises

The director, the director's agents and any peace officer may, in enforcing the provisions of this title, visit during the hours in which the premises are occupied and inspect the premises of a licensee.

4-119. Records

A. A licensee shall keep records of licensed business activity in a manner and location and for such duration as prescribed by the director. The rules of the director shall require that each on-sale retailer maintain at the licensed premises a copy of all required records including a current log of all persons employed at the licensed premises including each employee's full legal name, date of birth, address and responsibilities. A licensee shall retain records for two years.

B. Records that contain proprietary information, including confidential formulas, production processes and business information filed with the United States alcohol and tobacco tax and trade bureau, is not subject to inspection.

4-120. Liquor licenses fund; exemption

A. The liquor licenses fund is established consisting of monies deposited pursuant to sections 4-115 and 4-116.01. The department of liquor licenses and control shall administer the fund. The amount deposited in the fund each year shall not exceed the amount appropriated by the legislature.

B. Monies in the fund are subject to legislative appropriation.

C. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations, except that any monies remaining in the fund in excess of seven hundred thousand dollars at the end of each fiscal year revert to the state general fund.

4-201. Licensing; application procedure in city, town or county; burden of proof

A. A person desiring a license to manufacture, sell or deal in spirituous liquors shall apply to the director on a form prescribed and furnished by the director.

B. A person who files an application for a license within an incorporated city or town shall file the application with the director. The director shall remit the application to the city or town clerk. The city or town clerk shall immediately file a copy of the application in the clerk's office and post a copy for a period of twenty days in a conspicuous place on the front of the premises where the business is proposed to be conducted, with a statement requiring any natural person who is a bona fide resident residing or owning or leasing property within a one-mile radius from the premises proposed to be licensed, and who is in favor of or opposed to the issuance of the license, to file written arguments in favor of or opposed to the issuance of the license with the clerk within twenty days after the date of posting. The posting shall be limited to a copy of the license application and shall not contain any attachments filed with the application. The written argument shall contain the natural person's complete name, street address or post office box address and written or electronic signature. If the written arguments are filed by a person on behalf of a corporation or other legal entity or association, the written arguments must be accompanied by a copy of the entity's organizing document, a designation of the office or position that the person holds within the organization and a copy of the written appointment of the person to speak on behalf of the organization. If the written arguments are filed by a neighborhood association, block watch or other unincorporated association, written arguments must be accompanied by a letter of authority designating that person as a spokesperson. The posting shall contain substantially the following:

Notice

A hearing on a liquor license application shall be held before the local governing body at the following date, time and place:

(Insert date, time and address)

The local governing body will recommend to the state liquor board whether the board should grant or deny the license. The state liquor board may hold a hearing to consider the recommendation of the local governing body. Any person residing or owning or leasing property within a one-mile radius may contact the state liquor board in writing to register as a protestor. To request information regarding procedures before the board and notice of any board hearings regarding this application, contact the state liquor board at:

(Insert address and telephone number).

No arguments shall be filed or accepted by the city or town clerk thereafter. This subsection does not prevent a bona fide resident residing or owning or leasing property within a one-mile radius from the premises proposed to be licensed from testifying in favor of or in opposition to the issuance of the license, regardless of whether or not the person is a user or nonuser of spirituous liquor.

C. The governing body of the city, town or county shall then enter an order recommending approval or disapproval within sixty days after the filing of the application and shall file a certified copy of the order with the director. If the recommendation is for disapproval, a statement of the specific reasons containing a summary of the testimony or other evidence supporting the recommendation for disapproval shall be attached to the order. All petitions submitted to the governing body within the twenty-day period for filing protests shall be transmitted to the director with the certified copy of the order.

D. If a person applies for a license to conduct a spirituous liquor business outside an incorporated city or town, the director shall remit the application to the clerk of the board of supervisors of the county where the applicant desires to do business, and the proceedings by the clerk and board of supervisors shall be as provided for cities and towns.

E. On receipt of an application for a spirituous liquor license, the director shall set the application for a hearing by the board on a date following the expiration of the time fixed for the submitting of the certified order by the governing body of the city or town or the board of supervisors. If the city or town or the county recommends approval of the license a hearing is not required unless the director, the board or any aggrieved party requests a hearing on the grounds that the public convenience and the best interest of the community will not be substantially served if a license is issued. Any natural person residing or owning or leasing property within a one-mile radius of the proposed location may file a written protest with the director on a form prescribed by the director not later than fifteen calendar days after action by the local governing body or sixty days after the filing of the application, whichever is sooner. The director shall allow protests to be submitted by e-mail. The written argument shall contain the natural person's complete name, street address or post office box address and written or electronic signature. If the written arguments are filed by a person on behalf of a corporation or other legal entity or association, the written arguments must be accompanied by a copy of the entity's organizing document, a designation of the office or position that the person holds within the organization and a copy of the written appointment of the person to speak on behalf of the organization. If the written arguments are filed by a neighborhood association, block watch or other unincorporated association, written arguments must be accompanied by a letter of authority designating that person as a spokesperson. If no hearing is requested by the director, the board or any aggrieved party, the application may be approved by the director. If the recommendation is for disapproval of an application, the board shall hold a hearing. If the city, town or county recommends approval of the license pursuant to subsection C of this section or makes no recommendation, the director may cancel the hearing and issue the license unless the board or any aggrieved party requests a hearing. If the reason for the protest is clearly removed or deemed satisfied by the director, the board shall cancel the hearing. If the board cancels the hearing, the department may administratively issue an order without the applicant licensee or other parties present. The certified order, the reasons contained in the order and the summary of the testimony and other evidence supporting the city, town or county disapproval of the recommendation shall be read into the record before the board and shall be considered as evidence by the board. The board shall consider the certified order together with other facts and a report of the director relating to the qualifications of the applicant. If the governing body of the city or town or the board of supervisors fails to return to the director, as provided in subsections C and D of this section, its order of disapproval, no hearing is required. An application shall be approved or disapproved within one hundred five days after the filing of the application. If, after a hearing by the board where a license has been approved, a formal written order is not entered within thirty days after the hearing, the decision of the board is deemed entered on the thirtieth day after the hearing.

F. A hearing may be conducted by an administrative law judge at the request of the board to make findings and recommendations for use by the board in determining whether to grant or deny a license. The administrative law judge shall submit a report of findings to the board within twenty days after the hearing. The board may affirm, reverse, adopt, modify, supplement, amend or reject the administrative law judge's report in whole or in part.

G. Except for a person-to-person transfer of a transferable license for use at the same location and as otherwise provided in section 4-203, subsection A, in all proceedings before the governing body of a city or town, the board of supervisors of a county or the board, the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license.

H. In order to prevent the proliferation of spirituous liquor licenses the department may deny a license to a business on the grounds that the business is inappropriate for the sale of spirituous liquor. An inappropriate business is one that cannot clearly demonstrate that the sale of spirituous liquor is directly connected to its primary purpose and that the sale of spirituous liquor is not merely incidental to its primary purpose.

I. The board shall adopt, by rule, guidelines that state criteria for use in determining whether the public convenience requires and the best interest of the community will be substantially served by the issuance or transfer of a liquor license at the location applied for. These guidelines shall govern the recommendations and other approvals of the department and the local governing authority.

J. If the governing body of a city or town recommends disapproval by a two-thirds vote of the members present and voting on an application for the issuance or transfer of a spirituous liquor license that, if approved, would result in a license being issued at a location either having no license or having a license of a different series, the application shall not be approved unless the board decides to approve the application by a two-thirds vote of the members present and voting.

4-201.01. Extending time limits

A. In the event any decision, hearing, or other action by the department, including the board, is alleged to be untimely, an aggrieved person may file a demand that the department take action within fifteen days. In the event the department does not then act, the aggrieved person may file an action in superior court seeking an order requiring the department to act.

B. Notwithstanding the provisions of subsection A of this section, if the director determines that it is in the public interest to extend the time limits for action by the department, including the board, in connection with a license issuance or transfer or acquisition of control, the director may extend the time limits by up to one hundred five days. The director may further extend the time limits as the director deems necessary if special circumstances such as litigation affecting the ownership of the license, bankruptcy, probate or other circumstances deemed meritorious by the director prevent the department from completing its action or the director requires additional time to complete an investigation of an applicant's qualifications for licensure pursuant to section 4-202. In no event shall the director extend the time limits more than one year except as necessary in the event of litigation affecting the ownership of the license, bankruptcy or probate or except on a written request of the applicant or licensee that the director determines is supported by good cause.

4-202. Qualifications of licensees; application; background information; prior convictions

A. Every spirituous liquor licensee, other than a club licensee, a corporation licensee, a limited liability company licensee or an out-of-state licensee, shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a partnership,

each partner shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state, except that for a limited partnership an individual general partner is required to meet the qualifications of an individual licensee, a corporate general partner is required to meet the qualifications of a corporate licensee and a limited partner is not required to be a citizen of the United States, a legal resident alien or a bona fide resident of this state. If a corporation or limited liability company, it shall be a domestic corporation or a foreign corporation or a limited liability company that has qualified to do business in this state. A person shall hold a club license, corporation license, limited liability company license, partnership license or out-of-state license through an agent who shall be a natural person and meet the qualifications for licensure, except that an agent for an out-of-state license as specified in section 4-209, subsection B, paragraph 2 need not be a resident of this state. Notice of change of agent shall be filed with the director within thirty days after a change. For the purposes of this subsection, "agent" means a person who is designated by an applicant or licensee to receive communications from the department and to file documents and sign documents for filing with the department on behalf of the applicant or licensee.

B. A person shall file an application for a spirituous liquor license on a form prescribed by the director. The director shall require any applicant and may require any controlling person, other than a bank or licensed lending institution, to furnish background information and to submit a full set of fingerprints to the department. The department of liquor licenses and control 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. If a license is issued or transferred when fees are waived pursuant to section 4-209, subsection I, no additional background check is required if the person has already completed a background investigation in connection with the continuing business.

C. Each applicant or licensee shall designate a person who shall be responsible for managing the premises. The designated person may be the applicant or licensee. The manager shall be a natural person and shall meet all the requirements for licensure. The same person may be designated as the manager for more than one premises owned by the same licensee. Notice of a change in the manager shall be filed with the director within thirty days after a change.

D. No license shall be issued to any person who, within one year before application, has had a license revoked. The director shall not issue an interim permit or restaurant license to any person who, at the same location, has been required to surrender a restaurant license pursuant to section 4-205.02, subsection D or section 4-213 until twelve months after the date of the surrender. No license shall be issued to or renewed for any person who, within five years before application, has been convicted of a felony, or convicted of an offense in another state that would be a felony in this state. For a conviction of a corporation to be a basis for a denial under this section, the limitations that are provided in section 4-210, subsection A, paragraph 8 shall apply. No corporation shall have its annual license issued or renewed unless it has on file with the department a list of its officers and directors and any stockholders who own ten percent or more of the corporation.

E. The department of liquor licenses and control shall receive criminal history record information from the department of public safety for applicants for employment with the department of liquor licenses and control or for a license issued by the department of liquor licenses and control.

F. The department shall not issue or renew a license for any person who on the request of the director fails to provide the department with complete financial disclosure statements indicating all financial holdings of the person or any other person in or relating to the license applied for, including all cosignatories on financial holdings, land, buildings, leases or other forms of indebtedness that the applicant has incurred or will incur.

4-203. Licenses; issuance; transfer; reversion to state; tastings; rules; off-sale privileges; order requirements

A. A spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of wholesaler, producer, government or club licenses, that the public convenience requires and that the best interest of the community will be substantially served by the issuance. If an application is filed for the issuance of a transferable or nontransferable license, other than for a craft distiller license, a microbrewery license or a farm winery license, for a location that on the date the application is filed has a valid license of the same series, or in the case of a restaurant license application filed for a location with a valid hotel-motel license, issued at that location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. The presumption may be rebutted by competent contrary evidence. The presumption shall not apply once the licensed location has not been in use for more than one hundred eighty days and the presumption shall not extend to the personal qualifications of the applicant.

B. The license shall be to manufacture, sell or deal in spirituous liquors only at the place and in the manner provided in the license. A separate license shall be issued for each specific business, and each shall specify:

1. The particular spirituous liquors that the licensee is authorized to manufacture, sell or deal in.

2. The place of business for which issued.

3. The purpose for which the liquors may be manufactured or sold.

C. A spirituous liquor license issued to a bar, a liquor store or a beer and wine bar shall be transferable as to any permitted location within the same county, if the transfer meets the requirements of an original application. A spirituous liquor license may be transferred to a person qualified to be a licensee, if the transfer is pursuant to either judicial decree, nonjudicial foreclosure of a legal or equitable lien, including security interests held by financial institutions pursuant to section 4-205.05, a sale of the license, a bona fide sale of the entire business and stock in trade, or other bona fide transactions that are provided for by rule. Any change in ownership of the business of a licensee, directly or indirectly, as defined by rule is deemed a transfer, except that there is no transfer if a new artificial person is added to the ownership of a licensee's business but the controlling persons remain identical to the controlling persons that have been previously disclosed to the director as part of the licensee's existing ownership.

D. All applications for a new license pursuant to section 4-201 or for a transfer to a new location pursuant to subsection C of this section shall be filed with and determined by the director, except when the governing body of the city or town or the board of supervisors receiving an application pursuant to section 4-201 orders disapproval of the application or when the director, the state liquor board or any aggrieved party requests a hearing. The application shall then be presented to the state liquor board, and the new license or transfer shall not become effective unless approved by the state liquor board.

E. A person who assigns, surrenders, transfers or sells control of a liquor license or business that has a spirituous liquor license shall notify the director within thirty business days after the assignment, surrender, transfer or sale. A spirituous liquor license shall not be leased or subleased. A concession agreement entered into under section 4-205.03 is not considered a lease or sublease in violation of this section.

F. If a person other than those persons originally licensed acquires control over a license or licensee, the person shall file notice of the acquisition with the director within thirty business days after the acquisition of control and a list of officers, directors or other controlling persons on a form prescribed by the director.

There is no acquisition of control if a new person is added to the ownership of a licensee's business but the controlling persons remain identical to the controlling persons that have been previously disclosed to the director as part of the licensee's existing ownership. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed by this title. On request, the director shall conduct a preinvestigation before the assignment, sale or transfer of control of a license or licensee, the reasonable costs of which, not more than $1,000, shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this title are met. On receipt of notice of an acquisition of control or request of a preinvestigation, the director, within fifteen days after receipt, shall forward the notice of the acquisition of control to the local governing body of the city or town, if the licensed premises is in an incorporated area, or the county, if the licensed premises is in an unincorporated area. The director shall include in the notice to the local governing body written instructions on how the local governing body may examine, free of charge, the results of the department's investigation regarding the capabilities, qualifications and reliability of all officers, directors or other controlling persons listed in the application for acquisition of control. The local governing body, or the governing body's designee, may provide the director with a recommendation, either in favor of or against the acquisition of control, within sixty days after the director mails the notice, but section 4-201 does not apply to the acquisition of control provided for in this section. A local governing body may charge not more than one fee, regardless of the number of licenses held by the applicant, for review of one or more applications for acquisition of control submitted to the department at the same time and for the same entity. Within one hundred five days after filing the notice of the acquisition of control, the director shall determine whether the applicant is qualified, capable and reliable for licensure. A recommendation by the local governing body, or the governing body's designee, against the acquisition of control or denial by the director shall be set for a hearing before the board. The person who has acquired control of a license or licensee has the burden of an original application at the hearing, and the board shall make its determination pursuant to section 4-202 and this section with respect to capability, reliability and qualification.

G. A licensee who holds a license in nonuse status for more than five months shall be required to pay a $100 surcharge for each month thereafter. The surcharge shall be paid at the time the license is returned to active status. A license automatically reverts to the state after being held in continuous nonuse for more than thirty-six months. The director may waive the surcharge and may extend the time period provided in this subsection for good cause if the licensee files a written request for an extension of time to place the license in active status before the date of the automatic reversion. Unless the reverted license of the licensee has been subsequently reissued, the director shall relieve a licensee or its legal representative from a prior license reversion under this section if the request for such relief is filed in writing not later than two years after the date of reversion. A license shall not be deemed to have gone into active status if the license is transferred to a location that at the time of or immediately before the transfer had an active license of the same type, unless the licenses are under common ownership or control.

H. A restructuring of a licensee's business is not an acquisition of control, a transfer of a spirituous liquor license or the issuance of a new spirituous liquor license if both of the following apply:

1. All of the controlling persons of the licensee and the new business entity are identical.

2. There is no change in control or beneficial ownership.

I. If subsection H of this section applies, the licensee's history of violations of this title is the history of the new business entity. The director may prescribe a form and shall require the applicant to provide the necessary information to ensure compliance with this subsection and subsections F and G of this section.

J. Notwithstanding subsection B of this section, the holder of a retail license in this state having off-sale privileges, except a bar, beer and wine bar or restaurant licensee, may take orders by telephone, mail, fax or catalog, through the internet or by other means for the sale and delivery of spirituous liquor off of the

licensed premises to a person in this state in connection with the sale of spirituous liquor. Notwithstanding the definition of "sell" prescribed in section 4-101, the placement of an order and payment pursuant to this section is not a sale until delivery has been made. At the time that the order is placed, the licensee shall inform the purchaser that state law requires a purchaser of spirituous liquor to be at least twenty-one years of age and that the person accepting delivery of the spirituous liquor is required to comply with this state's age identification requirements as prescribed in section 4-241, subsections A and K. The licensee may maintain a delivery service and may contract with one or more independent contractors, that may also contract with one or more independent contractors, or may contract with a common carrier for delivery of spirituous liquor if the spirituous liquor is loaded for delivery at the premises of the retail licensee in this state and delivered in this state. Except if the person delivering the order has personally retrieved and bagged or otherwise packaged the container of spirituous liquor for delivery and the licensee records, or requires to be recorded electronically, the identification information for each delivery, all containers of spirituous liquor delivered pursuant to this subsection shall be conspicuously labeled with the words "contains alcohol, signature of person who is twenty-one years of age or older is required for delivery". The licensee is responsible for any violation of this title or any rule adopted pursuant to this title that is committed in connection with any sale or delivery of spirituous liquor. Delivery must be made by an employee of the licensee or other authorized person as provided by this section who is at least twenty-one years of age to a customer who is at least twenty-one years of age and who displays an identification at the time of delivery that complies with section 4-241, subsection K. The retail licensee shall collect payment for the full price of the spirituous liquor from the purchaser before the product leaves the licensed premises. The director shall adopt rules that set operational limits for the delivery of spirituous liquors by the holder of a retail license having off-sale privileges. With respect to the delivery of spirituous liquor, for any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's employee or other authorized person, the mitigation provision of section 4-210, subsection G applies, with the exception of the training requirement. For the purposes of this subsection and notwithstanding the definition of "sell" prescribed in section 4-101, section 4-241, subsections A and K apply only at the time of delivery. For the purposes of compliance with this subsection, an independent contractor, a subcontractor of an independent contractor, the employee of an independent contractor or the employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee.

K. Except as provided in subsection J of this section, Arizona licensees may transport spirituous liquors for themselves in vehicles owned, leased or rented by the licensee.

L. Notwithstanding subsection B of this section, an off-sale retail licensee may provide consumer tasting of wines off of the licensed premises subject to all applicable provisions of section 4-206.01.

M. The director may adopt reasonable rules to protect the public interest and prevent abuse by licensees of the activities permitted such licensees by subsections J and L of this section.

N. Failure to pay any surcharge prescribed by subsection G of this section or failure to report the period of nonuse of a license shall be grounds for revocation of the license or grounds for any other sanction provided by this title. The director may consider extenuating circumstances if control of the license is acquired by another party in determining whether or not to impose any sanctions under this subsection.

O. If a licensed location has not been in use for three years, the location must requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when the director deems that the nonuse of the location was due to circumstances beyond the licensee's control and an extension of time has been granted pursuant to subsection G of this section.

P. If the licensee's interest is forfeited pursuant to section 4-210, subsection L, the location shall requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when a bona fide lienholder demonstrates mitigation pursuant to section 4-210, subsection K.

Q. The director may implement a procedure for the issuance of a license with a licensing period of two years.

R. For any sale of a farm winery or craft distiller or change in ownership of a farm winery or craft distiller directly or indirectly, the business, stock-in-trade and spirituous liquor may be transferred with the ownership, in compliance with the applicable requirements of this title.

S. Notwithstanding subsection B of this section, bar, beer and wine bar, liquor store, beer and wine store or restaurant licensees in this state may take orders by telephone, mail, fax or catalog, through the internet or by other means for the sale and delivery of spirituous liquor off the licensed premises as follows:

1. Bar licensees for beer, wine, distilled spirits and mixed cocktails.

2. Beer and wine bar licensees for beer and wine.

3. Liquor store licensees for beer, wine, distilled spirits and mixed cocktails.

4. Beer and wine store licensees for beer and wine.

5. Restaurant licensees for any of the following:

(a) Mixed cocktails, with the sale of menu food items for consumption on or off the licensed premises, if the restaurant holds a permit issued pursuant to section 4-203.07 and section 4-205.02, subsection K or a lease pursuant to section 4-203.06.

(b) Beer if the restaurant holds a permit issued pursuant to section 4-205.02, subsection H.

(c) Beer, wine and distilled spirits if the restaurant holds an off-sale privileges lease with a bar or liquor store pursuant to section 4-203.07.

(d) Beer and wine if the restaurant holds an off-sale privileges lease with a beer and wine bar pursuant to section 4-203.07.

T. Notwithstanding the definition of "sell" prescribed in section 4-101, placing an order and paying for that order pursuant to subsection S of this section is not a sale until delivery has been made. At the time that the order is placed, the licensee shall inform the purchaser that state law requires a purchaser of spirituous liquor to be at least twenty-one years of age and that the person accepting delivery of the spirituous liquor is required to comply with this state's age identification requirements as prescribed in section 4-241, subsections A and K. The licensee may maintain a delivery service and may contract with one or more alcohol delivery contractors registered pursuant to section 4-205.13 for delivery of spirituous liquor if the spirituous liquor is packaged and tamperproof sealed by the bar, beer and wine bar, liquor store, beer and wine store or restaurant licensee or the licensee's employee and is loaded for delivery at the premises of the restaurant, beer and wine bar, liquor store, beer and wine store or bar licensee in this state and delivered in this state on the same business day. A liquor store or beer and wine store licensee may contract with one or more independent contractors as provided in subsection J of this section for delivery of spirituous liquor if the spirituous liquor is loaded for delivery at the premises of the liquor store or beer and wine store licensee in this state and delivered in this state on the same business day. All containers of spirituous liquor delivered pursuant to subsection S of this section shall be tamperproof

sealed and conspicuously labeled with the words "contains alcohol, signature of person who is twenty-one years of age or older is required for delivery". The licensee is responsible for any violation of this title or any rule adopted pursuant to this title that is committed in connection with any sale or delivery of spirituous liquor. Delivery must be made by an employee of the licensee or an employee or authorized independent contractor of a registered alcohol delivery contractor as provided by this section who is at least twenty-one years of age and delivery must be made to a customer who is at least twenty-one years of age and who displays an identification at the time of delivery that complies with section 4-241, subsection K. The restaurant, beer and wine bar, liquor store, beer and wine store or bar licensee shall collect payment for the full price of the spirituous liquor from the purchaser before the product leaves the licensed premises. The director shall adopt rules that set operational limits for the delivery of spirituous liquor pursuant to this subsection and subsection S of this section with respect to the delivery of spirituous liquor. For any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's employee or a registered alcohol delivery contractor, the mitigation provision of section 4-210, subsection G applies, with the exception of the training requirement. For the purposes of this subsection and notwithstanding the definition of "sell" prescribed in section 4-101, section 4-241, subsections A and K apply only at the time of delivery. An alcohol delivery contractor, a subcontractor of an alcohol delivery contractor, an employee of an alcohol delivery contractor or an employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee. For the purposes of this subsection, "business day" means between the hours of 6:00 a.m. of one day and 2:00 a.m. of the next day.

U. A licensee that has off-sale privileges and that delivers spirituous liquor as prescribed in this section shall complete a written record of each delivery at the time of delivery. The written record shall include all of the following:

1. The name of the licensee making the delivery.

2. The complete address of the licensee making the delivery.

3. The licensee's license number.

4. The date and time of the delivery.

5. The address where the delivery was made.

6. The type and brand of all spirituous liquor delivered.

V. A licensee that has off-sale privileges and that delivers spirituous liquor as prescribed in this section shall obtain the following information from the individual who accepts delivery:

1. The individual's name.

2. The individual's date of birth.

3. The individual's signature. The licensee making the delivery may use an electronic signature system to comply with the requirements of this paragraph.

4-203.01. Interim permit; fee; rules

A. The director may issue an interim permit to the applicant for a license of the same series, or for the replacement of a hotel-motel license with a restaurant license, at the same premises whether that license is transferrable or nontransferable and any of the following conditions exists:

1. The director has good cause to believe the licensee is no longer in possession of the licensed premises.

2. The license for such premises was surrendered pursuant to rules of the department.

3. The applicant for the interim permit filed with the department an application for the issuance of a license of the same series of nontransferable license or the transfer or replacement of a transferable license of the same series, or for the replacement of a hotel-motel license with a restaurant license, at the same premises.

B. The application for the interim permit shall be accompanied by an interim permit fee of one hundred dollars.

C. An interim permit issued by the director pursuant to this section shall be for a period of not more than one hundred five days and shall not be extended except as provided in subsection D of this section. An interim permit is a conditional permit and authorizes the holder to sell such alcoholic beverages as would be permitted to be sold under the privileges of the license for which application has been filed with the department.

D. Notwithstanding subsection C of this section, if the director extends the time limit for action by the department in connection with a license issuance or transfer pursuant to section 4-201.01, subsection B, the director shall issue an additional interim permit for a period equal to such extension unless either:

1. No interim permit has previously been issued.

2. For good cause shown the director denies the additional interim permit.

E. Notwithstanding any other law, an interim permit may be canceled or suspended summarily at any time, if the director determines that good cause for such cancellation or suspension exists. There shall be no appeal from such cancellation or suspension of an interim permit to the board. The board may cancel an interim permit on applications that have been disapproved by the board. The cancellation or suspension of an interim permit may be appealed directly to the superior court.

F. Application for an interim permit shall be on such form as the director shall prescribe. If an application for an interim permit is withdrawn before issuance or is refused by the director, the fee that accompanies such application shall be refunded.

G. If an application for transfer of a license, person to person, or nontransferable spirituous liquor license is denied or an interim permit is revoked, suspended or expires, the licensee may request the return of the surrendered license that has been issued for such premises.

H. The director may prescribe rules governing the issuance of interim permits under this section.

I. The director may deny an interim permit in situations in which a current licensee holds a license described in section 4-209, subsection B, paragraph 12 and the current license is not in compliance with section 4-205.02.

4-203.02. Special event license; rules

A. The director may issue on a temporary basis:

1. A daily on-sale special event license authorizing the sale of spirituous liquor for consumption on the premises where sold. The fee for the license is $25 per day. The director shall transfer the monies collected to the department of health services for the purposes prescribed in title 36, chapter 18, article 2.

2. A daily off-sale special event license authorizing a charitable auction for the sale of spirituous liquor for consumption off premises.

B. Before the director may issue a temporary special event license, a special event that is to occur at an otherwise unlicensed location or by a licensee at a location that is not fully within the licensee's existing licensed premises must be approved by the board of supervisors of a county, or the board's designee, if the event is to be held in an unincorporated area or by the governing body of the city or town, or the governing body's designee, if the event is to be held in a city or town. A denial by the county, city or town must be forwarded to the director within sixty days after the submission of an application to the county, city or town, unless the applicant has requested more time for consideration of the application.

C. The approval process prescribed in this section does not apply to physical locations that are fully within premises that are licensed pursuant to this title.

D. A physical location, other than a physical location that is owned, operated, leased, managed or controlled by the United States, this state or a city, town or county of this state, that is not licensed pursuant to this title may not be issued more than a total of thirty days of special event licenses during the same calendar year. All applications for a special event license issued pursuant to this section must be submitted to the department at least ten days before the scheduled event. The director may waive the ten-day requirement for good cause shown.

E. The director may issue the special event license only to a government entity or a political party or campaign committee supporting a candidate for public office or a ballot measure, or a nonprofit entity that is organized as a nonprofit entity in this state or pursuant to the laws of another state and that is a nonprofit entity under section 501(c) of the internal revenue code of the United States. The nonprofit entity shall demonstrate that it is in good standing in this state. An applicant for a special event license may contract with a special event contractor for assistance in selling and serving spirituous liquor at the special event. The special event contractor shall be listed on the application form. The director shall require a special event contractor to provide the controlling persons' identification and background information deemed necessary to identify the special event contractor and to demonstrate proof of the contractor's authority to conduct business in this state, including providing copies of any required state or local business licenses or permits. The department shall maintain a list of special event contractors that have been employed by special event licensees during the past year and that are not otherwise in penalty status pursuant to subsection I of this section. A licensee holding a currently active series 6, 7, 11 or 12 license may serve as the special event contractor for a special event license without any additional requirements. A new applicant for an initial special event license may be required by the department to demonstrate it is qualified, capable and reliable to conduct a special event. The department may require new special event contractors and new special event licensees to require persons who serve or sell spirituous liquor to patrons at the special event to complete an approved training course in accordance with section 4-112, subsection G, paragraph 2. A special event contractor is subject to examinations conducted pursuant to section 4-112, subsection G, paragraph 1.

F. The director may issue a temporary special event license under subsection E of this section to an affiliate of a national, statewide or international parent nonprofit organization for a special event if all of the following requirements are met:

1. The affiliate holding the event provides a letter from the internal revenue service that the parent organization is a nonprofit entity under section 501(c)(4) of the internal revenue code of the United States with a group ruling.

2. The proceeds of the event are for a charitable or nonprofit purpose.

3. The affiliate provides a copy of a charter or letter from the parent nonprofit entity or organization that is organized under section 501(c) of the internal revenue code of the United States that recognizes the affiliate as a subordinate to the parent organization.

4. The affiliate and its members have not previously violated this title, local requirements for special events or any fire code.

G. The director may issue a special event license concurrently with a wine festival license and a craft distillery festival license and may approve the location of the wine festival license within an excluded area of a special event license specifically described in each license. Notwithstanding section 4-244, paragraphs 13 and 19, both licenses shall allow the presence of purchased spirituous liquor in the possession of the purchaser.

H. For the purposes of this section, a special event licensee or an employee of a special event licensee and a special event contractor or an employee of a special event contractor that has been retained for an approved special event may order or purchase spirituous liquor from the holder of a license authorized to sell off-sale or a licensed wholesaler. If a nonprofit entity has obtained a special event license for the purpose of charitable fundraising activities, the nonprofit entity or special event contractor may receive the spirituous liquor from a wholesaler, farm winery, microbrewery or producer as a donation, except that a licensee licensed pursuant to subsection A, paragraph 2 of this section may receive spirituous liquor from a donor when the donor receives no remuneration or payment of any kind, directly or indirectly, other than any tax benefits that might result. Spirituous liquor may be dispensed and served at the special event only by the following persons:

1. The special event licensee or an employee of the special event licensee, unless the special event is at the premises of a licensed retailer and the licensed retailer has agreed to dispense and serve the spirituous liquor.

2. The special event contractor or an employee of the special event contractor, unless the special event is at the premises of a licensed retailer and the licensed retailer has agreed to dispense and serve the spirituous liquor.

3. The producer or producers who furnished the spirituous liquor.

4. The wholesaler or wholesalers who furnished the spirituous liquor.

I. In addition to all other actions that may be taken by the director for a violation of this title or the rules adopted pursuant to this title by the special event licensee or special event contractor, the department may limit the right of the licensee to obtain a special event license for a period of up to one year or may limit the right of the special event contractor to support any licensed special event for a period of up to one year. Any penalty issued pursuant to this subsection may be appealed to the board pursuant to section 4-210.02 as if the order was a sanction against a licensee. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall receive at least seventy-five percent of the gross receipts of the auction. Up to twenty-five percent of the gross receipts of a special event auction conducted pursuant to subsection A, paragraph 2 of this section may be used to pay reasonable and necessary expenses incurred in connection with the auction. All expenses shall be supported by written contracts, invoices or receipts, which shall be made available to the director on request. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall not sell at auction more than twenty twelve-bottle cases of spirituous liquor annually under a special event license.

J. The director may adopt those rules the director determines are necessary to implement and administer this section including a limitation on the number of times during a calendar year a qualified organization may apply for and be issued a license under this section. The qualified organization issued a license pursuant to subsection A, paragraph 1 of this section must receive at least twenty-five percent of the gross revenues of all spirituous liquor sold at the special events, which shall be supported by a contract between the parties to be supplied at the time of application.

K. At an event conducted under a license issued pursuant to subsection A of this section, the licensee may conduct a wine pull or distilled spirits pull of up to twenty twelve-bottle cases of wine and up to ten twelve-bottle cases of distilled spirits per day of a licensed special event not to exceed five days per year. The special event licensee shall be responsible for compliance with the case limits in this section. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall not sell more than twenty cases of spirituous liquor annually under a special event license. For the purposes of this subsection, "wine pull" or "distilled spirits pull" means an activity where, for a set price, one or more attendees at a special event pay for the opportunity to select at the event one or more bottles of wine or distilled spirits where the variety and vintage are undisclosed.

L. Section 4-201 does not apply to the licenses provided for under this section.

M. A licensed producer or wholesaler may donate spirituous liquor directly to a nonprofit entity that is issued a license pursuant to subsection A of this section. The licensed producer or wholesaler shall in such instances issue a net zero cost billing invoice in the name of the special event licensee. All licensees making or receiving spirituous liquor donations remain subject to the applicable limitations and requirements stated in this title and in the rules adopted by the department. A licensed producer or wholesaler may also make a monetary donation to a nonprofit entity that is issued a license pursuant to subsection A of this section to help sponsor a special event and the licensed producer or wholesaler may issue a check payable to either the special event licensee or to the approved special event contractor that is contracted to conduct the special event if the special event contractor does not hold a currently active bar license, beer and wine bar license, hotel-motel license or restaurant license.

N. A licensed wholesaler may temporarily leave a delivery vehicle and other items of equipment necessary for the sale or service of spirituous liquor on the premises of a licensed special event for the duration of the event and up to one business day before and after the event.

O. The holder of a license authorized to sell off-sale or a licensed wholesaler may leave purchased spirituous liquor products at a special event if the products are properly described on a preliminary billing invoice that is issued in the name of the special event licensee. The holder of a license authorized to sell off-sale or the licensed wholesaler has up to five business days after the special event ends to make any necessary billing adjustments and issue a final billing invoice to the special event licensee. Within one business day after the conclusion of the special event, the special event licensee or a special event contractor shall return unbroken packages of spirituous liquor to the appropriate off-sale licensee or wholesaler subject to the applicable rules of the United States alcohol and tobacco tax and trade bureau and the policy of the applicable off-sale licensee or wholesaler.

P. The director may adopt rules deemed necessary to implement and administer this section for special event contractors.

4-203.03. Farm winery festival license; farm winery fair license; fee

A. The director may issue on a temporary basis a farm winery festival license that authorizes:

1. The sampling of the farm winery products on the farm winery festival premises.

2. The sale of products for consumption on the farm winery festival premises.

3. The sale of products in the original container for consumption off the farm winery festival premises.

B. Before the director may issue a farm winery festival license, a farm winery festival that is to occur at an otherwise unlicensed location or at a location that is not fully within the licensee's existing licensed premises must be approved by the county board of supervisors, or the board's designee, if the event is to

be held in an unincorporated area or by the governing body of the city or town, or the governing body's designee, if the event is to be held in a city or town. A denial by the county, city or town must be forwarded to the director within sixty days after the submission of an application to the county, city or town, unless the applicant has requested more time for consideration of the application.

C. The approval process prescribed in this section does not apply to physical locations that are fully located within a premises that is licensed pursuant to this title.

D. The director may issue one or more farm winery festival licenses for each farm winery licensed pursuant to this title, for a total of up to one hundred fifty calendar days for each farm winery. The director may establish a fee for each day of each event for a farm winery festival license.

E. Any farm winery may apply for a farm winery festival license pursuant to this section.

F. A representative of the licensed farm winery may consume small amounts of the products of the licensed farm winery on the festival premises for the purpose of quality control. The wine may include wine produced pursuant to section 4-205.04, subsection D and section 4-243.03.

G. The director may issue a farm winery fair license. With the permission of state fair organizers or county fair organizers, any farm winery may allow the sampling of farm winery products on the fair premises, the sale of the products for consumption on the fair premises and the sale of the products in original containers for consumption off of the fair premises at any sanctioned state fair or county fair. The director may establish a per-day fee for each event for a farm winery fair license.

H. Section 4-201 does not apply to the licenses provided for under this section.

4-203.04. Direct shipment license; issuance; fee; requirements; renewal; civil penalties; limitations; duties; violation; classification; applicability

A. The director may issue a direct shipment license to any winery that holds a federal basic permit issued by the United States alcohol and tobacco tax and trade bureau and a current license to produce wine issued by this state or any other state. A farm winery licensed pursuant to section 4-205.04 and a winery holding a producer's license or a limited producer's license issued by this state may also hold a direct shipment license.

B. A person shall apply for a direct shipment license on a form prescribed and provided by the director. The director may charge an application issuance fee to be used for administrative costs associated with the direct shipment license. An application for a direct shipment license shall include:

1. The address of the premises where the applicant's principal place of business is located.

2. The name, address and telephone number of an officer of the applicant or an individual who is authorized to represent the applicant before the director.

3. A complete and full disclosure by the applicant and by any officer, director, administrator or controlling person of the applicant of any criminal convictions in any state or foreign jurisdiction within the five years immediately preceding the application.

4. The applicant's farm winery license, producer's license or limited producer's license number or, for a winery that is not currently licensed by this state, a copy of the winery's federal basic permit issued by the United States alcohol and tobacco tax and trade bureau and a copy of that winery's current license to produce wine that is issued by another state.

5. The applicant's transaction privilege tax number issued by the department of revenue for the payment of transaction privilege taxes and luxury taxes on wine that is sold to purchasers in this state under the license.

C. The director may refuse to issue a direct shipment license for good cause. The director may not issue a direct shipment license to any person who:

1. Has had a direct shipment license or any other license to deal in spirituous liquor revoked in this state or any other state within one year preceding the application.

2. Has been convicted of a felony in this state or any other state or has been convicted of an offense in another state that would be a felony if convicted in this state within five years immediately preceding the application.

D. A direct shipment license is valid for one year. Direct shipment licenses may not be transferred. A person that holds a direct shipment license may apply for a renewal before the expiration of the person's current license. The director may charge a license renewal fee to be used for administrative costs associated with the direct shipment license, auditing and enforcement.

E. After notice and a hearing pursuant to title 41, chapter 6, article 10, the director may suspend, revoke or refuse to renew a direct shipment license for any violation of this section or for good cause. Any act or omission of a person who makes a sale or delivery of wine for a licensee under subsection F of this section is deemed to be an act or omission of the licensee for the purposes of section 4-210, subsection A, paragraph 9. In lieu of suspension, revocation or refusal to renew a license, the director may impose a civil penalty pursuant to section 4-210.01 against a licensee for each violation of this section. The licensee may appeal the finding or decision of the director to the board. The board may affirm, modify or reverse the finding or decision of the director.

F. Notwithstanding any other law, a licensee annually may sell and ship nine-liter cases of wine that is produced by the licensee directly to a purchaser in this state pursuant to all of the following:

1. The licensee may sell and ship:

(a) Until December 31, 2017, up to six nine-liter cases of wine.

(b) Beginning January 1, 2018 and until December 31, 2018, up to nine nine-liter cases of wine.

(c) Beginning January 1, 2019 and for each year thereafter, up to twelve nine-liter cases of wine.

2. The wine may be ordered by any means, including telephone, mail, fax or the internet.

3. The wine is for personal use only and not for resale.

4. Before shipping the wine, the licensee shall verify the age of the purchaser who is placing the order by obtaining a copy of the purchaser's valid photo identification as prescribed in section 4-241, subsection K demonstrating that the person is at least twenty-one years of age or by using an age verification service.

5. The wine may be shipped to a residential or business address but not to a premises licensed pursuant to this title.

6. All containers of wine shipped pursuant to this subsection shall be conspicuously labeled with the words "contains alcohol, signature of person age 21 or older required for delivery".

7. The licensee may not sell or ship wine to a purchaser pursuant to this subsection unless the purchaser could have carried the wine lawfully into or within this state.

8. The delivery must be made by a person who is at least twenty-one years of age.

9. The delivery must be made only during the hours of lawful service of spirituous liquor to a person who is at least twenty-one years of age.

10. The delivery must be made only after inspection of the valid photo identification as prescribed in section 4-241, subsection K of the person accepting delivery that demonstrates that the person is at least twenty-one years of age.

11. Payment for the price of the wine must be collected by the licensee not later than at the time of delivery.

G. A licensee shall:

1. Not later than January 31 of each year, file a report regarding the wine shipped to purchasers in this state during the preceding calendar year that includes the information required in paragraph 2 of this subsection.

2. Complete a record of each shipment at the time of shipment. The licensee shall ensure that the record provides the following information:

(a) The name of the licensee making the shipment.

(b) The address of the licensee making the shipment.

(c) The license number.

(d) The date of shipment.

(e) The address at which delivery is to be made.

(f) The amount shipped.

3. On request, allow the director or the department of revenue to perform an audit of the records of wine shipped to purchasers in this state. The director may request the licensee submit records to demonstrate compliance with this section. The licensee shall maintain records of each shipment of wine made to purchasers in this state for two years.

4. Be deemed to have consented to the jurisdiction of the department, any other agency of this state, the courts of this state and all related laws, rules or regulations.

5. Pay the department of revenue all transaction privilege taxes and luxury taxes on sales of wine under the direct shipment license to purchasers in this state. For transaction privilege tax and luxury tax purposes, all wine sold pursuant to this section shall be deemed to be sold in this state.

6. Ship not more than the total number of nine-liter cases of wine authorized under subsection F, paragraph 1 of this section to any purchaser in this state in any calendar year for personal use.

H. A person who knowingly sells and ships wine directly to a purchaser in this state shall be deemed to have consented to the jurisdiction of the department, any other agency of this state, the courts of this state

and all related laws, rules or regulations. A person who knowingly sells and ships wine directly to a purchaser in this state is guilty of a class 2 misdemeanor if either:

1. The person does not possess a current direct shipment license.

2. The person does not possess a current farm winery license for a winery that produces twenty thousand gallons or less of wine in the previous calendar year.

I. Section 4-201 does not apply to licenses issued pursuant to this section.

J. Common carriers, other than railroads as defined in section 40-201, that transport wine into and within this state shall:

1. Keep records of wine shipped to purchasers in this state, including the direct shipment licensee's name and address, the recipient's name and address, the shipment and delivery dates and the weight of wine shipped.

2. Remit the records kept pursuant to paragraph 1 of this subsection on request of the department.

K. Farm winery licensees under section 4-205.04 that produced twenty thousand gallons of wine or less in the preceding calendar year may ship wine directly to purchasers in this state pursuant to section 4-205.04 and are exempt from the requirements of this section, including the case limitations prescribed in subsection F of this section.

L. The director shall begin issuing direct shipment licenses pursuant to this section not later than January 1, 2017.

4-203.05. Licenses held in nonuse status

A licensee who holds a license in nonuse status shall not be responsible for and shall not accrue any municipal license fee or tax or municipal renewal fee or tax attributed to the time that the license is properly held in nonuse status.

4-203.06. Mixed cocktails; off-sale privileges; leases; fees

(Rpld. 1/1/26)

A. Notwithstanding section 4-203, subsection E and section 4-210, subsection A, paragraph 6, through December 31, 2025, bar and liquor store licensees, through the department, shall lease to restaurant licensees the privilege of selling mixed cocktails for consumption off the licensed premises in accordance with section 4-244, paragraph 32, subdivision (d). The lease shall be for a period of one year and shall be renewable for successive terms of one year. The department shall establish a lease amount that fairly recognizes, and is derived from, the commercial value of the privilege to sell mixed cocktails for consumption off the licensed premises.

B. Leases made pursuant to subsection A of this section are subject to the following conditions:

1. A restaurant licensee may apply to the department on a form prescribed and provided by the department for a lease pursuant to this section. The department may establish and charge an application fee for administrative and enforcement costs associated with this section.

2. On the director approving the application of a restaurant licensee, the director shall randomly select a bar or liquor store license for the lease of the bar or liquor store licensee's mixed cocktail off-sale privileges to the restaurant licensee through the department.

3. The department shall establish a process to facilitate and approve the lease conveyance and to govern the leases, including the following:

(a) A standard form of lease.

(b) The term of the lease, which shall be one year except for the first year of the lease. During the first year of the lease, the director may set a lease term that is less than a year in order to align the lease renewal date with the renewal date of the restaurant license. The lease payment amount for the first year may be prorated.

(c) The amount of the lease established by the director pursuant to subsection A of this section.

(d) The responsibilities of the lessor and lessee.

(e) The lease may be transferred to another restaurant licensee if a new restaurant licensee purchases the business of the original lessee during the term of the lease.

(f) The privileges conveyed to the lessee during the term of the lease will continue if the bar or liquor store lessor has its license suspended or revoked.

(g) If the bar or liquor store lessor sells its license during the term of the lease, the purchaser of the bar or liquor store license becomes the new lessor.

(h) This title and rules adopted pursuant to this title apply to both the lessor and lessee.

(i) During the term of the lease, all violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee leasing the mixed cocktail off-sale privilege. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

4. The director may deny approval of a lease based on the proposed location or history of the proposed lessee.

5. The restaurant licensee shall pay to the department all lease payments in full in advance.

6. The department of liquor licenses and control may adopt a procedure to pay the lease amount to the lessor and may use the department of administration to facilitate the payments.

7. During the term of the lease, all violations and liability for the liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. Pursuant to section 4-210, the director may immediately suspend a lease for any violation of this title or any rule adopted pursuant to this title by the restaurant licensee. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

8. During the term of the lease, a bar or liquor store lessor may continue to sell spirituous liquor as authorized by the bar or liquor store license and mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d).

9. The restaurant licensee leasing the off-sale privilege is subject to the limit on off-sale use by the restaurant licensee's total spirituous liquor sales as prescribed in section 4-206.01, subsection G.

C. If a restaurant licensee does not renew a lease, the director shall return the bar or liquor store lessor to the random selection process pursuant to subsection B, paragraph 2 of this section.

D. If a bar or liquor store lessor has its license suspended or revoked, the director shall transfer the lease to another bar or liquor store licensee at the end of the lease term pursuant to subsection B, paragraph 2 of this section.

4-203.07. Off-sale privileges; leases; mixed cocktails; permits; fees

A. Notwithstanding section 4-203, subsection E and section 4-210, subsection A, paragraph 6, a bar, beer and wine bar and liquor store licensee may lease the off-sale privileges associated with the licensee's license, except the privilege to sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d), to a restaurant licensee. The lease shall be for a period of one year and may be renewable for successive terms of one year. The off-sale privileges of a bar, beer and wine bar or liquor store license that are held in nonuse status may also be leased pursuant to this section.

B. Leases made pursuant to this section are subject to the following conditions:

1. The department shall establish a minimum of four lease windows throughout the calendar year during which a lease may be agreed to between a bar, beer and wine bar or liquor store licensee and a restaurant licensee for the lease of off-sale privileges.

2. A restaurant licensee may apply to the department for approval of a lease at least thirty days before the end of the lease window. The restaurant licensee shall provide a completed lease agreement signed by both the lessor and lessee. The department may establish and charge an application fee for administrative and enforcement costs associated with this section.

3. On the director approving the lease, the director shall transfer the lessor's off-sale privileges, except the privilege to sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d), to the restaurant lessee for the term of the lease.

4. The department shall establish a process to facilitate and approve the lease conveyance and to govern the leases, including the following:

(a) A standard form of lease.

(b) The term of the lease shall be one year except for the first year of the lease. During the first year of the lease, the director may establish a lease term that is less than a year in order to align the lease renewal date with the renewal date of the restaurant license.

(c) The responsibilities of the lessor and lessee.

(d) The lease may be transferred to another restaurant licensee if the new restaurant licensee purchases the business of the original lessee during the term of the lease.

(e) The privileges conveyed to the lessee during the term of the lease will continue if the bar, beer and wine bar or liquor store lessor has its license suspended or revoked.

(f) If the bar, beer and wine bar or liquor store lessor sells its license during the term of the lease, the purchaser of the bar, beer and wine bar or liquor store license becomes the new lessor.

(g) This title and rules adopted pursuant to this title apply to both the lessor and lessee.

(h) During the term of the lease, all violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

5. The restaurant licensee shall pay to the department all lease payments in full in advance.

6. The department of liquor licenses and control may adopt a procedure to pay the lease amount to the lessor and may use the department of administration to facilitate the payments.

7. During the term of the lease, all violations and liability for the liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. Pursuant to section 4-210, the director may immediately suspend a lease for any violation of this title or any rule adopted pursuant to this title by the restaurant licensee. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.

8. During the term of the lease, a bar, beer and wine bar or liquor store lessor may not sell spirituous liquor for off-premises consumption, except a bar or liquor store licensee may sell mixed cocktails for off-premises consumption pursuant to section 4-244, paragraph 32, subdivision (d).

9. The restaurant licensee leasing the off-sale privilege is subject to the limit on off-sale use by the restaurant licensee's total spirituous liquor sales as prescribed in section 4-206.01, subsection G.

10. A lessor may lease its off-sale privileges only to a restaurant licensee located in the same county.

C. The director shall publish a lease amount for leases made pursuant to this section. The department shall establish a lease amount that fairly recognizes, and is derived from, the commercial value of selling spirituous liquor for consumption off the licensed premises. The department may establish separate lease amounts for urban and rural counties and may designate counties in this state for each amount. The lease amount applies unless the lessor and lessee agree to a different lease amount.

D. Beginning January 1, 2026, the director shall make available for restaurant licensees to purchase from the department permits to sell mixed cocktails pursuant to section 4-244, paragraph 32, subdivision (d) equal in number to the number of total bar and liquor store licenses. The director may set the application and annual renewal fee for a mixed cocktail permit to be used for administrative and enforcement costs associated with the permit.

4-204. Personal representative or fiduciary acting for licensee

A. A person acting as administrator, executor or guardian of the estate of any licensee or a person acting as receiver for any licensee, trustee of the bankrupt estate of any licensee or assignee for the benefit of creditors of a licensee is authorized, upon receiving permission from the director to sell and deal in spirituous liquors under authority of the license issued to the licensee for whom the person is acting for a period not exceeding twenty-four months from the date of the appointment of such person as administrator, executor, guardian, receiver, trustee or assignee for the benefit of creditors.

B. The provisions of this section shall not apply if at any time during the twenty-four months an administrator, executor or guardian of the estate of a licensee who has received the permission from the director as provided in subsection A of this section transfers the license to the surviving spouse or the guardian of the minor child of the licensee.

C. A person, authorized representative or assignee, meeting the qualifications of section 4-202, not licensed under the provisions of this chapter, owning or possessing spirituous liquor as a result of enforcement of a security interest in the property of a wholesaler licensed under this chapter is authorized,

upon receiving permission from the director, to sell such spirituous liquor to a licensee authorized to sell spirituous liquor for resale. Sections 4-201, 4-203 and 4-243.01 shall not apply to nor restrict the authority granted under this provision.

4-205. Issuance of club license; regulatory provisions; revocation

A. The director may issue one club license to any club as defined in section 4-101.

B. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and sell to members' bona fide guests. Attendance at private clubs is limited to enrolled members of the club and their spouses, families and bona fide guests. Admitted nonmember guests shall not exceed more than fifty percent of attendance during any month. This provision shall not limit the ability of a member or the club to host wedding receptions, group meetings, civic association meetings, scheduled social functions, including bingo games, and other member or club hosted functions where individuals are not admitted on the basis of being a guest of a member of the club and attendance at the event shall not be considered in computing the fifty percent requirement. Member recruitment events that are hosted by the club or other members where individuals are not admitted on the basis of being a guest of a member of the club or not in attendance at other specified events authorized in this section shall be limited to not more than twelve events in a calendar year for each club.

C. No member and no officer, agent or employee of a club licensee shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any of the profits from the revenue producing activities of the club or from the distribution or sale of alcoholic beverages to the members of the club or to its guests, beyond the amount of the salary as fixed and voted on at a regular meeting by the members of the club licensee or by its governing body out of the general revenue of the licensee, nor shall such salaries or compensation be in excess of reasonable compensation for the services actually performed.

D. The director may revoke a club license issued pursuant to this section if the licensee ceases to operate as a bona fide club as defined in section 4-101.

E. A club may not hold a spirituous liquor license other than one issued pursuant to this section, except that any club that on January 1, 1975 holds a spirituous liquor license other than one issued pursuant to this section may use the license until such time as the license is revoked or reverted.

4-205.01. Hotel-motel license; issuance; revocation

A. The director may issue a hotel-motel license to any hotel or motel in this state that has in conjunction with such hotel or motel a restaurant where food is served.

B. The director shall issue the license in the name of the hotel or motel upon application for the license by the owner or lessee of the motel or hotel, provided the applicant is otherwise qualified to hold a spirituous liquor license. The holder of such license is subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.

C. The holder of a hotel-motel license may sell and serve spirituous liquors solely for consumption on the licensed premises. For the purpose of this subsection, "licensed premises" shall include all public and private rooms, facilities and areas in which spirituous liquors may be sold or served in the normal operating procedures of the hotel or motel.

D. In addition to other grounds prescribed in this title upon which a license may be revoked, the director may revoke a hotel-motel license issued pursuant to this section in any case in which the licensee ceases to operate as a hotel or motel, as prescribed in subsection A of this section.

E. For the purposes of this section, the licensee shall be subject to the standards and qualifications of a restaurant licensee as provided in section 4-205.02. If an independent person or entity manages and supervises the sale and service of spirituous liquor at the premises pursuant to section 4-243.04, subsection A, paragraph 3, the person or entity may contract with the owner of the premises to sell and serve food on the premises. For the purpose of determining whether forty per cent of the licensee's gross revenues are derived from the sale of food, sales of food made by the owner of the premises are deemed sales of food made by the licensee.

4-205.02. Restaurant license; issuance; regulatory provisions; expiration; off-sale leases and permits; fee; definitions

A. The director may issue a restaurant license to any restaurant in this state that is regularly open for serving food to guests for compensation and that has suitable kitchen facilities connected with the restaurant for keeping, cooking and preparing foods required for ordinary meals.

B. The director shall issue the license in the name of the restaurant on application for the license by the owner or lessee of the restaurant, if the applicant is otherwise qualified to hold a spirituous liquor license. The holder of such a license is subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.

C. The holder of a restaurant license may sell and serve spirituous liquors solely for consumption on the licensed premises. For the purpose of this subsection, "licensed premises" may include rooms, areas or locations in which the restaurant normally sells or serves spirituous liquors pursuant to regular operating procedures and practices and that are contiguous to the restaurant or a noncontiguous patio pursuant to section 4-101, paragraph 32. For the purposes of this subsection, a restaurant licensee must submit proof of tenancy or permission from the landowner or lessor for all property to be included in the licensed premises.

D. In addition to other grounds prescribed in this title on which a license may be revoked, the director may require the holder of a restaurant license issued pursuant to this section to surrender the license in any case in which the licensee ceases to operate as a restaurant, as prescribed in subsection A of this section. The surrender of a license pursuant to this subsection does not prevent the director from revoking the license for other grounds prescribed in this title or for making deliberate material misrepresentations to the department regarding the licensee's equipment, service or entertainment items or seating capacity in applying for the restaurant license.

E. Neither the director nor the board may initially issue a restaurant license if either finds that there is sufficient evidence that the operation will not satisfy the criteria adopted by the director for issuing a restaurant license described in section 4-209, subsection B, paragraph 12. The director shall issue a restaurant license only if the applicant has submitted a plan for the operation of the restaurant. The plan shall be completed on forms provided by the department and shall include listings of all restaurant equipment and service items, the restaurant seating capacity and other information requested by the department to substantiate that the restaurant will operate in compliance with this section.

F. The holder of the license described in section 4-209, subsection B, paragraph 12 who intends to alter the seating capacity or dimensions of a restaurant facility shall notify the department in advance on forms provided by the department.

G. The director may charge a fee for site inspections conducted before the issuance of a restaurant license.

H. A restaurant applicant or licensee may apply for a permit allowing for the sale of beer for consumption off the licensed premises pursuant to section 4-244, paragraph 32, subdivision (c) on a form prescribed and furnished by the director. The department shall not issue a permit to a restaurant applicant or licensee that does not meet the requirements in section 4-207, subsection A. Section 4-207, subsection B does not apply to this subsection. The permit shall be issued only after the director has determined that the public convenience requires and that the best interest of the community will be substantially served by the issuance of the permit, considering the same criteria adopted by the director for issuing a restaurant license described in section 4-209, subsection B, paragraph 12. The amount of beer sold under the permit shall not exceed ten percent of gross revenue of spirituous liquor sold by the establishment. After the permit has been issued, the permit shall be noted on the license itself and in the records of the department. The director may charge a fee for processing the application for the permit and a renewal fee.

I. Notwithstanding any rule adopted by the department, business establishments that relied on a form issued by the department that provides for a small restaurant exemption for fifty or fewer seats before January 31, 2019 are allowed to continue to maintain the capacity of fifty or fewer seats for the duration of the business. The rights of a business establishment subject to this section are not transferable.

J. Notwithstanding section 4-203, subsection E, section 4-207 and section 4-210, subsection A, paragraph 6, through December 31, 2025, a restaurant applicant or licensee may apply to the department for a lease for the privilege of selling mixed cocktails for consumption off the licensed premises pursuant to section 4-203.06 and section 4-244, paragraph 32, subdivision (d).

K. Notwithstanding section 4-207, beginning January 1, 2026, a restaurant applicant or licensee may apply for a permit to allow the sale of mixed cocktails for consumption off the licensed premises pursuant to section 4-203.07 and section 4-244, paragraph 32, subdivision (d), on a form prescribed and furnished by the director. The sale of mixed cocktails for consumption off the licensed premises must be accompanied by the sale of menu food items for consumption on or off the licensed premises. The department shall issue the permit only after the director has determined that the public convenience requires and that the best interest of the community will be substantially served by issuing the permit. All permit holders and their employees, managers and agents must complete alcohol training pursuant to section 4-112, subsection G, paragraph 2. After the department issues the permit, the permit shall be noted on the license itself and in the records of the department. The director may establish and charge a fee for processing the permit application and a renewal fee.

L. A restaurant licensee shall cease selling spirituous liquor, including mixed cocktails, for off-premises consumption when the licensee ceases regular kitchen service for food.

M. For the purposes of this section:

1. "Gross revenue":

(a) Means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.

(b) Includes revenue derived from spirituous liquor sold for off-sale consumption.

2. "Restaurant" means an establishment that derives at least forty percent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed fifteen percent of all gross revenue of the restaurant.

4-205.03. Government license; issuance; regulatory provisions; agreements with coliseum concessionaires; definitions

A. The department may issue a government license to any state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board on application authorized by the governing body of the state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board.

B. If the department issues the license, it shall be issued in the name of the state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona coliseum and exposition center. No application shall be filed unless authorized by the respective governing body. The application shall designate for each location a manager or other individual responsible for administering the license. The state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board shall give notice to the department within ten days after any change in the designee. The state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona coliseum and exposition center to which a license is issued is subject to the fine or penalty prescribed for any violation of the statutes relating to alcoholic beverages.

C. The holder of a government license may sell and serve spirituous liquors solely for consumption on the premises for which the license is issued. A separate license is required for each premises on which spirituous liquors are served. A single premises licensed under this section may consist of not more than one dock area that is designated by a city or town and that is situated on a lake owned by the city or town and not more than thirty boats that are operated on the lake. A dock and boats that comprise a premises under this subsection shall be operated in compliance with subsection G of this section.

D. A governing body in possession of a government license may by appropriate legislation or rule authorize the use of the license pursuant to a concession agreement approved by the governing body.

E. The department may adopt rules in order to administer this section.

F. Any agreement entered into by the Arizona exposition and state fair board allowing an indicated concessionaire to serve alcoholic beverages pursuant to this section shall contain a provision requiring the concessionaire to do both of the following:

1. Fully indemnify and hold harmless this state and any of its agencies, boards, commissions, officers and employees against any liability for loss or damage incurred either on or off state property and resulting from the negligent serving of alcoholic beverages by the concessionaire or the concessionaire's agents or employees.

2. Post a surety bond in favor of this state in an amount determined by the Arizona exposition and state fair board to be sufficient to indemnify this state against the potential liability or name this state as an additional insured in a liability policy that provides sufficient coverage to indemnify this state as determined by the Arizona exposition and state fair board.

G. The following apply to the operation of a dock and boats as a licensed premises pursuant to subsection C of this section:

1. Liquor may be sold only for consumption on the premises in conjunction with consumption of food.

2. Liquor shall not be served or consumed on the dock. Liquor shall not be served on a boat earlier than fifteen minutes before the boat is scheduled to depart from the dock and shall not be served after a boat returns to the dock.

3. A person shall not be served more than fifty ounces of beer, one liter of wine or four ounces of distilled spirits at one time while the person is on a boat.

4. A person shall not bring spirituous liquor onto a boat other than liquor purchased by the licensee or a concessionaire for resale under this title.

5. The pilot of each boat, all crew members and all persons who sell or serve spirituous liquor on each boat are deemed employees of the licensee for purposes of this title.

6. The pilot of each boat shall either have a current and valid coast guard operator's license or shall have successfully completed a safety and operator training course approved by the city or town.

7. Spirituous liquor shall not be served, consumed or possessed by a customer on the boat between the hours of 11:00 p.m. and 5:00 p.m.

8. All provisions of this title and rules adopted pursuant to this title that are not inconsistent with this section apply to sales and consumption of spirituous liquor on the licensed premises.

H. For the purposes of this section:

1. "Arizona coliseum and exposition center" includes all property under the control of the Arizona exposition and state fair board as provided in section 3-1001.

2. "Boat" means a seaworthy vessel that is designed to carry and that is capable of carrying not less than fifteen nor more than forty-five passengers, that has a displacement of not more than ten tons and that possesses a current coast guard certificate.

3. "Community college" has the same meaning prescribed in section 15-1401.

4. "State university" means institutions as described in section 15-1601.

4-205.04. Farm winery license; issuance; regulatory provisions; retail site; fee

A. The director may issue a farm winery license to any person who meets the requirements of subsection C of this section. Each location that engages in producing or manufacturing these products must obtain a separate farm winery license. The licensee may not transfer the farm winery license from person to person or from location to location.

B. An applicant for a farm winery license, at the time of filing the application for the license, shall accompany the application with the license fee. A person who holds a farm winery license shall report annually at the end of each calendar year, at the time and in the manner as the director prescribes, the amount of wine produced or manufactured by the licensee during the calendar year. In addition to any provision of this title, if the total amount of wine produced or manufactured during the year exceeds the amount permitted annually by the license, the licensee shall apply for and receive a producer's license only on surrender of the farm winery license or licenses.

C. A person may be licensed as a farm winery to sell wine produced or manufactured if in a calendar year it produces at least two hundred gallons and not more than forty thousand gallons of wine and if the winery either holds a winery permit issued by the United States alcohol and tobacco tax and trade bureau or has a contract pursuant to subsection D of this section for the production or manufacturing of wine

from grapes or other fruit grown on at least five producing acres of land owned or controlled by the applicant and the land has been devoted to fruit growing for at least three consecutive calendar years. A licensed farm winery may make sales and deliveries of wine only as specifically provided in this section and as follows:

1. A licensed farm winery may make sales and deliveries of wine to wholesalers licensed to sell wine under this title.

2. A licensed farm winery may serve wine produced or manufactured on the premises for the purpose of sampling the wine. The wine may include wine produced pursuant to subsection D of this section and section 4-243.03.

3. A representative of the licensed farm winery may consume small amounts of the products of the licensed farm winery on the premises for the purpose of sampling the wine. The wine may include wine produced pursuant to subsection D of this section and section 4-243.03.

4. A licensed farm winery may sell to a consumer physically present on the premises wine produced or manufactured on the premises in the original container for consumption on or off the premises. The wine may include wine produced pursuant to subsection D of this section and section 4-243.03.

5. A licensed farm winery may purchase and sell wine produced, packaged and labeled by another licensed farm winery for sampling and consumption on or off the premises only if the retail sale is to a consumer physically present on the premises of the farm winery, except that the sales of wine produced, packaged and labeled by another winery may not exceed twenty percent of the farm winery's sales by volume. The percentage limitation shall not apply to wine produced pursuant to subsection D of this section and section 4-243.03.

6. If the licensed farm winery is not otherwise engaged in the business of a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor in any jurisdiction, the licensed farm winery may hold licenses prescribed in section 4-209, subsection B, paragraph 12 on the licensed farm winery premises or other retail premises. Except as provided in paragraph 5 of this subsection, the licensed farm winery shall purchase all other spirituous liquor for sale at the on-sale retail premises from wholesalers that are licensed in this state, except that a licensed farm winery may:

(a) Purchase wine from other farm wineries pursuant to paragraph 7 of this subsection.

(b) Make deliveries of the wine that the farm winery produces to the farm winery's own commonly controlled retail licensed premises.

7. A licensed farm winery that produces not more than twenty thousand gallons of wine in a calendar year may make sales and deliveries of the wine that the licensed farm winery produces to on-sale and off-sale retailers.

8. Notwithstanding section 4-244, paragraphs 3 and 7, an on-sale or off-sale retailer may purchase and accept delivery of wine from a licensed farm winery pursuant to paragraph 7 of this subsection.

9. A licensed farm winery that produces not more than twenty thousand gallons of wine in a calendar year may make sales and deliveries of wine that the licensed farm winery produces to consumers off of the licensed premises and that is ordered by telephone, mail, fax or catalogue, through the internet or by other means if all of the following apply:

(a) The purchaser of the wine provided the licensed farm winery with verification of the purchaser's legal age to purchase alcohol.

(b) The shipping container in which the wine is shipped is marked to require the signature on delivery of an adult who is of legal age to purchase alcohol and delivery confirmation.

(c) The wine is for personal use only and not for resale.

(d) The wine is delivered by the licensed farm winery or shipped by the licensed farm winery by a common carrier to a residential or business address other than a premises licensed pursuant to this title.

(e) The purchaser could have carried the wine lawfully into or within this state.

(f) The delivery is made by a person who is at least twenty-one years of age.

(g) The farm winery collects payment for the price of the spirituous liquor not later than at the time of delivery.

10. A licensed farm winery may make sales and deliveries as expressly permitted by sections 4-203.03, 4-203.04 and 4-244.04.

D. A person otherwise qualified to receive a farm winery license may enter into a custom crush arrangement where a licensed winery produces or manufactures wine from grapes or other fruit supplied by the person. The winery receiving the fruit shall be licensed by the United States alcohol and tobacco tax and trade bureau and the department and is responsible for filing all reports that relate to its wine production or manufacturing with the United States alcohol and tobacco tax and trade bureau and the department. Each person supplying the grapes or other fruit shall first apply for and receive a farm winery license and shall report to the department all volumes of wine from its custom crush arrangements, which shall not be allocated to the gallonage of the receiving farm winery if the supplying farm winery has an active basic permit issued by the United States alcohol and tobacco tax and trade bureau.

E. On application by a farm winery licensee, the director may authorize a farm winery licensee to operate up to two remote tasting and retail premises if:

1. The wine sold at the premises is limited to wine produced or manufactured by the licensed farm winery and wines produced or manufactured by other licensed farm wineries, including wines produced or manufactured pursuant to subsection D of this section and section 4-243.03. The farm winery may sell wine to a consumer physically present on the premises for consumption on or off the premises. Sales of wines not produced or manufactured by the farm winery are limited to not more than twenty percent of the total sales by volume at that location. The percentage limitation shall not apply to wine produced pursuant to subsection D of this section and section 4-243.03.

2. The farm winery licensee:

(a) Remains responsible for the premises.

(b) Obtains approval for the premises from the local governing body before submitting an application to the department. A copy of an order from the local governing body recommending approval of the premises must be filed with the department as part of the application.

(c) Does not sublease the premises.

(d) Has an agent who is a natural person who meets the qualifications of licensure in this state.

(e) Meets the qualifications for a license pursuant to section 4-203, subsection A.

F. A farm winery licensee may hold a craft distiller license issued pursuant to section 4-205.10. The farm winery and craft distiller licensee is subject to all other requirements of this section and section 4-205.10. The farm winery may provide sampling and sales of the distilled spirits pursuant to section 4-205.10, subsection C, paragraphs 2 and 3 on the same premises as the wine sampling and retail sales.

G. The farm winery is liable for any violation committed in connection with any sale or delivery of the wine. The rules adopted by the director pursuant to section 4-203, subsection J apply to the delivery of wine under subsection C, paragraph 9 of this section. An act or omission of any person who makes a sale or delivery of wine for a licensee under subsection C, paragraph 9 of this section is deemed to be an act or omission of the licensee for the purposes of section 4-210, subsection A, paragraph 9.

H. A farm winery that sells or delivers wine pursuant to this section shall:

1. Pay to the department of revenue all luxury taxes imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes imposed pursuant to title 42, chapter 5.

2. File all returns or reports required by law.

I. A delivery of wine by a farm winery to a purchaser in this state is a transaction deemed to have occurred in this state.

J. The director shall adopt rules in order to administer this section.

K. The director may charge an additional farm winery license fee adopted pursuant to section 4-209 for issuing licenses, authorizations or approvals pursuant to subsections D and E of this section.

L. The farm winery licensee that operates primarily as a remote tasting room premises may exchange the farm winery license for a remote tasting room license without an additional fee, not later than December 31, 2018. The new remote tasting room license must be connected to a farm winery license, with common ownership, that complies with all requirements for a farm winery license pursuant to subsections C and E of this section.

M. Production and storage space of the farm winery is excluded from the licensed farm winery premises and is not the public area unless that space is also used for the sale of wine to the public or consumption of or sampling of wine by the public or to provide other services to the public. Pursuant to section 4-118, the director, the director's agents or any peace officer may inspect spaces excluded by this subsection. For the purposes of this subsection, "public area" means a place within a farm winery that is accessible to the public and in which the farm winery authorizes the presence of members of the public.

4-205.05. Disposal of seized or recovered liquor

A. The director may issue a temporary permit of any series authorizing the disposal at public auction of spirituous liquor that has been seized by any agency of this state, the federal government, any political subdivision of this state, any financial institution as defined in section 6-101 that has a security interest in a license, the federal government pursuant to statute or a trustee in bankruptcy that acquires the spirituous liquor of a debtor. A bid at a public auction shall not be accepted from a licensee if the spirituous liquors offered for sale at the auction were seized or acquired from that licensee. The director shall issue the permit only if presented with proper documents of seizure by the appropriate official or the appointment of a trustee in bankruptcy. The director may dispose of seized spirituous liquor in whole or in part by public auction, by providing the spirituous liquor to law enforcement for training and investigation purposes only or by authorizing a qualified person to recycle the spirituous liquor.

B. Spirituous liquor with a stated expiration date on the label shall not be offered for sale at public auction after the expiration date and shall either be destroyed or disposed of as provided in this section. The licensed wholesaler that distributes the spirituous liquor brand in that sales territory may, but is not required to, accept a return of the liquor at no cost for disposal or to enable it to be returned to the supplier.

4-205.06. Hotel or motel minibars; rules; definitions

A. Notwithstanding any other statute, a hotel or motel may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of those registered guests, if all of the following conditions are met:

1. Before providing a key, magnetic card or other similar device required to attain access to the minibar in a particular guest room to the registered guest, or before otherwise providing access to the minibar to the registered guest, the licensee verifies that each registered guest to whom a key, magnetic card or similar device is provided or to whom access is otherwise provided is not a person under the legal drinking age.

2. All employees handling the spirituous liquors to be placed in the minibar in any guest room, including an employee who inventories or restocks and replenishes the spirituous liquors in the minibar, are at least eighteen years of age.

3. The minibar is not replenished or restocked with spirituous liquor between the hours of 2:00 a.m. and 6:00 a.m.

4. The minibar is located on the premises of a person who has been issued an on-sale retailer's license.

5. The minibar contains no more than thirty individual portions of spirituous liquor at any one time.

B. A minibar may be part of another cabinet or similar device, whether refrigerated in whole or in part or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in hotel or motel guest rooms. The portion of the cabinet or similar device in which spirituous liquors are stored shall comply with the requirements of this section.

C. The director may prescribe rules to regulate the use of a minibar including rules on the size of containers of spirituous liquors and may by rule reduce from thirty the number of containers of spirituous liquor placed in the minibar.

D. For the purposes of this section:

1. "Hotel" or "motel" means an establishment that is licensed to sell spirituous liquors and that contains guest room accommodations with respect to which the predominant relationship existing between the occupants of the rooms and the owner or operator of the establishment is that of innkeeper and guest. For the purposes of this paragraph, the existence of other legal relationships as between some occupants and the owner or operator is immaterial.

2. "Minibar" means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior is restricted by means of a locking device that requires the use of a key, magnetic card or similar device.

4-205.07. Conveyance license for excursion boats

A. The director may issue a conveyance license to the owner or lessee of an excursion boat if all of the following conditions apply:

1. The applicant for the license shall designate a dock as the home port for the boat.

2. The notice of the license application shall be prominently placed on the designated dock that is the home port.

3. The boat shall have a displacement of not less than fifty tons and shall have a passenger capacity of eighty persons or more.

4. The boat shall have a current coast guard certification.

B. The licensee or employee shall comply with each of the following requirements:

1. Liquor sales shall be for on premises consumption only.

2. No liquor sales shall be made in dock earlier than thirty minutes prior to departure or later than thirty minutes after docking.

3. No person may be permitted to bring spirituous liquor onto the boat except that purchased by the licensee or employee for resale according to law.

4. No boat captain or crew member shall consume spirituous liquor while serving as crew member.

C. The director may adopt rules to administer this section and to prevent violations of this title.

4-205.08. Microbrewery license; issuance; regulatory provisions; retail site

A. The director may issue a microbrewery license to any microbrewery. Each location that engages in producing, manufacturing and bottling these products must obtain a separate microbrewery license. The licensee may not transfer the microbrewery license from person to person or from location to location.

B. An applicant for a microbrewery license, at the time of filing the application for the license, shall accompany the application with the license fee. Persons holding a microbrewery license shall report annually at the end of each calendar year, at the time and in the manner as the director prescribes, the amount of beer produced or manufactured by them during the calendar year and the amount delivered pursuant to subsection D, paragraph 4, subdivision (b) of this section. If the total amount of beer that is produced or manufactured during the calendar year exceeds the amount permitted annually by the license, the licensee shall apply for and receive a producer's license only on surrender of the microbrewery license or licenses and shall have no continuing rights as a microbrewery under this section. On the surrender of the microbrewery license or licenses, the licensee shall transfer, surrender or otherwise relinquish control of all of its retail licenses located remotely from a microbrewery.

C. Notwithstanding any other law, a licensed microbrewery may:

1. Sell beer produced or manufactured on the premises for consumption on or off the premises.

2. Make sales and deliveries of beer that the microbrewery produces or manufactures to persons licensed to sell beer under this title through wholesalers licensed under this title or as provided in subsection D, paragraph 4, subdivision (a) or (b) of this section.

3. Make sales and deliveries of beer that the microbrewery produces or manufactures to persons licensed to sell beer in another state if lawful under the laws of that state.

4. Serve beer produced or manufactured on the premises for the purpose of sampling the beer.

5. Sell beer produced or manufactured by other microbreweries for consumption only on the premises of the licensee, except that the sales percentage of beer from other microbreweries may not exceed twenty percent of the licensee's annual sales of beer by volume at the premises. If the other microbrewery has established a distribution relationship with one or more wholesalers who are licensed under this title, the beer shall be purchased through those wholesalers.

6. Maintain at no charge a tapping equipment system of a licensed retailer when the microbrewery sells beer as provided in subsection D, paragraphs 3 and 4 of this section, including cleaning the tapping equipment system and replacing bonnet washers, friction rings, valve stems, hardware, unions, clamps, air tees, screws, tapping devices, tower heads and single air and beer lines.

D. A licensed microbrewery is subject to all of the following requirements:

1. The microbrewery shall produce or manufacture not less than five thousand gallons of beer in each calendar year following the first year of operation.

2. The microbrewery shall not produce or manufacture more than six million two hundred thousand gallons of beer in a calendar year.

3. If retail operations are conducted in conjunction with the microbrewery, the microbrewery may sell other spirituous liquor products if the microbrewery holds an on-sale retail license for a bar, beer and wine bar or restaurant. The microbrewery may be issued up to a combined total of seven retail licenses in this state, whether the premises are located on or adjacent to a microbrewery or remotely from a microbrewery. The limit on the number of retail licenses applies on an aggregated basis to all microbreweries that are under common control of any person with control of the microbrewery.

4. The microbrewery may make sales and deliveries of beer that it has produced or manufactured to both:

(a) Retail licensees that meet the requirements prescribed in paragraph 3 of this subsection in any amount.

(b) Any other retail licensee in a cumulative amount not to exceed ninety-three thousand gallons in total for all licensed retailers in any calendar year.

E. A microbrewery that produces or manufactures more than one million two hundred forty thousand gallons of beer in a calendar year maintains all of the rights associated with a microbrewery license, except that the microbrewery shall not:

1. Apply for or receive a retail license pursuant to subsection D, paragraph 3 of this section for premises that are located remotely from the microbrewery.

2. Make sales or deliveries of beer that the microbrewery has produced or manufactured to any retail licensee as provided in subsection D, paragraph 4 of this section, except for the microbrewery's retail licensees on or adjacent to the microbrewery.

F. The gallonage amounts prescribed in subsection D, paragraph 2 and subsection E of this section apply to the aggregate manufacture or production of all microbreweries that are under common control of any person with control of the microbrewery.

G. A microbrewery that is otherwise engaged as a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor in any jurisdiction is prohibited from holding any retail license that is located remotely from a microbrewery. This subsection does not prohibit a person with control of more than one microbrewery from conducting retail operations remotely from a microbrewery pursuant to subsection D, paragraph 3 of this section.

H. A microbrewery that sells or delivers beer pursuant to this section shall:

1. Pay to the department of revenue all luxury taxes imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes imposed pursuant to title 42, chapter 5.

2. File all returns or reports required by law.

I. A delivery of beer by a microbrewery to a purchaser in this state is a transaction deemed to have occurred in this state.

J. The director shall adopt rules to administer this section.

4-205.09. Microbrewery and farm winery licenses on same land; requirements

A. The director may issue a microbrewery license located on the same parcel of land as a farm winery subject to the following conditions:

1. The licenses of the microbrewery and the farm winery shall be held by different persons, except that the director may issue both licenses to the same bona fide educational institution for the purposes of postsecondary educational instruction.

2. The microbrewery and the farm winery shall be located in separate buildings that are licensed separately.

3. The microbrewery and the farm winery may share a common tasting room and indoor and outdoor premises for tasting and for consumption of microbrewery and farm winery products.

4. The microbrewery and farm winery shall each comply fully with all applicable requirements prescribed in sections 4-205.04 and 4-205.08.

5. Persons who hold a microbrewery license or a farm winery license with combined premises under this section shall not hold any other license issued pursuant to this title.

B. A microbrewery and a farm winery that share a common tasting room and indoor and outdoor premises as provided in subsection A, paragraph 3 of this section may each be held liable for any violation of this title.

4-205.10. Craft distiller license; issuance; regulatory provisions; fee

A. The director may issue a craft distiller license to any person that meets the requirements of subsection C of this section. Each location that engages in producing and bottling these products must obtain a separate craft distiller license. The licensee may not transfer the craft distiller license from person to person or from location to location and may not also hold a producer's license. The licensee and all commonly controlled craft distiller licensees may not manufacture or produce more than twenty thousand gallons of distilled spirits in a calendar year. For the purposes of this section, annual gallonage shall be the total proof gallons of finished distilled product available for wholesale or retail sale as defined by 26 United States Code section 5002 and rules adopted pursuant to this section or its successor.

B. Persons holding a craft distiller license shall report annually at the end of each calendar year, at the time and in the manner as the director prescribes, the amount of distilled spirits that is produced or manufactured by that licensee during the calendar year. In addition to any other provision of this title, if the total amount of distilled spirits that is produced or manufactured during the year exceeds the amount that is permitted annually by the license, the licensee shall apply for and, on qualification, receive a

producer's license only on the surrender of the craft distiller license and shall have no continuing rights as a craft distiller licensee under this section.

C. A person may be licensed as a craft distiller to sell distilled spirits that are produced or manufactured by the person if in a calendar year the person produces or manufactures not more than twenty thousand gallons of distilled spirits and may make sales and deliveries of distilled spirits only as specified in this section and subject to the following criteria:

1. A licensed craft distiller may make sales and deliveries of distilled spirits to wholesalers that are licensed to sell distilled spirits under this title.

2. A licensed craft distiller may serve distilled spirits that are produced or manufactured on the premises for the purpose of consumption on the premises and may charge for samples on the premises of the craft distiller.

3. A licensed craft distiller may sell distilled spirits that are produced or manufactured on the premises in the original container for consumption off the premises to a consumer who is physically present on the premises.

4. The licensed craft distiller may hold one license prescribed in section 4-209, subsection B, paragraph 6 or 12 on or adjacent to the licensed craft distiller premises. The licensed craft distiller shall purchase all other spirituous liquor for sale at the on-sale retail premises from wholesalers that are licensed in this state, except that a licensed craft distiller may:

(a) Purchase distilled spirits from other craft distillers that are licensed in this state. Sales of craft distillery products not produced or manufactured by the craft distiller shall be limited to no more than twenty percent of the total sales by volume.

(b) Make deliveries of the distilled spirits that the craft distiller manufactures or produces to any commonly controlled retail licensed premises or to the craft distiller's remote tasting rooms and that are authorized pursuant to this paragraph.

5. A licensed craft distiller that produces not more than three thousand five hundred sixty-six gallons of distilled spirits in a calendar year may make sales and deliveries of distilled spirits that the licensed craft distiller produces to on-sale and off-sale retailers.

6. Notwithstanding section 4-244, paragraphs 3 and 7, an on-sale or off-sale retailer may purchase and accept delivery of distilled spirits from a licensed craft distiller pursuant to paragraph 5 of this subsection.

7. A licensed craft distiller may make sales and deliveries of distilled spirits that the licensed craft distiller manufactures or produces to consumers off of the licensed premises if the sale or delivery is ordered by telephone, mail, fax, catalogue, the internet or by other means if all of the following conditions exist:

(a) The purchaser of the distilled spirits provided the licensed craft distiller with verification of the purchaser's legal age to purchase alcohol and a copy of same is maintained in the records of the craft distiller.

(b) The shipping container in which the distilled spirits are shipped is marked to require the signature on delivery of an adult who is of legal age to purchase alcohol and delivery confirmation.

(c) The distilled spirits are for personal use only and not for resale.

(d) The distilled spirits are shipped to a residential or business address other than a premises licensed pursuant to this title.

(e) The purchaser could have carried the distilled spirits lawfully into or within this state.

(f) A person who is at least twenty-one years of age makes the delivery.

(g) The craft distiller collects payment for the price of the spirituous liquor no later than at the time of delivery.

D. On application by a craft distiller licensee, the director may authorize a craft distiller licensee to operate two other remote tasting and retail premises if:

1. The distilled spirits sold at the premises are limited to distilled spirits produced or manufactured by the licensed craft distillery and distilled spirits produced or manufactured by another licensed craft distillery. The craft distillery may sell to a consumer physically present on the premises distilled spirits produced by the craft distillery or by other licensed craft distilleries in the original container for consumption on or off the premises. The sales of the distilled spirits produced or manufactured by other craft distilleries shall not exceed twenty percent of the craft distillery's total sales by volume.

2. The craft distiller licensee:

(a) Remains responsible for the premises.

(b) Obtains approval for the premises from the local governing body before submitting an application to the department. A copy of an order from the local governing body recommending approval of the premises must be filed with the department as part of the application.

(c) Does not sublease the premises.

(d) Has an agent who is a natural person who meets the qualifications of licensure in this state.

(e) Meets the qualifications for a license pursuant to section 4-203, subsection A.

(f) For a tasting room with a shared patio, meets the requirements prescribed in section 4-205.12.

E. A craft distiller licensee may hold a farm winery license issued pursuant to section 4-205.04. The craft distiller licensee and farm winery licensee are subject to all other requirements of this section and section 4-205.04. The craft distiller may provide sampling and retail sales of distilled spirits pursuant to subsection C, paragraphs 2 and 3 of this section on the same premises as the wine sampling and retail sales.

F. The craft distiller is liable for any violation that is committed in connection with any sale or delivery of the distilled spirits. The rules adopted by the director pursuant to section 4-203, subsection J apply to the delivery of distilled spirits under subsection C of this section. An act or omission of any person who makes a sale or delivery of distilled spirits for a licensee under subsection C of this section is deemed to be an act or omission of the licensee for the purposes of section 4-210, subsection A, paragraph 9.

G. A craft distiller that sells or delivers distilled spirits pursuant to this section shall:

1. Pay to the department of revenue all luxury taxes that are imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes that are imposed pursuant to title 42, chapter 5.

2. File all returns or reports that are required by law.

H. A delivery of distilled spirits by a craft distiller to a purchaser in this state is a transaction deemed to have occurred in this state.

I. The production and storage space of the craft distiller are excluded from the public area of the licensed craft distiller premises. Pursuant to section 4-118, the director, the director's agents or any peace officer may inspect spaces excluded by this subsection. For the purposes of this subsection:

1. "Production and storage space" means a bonded area, tax-paid storage area and area that provides no services to the public.

2. "Public area" means a place within a licensed and bonded craft distiller that is accessible to the public and in which the craft distiller sells and samples tax-paid product and authorizes the presence of members of the public.

J. The director may adopt rules in order to administer this section.

K. The director may charge a fee adopted pursuant to section 4-209 for the issuance of a license pursuant to this section.

L. The director may issue a craft distiller license to be located on the same parcel of land as a farm winery licensed pursuant to section 4-205.04.

4-205.11. Craft distillery festival license; craft distillery fair license; craft distillery fee

A. The director may issue on a temporary basis a craft distillery festival license that authorizes:

1. The sampling of the craft distillery products on the craft distillery festival premises.

2. The sale of products for consumption on the craft distillery festival premises.

3. The sale of products in the original container for consumption off the craft distillery festival premises.

B. Before the director may issue a craft distillery festival license, a craft distillery festival that is to occur at an otherwise unlicensed location or at a location that is not fully within the licensee's existing licensed premises must be approved by the board of supervisors of the county, or the board's designee, if the event is to be held in an unincorporated area or by the governing body of the city or town, or the governing body's designee, if the event is to be held in a city or town. A denial by the county, city or town must be forwarded to the director within sixty days after the submission of an application to the county, city or town, unless the applicant has requested more time for consideration of the application.

C. The approval process prescribed in this section does not apply to physical locations that are fully located within a premises that is licensed pursuant to this title.

D. The director may issue one or more craft distillery festival licenses for each craft distillery licensed pursuant to this title, for a total of up to one hundred fifty calendar days per craft distillery. The director may establish a fee for each day of each event for a craft distillery festival license.

E. Any craft distillery may apply for a craft distillery festival license pursuant to this section.

F. With the permission of the state or county fair organizers, any craft distillery is authorized to allow sampling of craft distillery products on the fair premises, the sale of the products for consumption on the fair premises and the sale of the products in original containers for consumption off of the fair premises at any sanctioned county or state fair. The director may establish a per-day fee for each event for a craft distillery fair license.

G. Section 4-201 does not apply to the licenses provided for under this section.

4-205.12. Tasting rooms with shared patios

A. The director may issue a remote tasting room license to a craft distiller or a domestic farm winery for a tasting room that is located on the same property as another remote tasting room license, subject to the following conditions:

1. Each remote tasting room license shall be held by a different person.

2. Each license shall be located in separate premises that are licensed separately.

3. Remote tasting room licensees may share a common indoor area and common outdoor patio for tasting and for consumption of their products.

4. The remote tasting room licensees shall each comply fully with all applicable requirements prescribed in sections 4-205.04 and 4-205.10.

5. Remote tasting room licenses with a combined premises under this section cannot be stacked with any other license issued pursuant to this title.

B. All remote tasting room licensees that share a common indoor area and outdoor patio as provided in subsection A, paragraph 3 of this section may each be held liable for any violation of this title.

4-205.13. Registered alcohol delivery contractor; issuance; fee; regulatory provisions

A. The director may register any person in this state as an alcohol delivery contractor for the purposes of delivering spirituous liquor from a bar, beer and wine bar, liquor store, beer and wine store or restaurant licensee to a consumer in this state pursuant to section 4-203, subsections S and T.

B. A person shall apply to be a registered alcohol delivery contractor on a form prescribed by the director. The director shall require an applicant to provide the controlling person's identification and any background information deemed necessary to identify the person and to demonstrate proof of the person's authority to conduct business in this state, including copies of any required state or local business licenses or permits. The director may establish and charge a registration fee and a renewal fee to be used for administrative and enforcement costs associated with alcohol delivery contractors.

C. The department shall maintain a list of registered alcohol delivery contractors that are not otherwise in penalty status pursuant to subsection G of this section.

D. The department may require new registered alcohol delivery contractors to complete an approved training course in accordance with section 4-112, subsection G, paragraph 2. A registered alcohol delivery contractor is subject to examinations conducted pursuant to section 4-112, subsection G, paragraph 1.

E. The director may refuse to register a person as an alcohol delivery contractor for good cause and may not register any person as an alcohol delivery contractor if the person has been convicted of a felony in this state or any other state within five years immediately preceding the application.

F. A registered alcohol delivery contractor may deliver spirituous liquor to a consumer in this state on behalf of a bar, beer and wine bar, liquor store, beer and wine store or restaurant in this state pursuant to section 4-203, subsections S and T, if the registered alcohol delivery contractor complies with this title. A registered alcohol delivery contractor may contract with one or more independent subcontractors for the delivery of spirituous liquor to a consumer in this state on behalf of a bar, beer and wine bar, liquor store, beer and wine store or restaurant in this state pursuant to section 4-203, subsections S and T. An alcohol delivery contractor, a subcontractor of an alcohol delivery contractor, an employee of an alcohol delivery

contractor or an employee of a subcontractor is deemed to be acting on behalf of the licensee when making a delivery of spirituous liquor for the licensee.

G. In addition to all other action that may be taken by the director for a violation of this title or the rules adopted pursuant to this title by a registered alcohol delivery contractor and its employees or subcontractors and employees of subcontractors, the department may limit the right of the registered alcohol delivery contractor to deliver spirituous liquor on behalf of a licensee for a period of up to one year, after which the alcohol delivery contractor shall register with the department to resume delivery of spirituous liquor. Any penalty issued pursuant to this subsection may be appealed to the board pursuant to section 4-210.02.

4-205.14. Microbrewery festival license; microbrewery fair license; fee

A. The director may issue on a temporary basis a microbrewery festival license that authorizes:

1. The sampling of the microbrewery products on the microbrewery festival premises.

2. The sale of products for consumption on the microbrewery festival premises.

3. The sale of products in the original container for consumption off the microbrewery festival premises.

B. Before the director may issue a microbrewery festival license, a microbrewery festival that is to occur at an otherwise unlicensed location or at a location that is not fully within the licensee's existing licensed premises must be approved by the board of supervisors of the county, or the board's designee, if the event is to be held in an unincorporated area or by the governing body of the city or town, or the governing body's designee, if the event is to be held in a city or town. A denial by the county, city or town must be forwarded to the director within sixty days after the submission of an application to the county, city or town unless the applicant has requested more time for consideration of the application.

C. The approval process prescribed in subsection B of this section does not apply to physical locations that are fully located within a licensed premises.

D. The director may issue one or more microbrewery festival licenses for each licensed microbrewery, for a total of up to one hundred fifty calendar days for each microbrewery. The director may establish a fee for each day of each event for a microbrewery festival license.

E. Any microbrewery may apply for a microbrewery festival license pursuant to this section.

F. A representative of the licensed microbrewery may consume small amounts of the products of the licensed microbrewery on the festival premises for the purpose of quality control.

G. The director may issue a microbrewery fair license with the permission of state fair organizers or county fair organizers. Any microbrewery may allow the sampling of microbrewery products on the fair premises, the sale of the products for consumption on the fair premises and the sale of the products in original containers for consumption off of the fair premises at any sanctioned state fair or county fair. The director may establish a fee for each day for each event for a microbrewery fair license.

H. Section 4-201 does not apply to the licenses provided under this section.

4-206.01. Bar, beer and wine bar or liquor store licenses; number permitted; fee; sampling privileges; off-sale permit

A. The director shall determine the total number of spirituous liquor licenses by type and in each county. The director shall publish a listing of that information as determined by the director.

B. In each county, the director, each year, shall issue additional bar or liquor store licenses at the rate of one of each type for each additional ten thousand person increase over the population in that county as of July 1, 2010. For every license that has been revoked or reverted in any county, the director may issue a new license of the same series in the same county, except that if there are more than five licenses of a particular class, the director may issue five new licenses plus an additional number of new licenses equivalent to twenty percent of the difference between the number of revoked or reverted licenses per year and five. The director may waive the issuance of licenses in a county for one year where there has been no request made to the department for the issuance of a new license of that series. For the purposes of this subsection, the population of a county is deemed to be the population estimated by the office of economic opportunity as of July 1 of each year.

C. In each county, the director, each year, shall issue additional beer and wine bar licenses at the rate of one for each additional five thousand person increase over the population in that county as of July 1, 2010. Beginning January 1, 2022, in each county, the director, each year, shall issue additional beer and wine bar licenses at the rate of one for each additional ten thousand person increase over the population in that county as of July 1, 2010. For every license that has been revoked or reverted in any county, the director may issue a new license of the same series in the same county, except that if there are more than five licenses of a particular class, the director may issue five new licenses plus an additional number of new licenses equivalent to twenty percent of the difference between the number of revoked or reverted licenses per year and five. The director may waive the issuance of licenses in a county for one year if there has been no request made to the department for the issuance of a new license of that series. For the purposes of this subsection, the population of a county is deemed to be the population estimated as of July 1 of each year by the office of economic opportunity.

D. A person issued a license authorized by subsection B or C of this section shall pay an additional issuance fee equal to the license's fair market value that shall be paid to the state general fund. An appraisal shall be conducted to determine the fair market value of that license type in a specific county. The fair market value is defined to mean the price arrived at in good faith that a knowledgeable and willing buyer will pay and is computed by determining the average value, or weighted average value if there are trends in license pricing in that county, of licenses of the same type, free of any encumbrances, sold on the open market in the same county during the prior twelve months, but if there are not three or more sales then the fair market value is determined by two appraisals furnished to the department by independent professional appraisers employed by the director. The valuation method under both approaches shall take into account trends in the value of licenses of the specific type during the previous twelve months. A new license authorized pursuant to subsection B or C of this section may not be issued to a person or entity that has had a similar license revoked or reverted unless the person or entity provides the director with satisfactory proof that all previous liens on the revoked or reverted license have been satisfied in full.

E. The director shall employ professional appraisal services to determine the fair market value of bar, beer and wine bar or liquor store licenses.

F. If more than one person applies for an available license, a priority of applicants shall be determined by a random selection method prescribed by the director, except that the number of times that a person may enter the random selection process shall not exceed the number of licenses of that series that are available for issuance. For the purposes of this subsection, a partnership, limited liability company, association, company or corporation is considered the same person if it is owned, managed, operated or controlled by the same controlling person.

G. Bar licenses and beer and wine bar licenses shall be issued and used only if the clear primary purpose and actual primary use is for on-sale retailer privileges. The off-sale privileges associated with a bar license and a beer and wine bar license shall be limited to use, which is clearly auxiliary to the active

primary on-sale privilege. A bar license or a beer and wine bar license shall not be issued or used if the associated off-sale use, by total retail spirituous liquor sales, exceeds thirty percent of the sales price of on-sale spirituous liquors by the licensee at that location. For dual licenses issued pursuant to a single site or where a second license is issued to a site that already has a spirituous liquor license, other than settlement licenses issued as provided by law, the applicant has the burden of establishing that public convenience and the best interest of the community will be served by the issuance of the license.

H. The director may issue a beer and wine store license to the holder of a beer and wine bar license simultaneously at the same premises. An applicant for a beer and wine bar license and a beer and wine store license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with this title. A beer and wine bar license and beer and wine store license on the same premises shall be owned by and issued to the same licensee.

I. The director may issue a beer and wine bar license to the holder of a liquor store license issued simultaneously at the same premises. An applicant for a liquor store license and a beer and wine bar license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with this title. A liquor store license and a beer and wine bar license on the same premises shall be owned by and issued to the same licensee.

J. The director may issue a restaurant license to the holder of a beer and wine bar license issued simultaneously at the same premises. An applicant for a restaurant license and a beer and wine bar license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with this title. A restaurant license and a beer and wine bar license on the same premises shall be owned by and issued to the same licensee. The limitation stated in subsection G of this section with respect to the off-sale privileges of the beer and wine bar licenses shall be measured against the on-sales of beer and wine sales of the establishment. For the purposes of compliance with section 4-205.02, subsection M, paragraph 2, it shall be conclusively presumed that all on-premises sales of spirituous liquors are made under the authority of the restaurant license.

K. An applicant for a liquor store license or a beer and wine store license and the licensee of a liquor store license or a beer and wine store license may apply for sampling privileges associated with the license. Beer and wine store premises containing less than five thousand square feet must dedicate at least seventy-five percent of retail shelf space to the sale of spirituous liquor in order to be eligible for sampling privileges. A person desiring a sampling privilege associated with a liquor store license shall apply to the director on a form prescribed and furnished by the director. The application for sampling privileges may be filed for an existing license or may be submitted with an initial license application. The request for sampling approval, the review of the application and the issuance of approval shall be conducted under the same procedures for the issuance of a spirituous liquor license prescribed in section 4-201. After a sampling privilege has been issued for a liquor store license or a beer and wine store license, the sampling privilege shall be noted on the license itself and in the records of the department. The sampling rights associated with a license are not transferable. The director may charge a fee for processing each application for sampling privileges and a renewal fee as provided in this section. A city or town shall not charge any fee relating to the issuance or renewal of a sampling privilege. Notwithstanding section 4-244, paragraph 19, a liquor store licensee or a beer and wine store licensee that holds a license with sampling privileges may provide spirituous liquor sampling subject to the following requirements:

1. Any open product shall be kept locked by the licensee when the sampling area is not staffed.

2. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.

3. The licensed retailer shall make sales of sampled products from the licensed retail premises.

4. The licensee shall not charge any customer for the sampling of any products, except that the licensee may charge a fee for bona fide educational classes conducted in a classroom by an instructor on the licensed premises where the sampling of any spirituous liquor product is incidental to the course taught and to the course materials presented.

5. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.

6. Accurate records of sampling products dispensed shall be retained by the licensee.

7. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounces of wine and one ounce of distilled spirits per person, per brand, per day.

8. The sampling shall be conducted only on the licensed premises.

L. If a beer and wine bar license and a beer and wine store license are issued at the same premises, for the purposes of reporting liquor purchases under each license, all spirituous beverages purchased for sampling are conclusively presumed to be purchased under the beer and wine bar license and all spirituous liquor sold off-sale are conclusively presumed to be purchased under the beer and wine store license.

M. The director may issue a beer and wine store license to the holder of a bar license simultaneously at the same premises. An applicant for a beer and wine store license and a bar license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with this title. A beer and wine store license and a bar license on the same premises shall be owned by and issued to the same licensee. If a beer and wine store license and a bar license are issued at the same premises, for purposes of reporting liquor purchases under each license, all off-sale beer and wine sales are conclusively presumed to be purchased under the beer and wine store license.

4-207. Restrictions on licensing premises near school buildings; definition

A. A retailer's license shall not be issued for any premises that are, at the time the license application is received by the director, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building. This section does not prohibit the renewal of a valid license issued pursuant to this title if, on the date that the original application for the license is filed, the premises were not within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building.

B. Subsection A of this section does not apply to a:

1. Restaurant issued a license pursuant to section 4-205.02, subject to the limitations in section 4-205.02, subsection H for a permit allowing for the sale of beer for consumption off of the licensed premises pursuant to section 4-244, paragraph 32, subdivision (c).

2. Special event license issued pursuant to section 4-203.02.

3. Hotel-motel issued a license pursuant to section 4-205.01.

4. Government license issued pursuant to section 4-205.03.

5. Playing area of a golf course issued a license pursuant to this article.

6. Beer and wine license at a nonprofit performing arts theatre with a permanent seating capacity of at least two hundred fifty persons.

7. Craft distillery festival license issued pursuant to section 4-205.11.

8. Farm winery festival license issued pursuant to section 4-203.03.

9. Microbrewery festival license or microbrewery fair license issued pursuant to section 4-205.14.

C. Notwithstanding subsection A of this section:

1. A transferable spirituous liquor license that is validly issued and that is, on the date an application for a transfer is filed, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building may be transferred person to person pursuant to sections 4-201, 4-202 and 4-203 and remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.

2. A person may be issued a spirituous liquor license pursuant to sections 4-201, 4-202 and 4-203 of the same class for premises that, on the date the application is filed, have a valid transferable or nontransferable license of the same series if the premises are, on the date an application for the license is filed, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.

3. A person may be issued a liquor store license pursuant to sections 4-201, 4-202, 4-203 and 4-206.01 for premises that have a beer and wine store license validly issued if the premises, on the date an application for such license is filed, are within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.

4. The governing body of a city or town, on a case-by-case basis, may approve an exemption from the distance restrictions prescribed in this section for a public or private school that is located in an area that is designated an entertainment district by the governing body of that city or town. A city or town with a population of at least five hundred thousand persons may designate not more than three entertainment districts within the boundaries of the city or town pursuant to this paragraph. A city or town with a population of at least two hundred thousand persons but less than five hundred thousand persons may designate not more than two entertainment districts within the boundaries of the city or town pursuant to this paragraph. A city or town with a population of less than two hundred thousand persons may designate not more than one entertainment district within the boundaries of the city or town pursuant to this paragraph.

5. A person may be issued a beer and wine store license pursuant to sections 4-201, 4-202, 4-203 and 4-206.01 for premises that have a liquor store license validly issued if the premises, on the date of an application for which the license is filed, are within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreation area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.

D. For the purposes of this section, "entertainment district" means a specific contiguous area that is designated an entertainment district by a resolution adopted by the governing body of a city or town, that consists of not more than one square mile, that is not less than one-eighth of a mile in width and that contains a significant number of entertainment, artistic and cultural venues, including music halls, concert facilities, theaters, arenas, stadiums, museums, studios, galleries, restaurants, bars and other related facilities.

4-207.01. Submission of floor plan required; alteration of licensed premises; ingress and egress to off-sale package sales in on-sale licensed premises

A. No licensee of premises approved for transfer or an original location of on-sale spirituous liquor license shall open such licensed premises to the public for sale of spirituous liquor until the licensee shall first have filed with the director floor plans and diagrams completely disclosing and designating the physical arrangement of the licensed premises, including whether the licensee intends to sell spirituous liquor by means of a drive-through or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle, and shall have secured the written approval of the director to so open and operate such premises. The director may require the installation and maintenance of physical barriers around outside serving areas to control liquor service, delineate licensed premises and control the ingress and egress to and from the licensed premises for the purpose of providing for the safety of patrons and preventing underage possession and consumption, the removal of alcohol from the premises, the unauthorized bringing of alcohol onto the premises and the unauthorized consumption of alcohol in a public area or thoroughfare.

B. No licensee shall alter or change the physical arrangement of his licensed premises so as to encompass greater space or the use of different or additional entrances, openings or accommodations than the space, entrance or entrances, openings or accommodations offered to the public at the time of issuance of the licensee's license or a prior written approval of the licensed premises, without first having filed with the director floor plans and diagrams completely disclosing and designating the proposed physical alterations of the licensed premises, including the addition of a drive-through or other physical feature to the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle, and shall have secured the written approval by the director. This subsection shall apply to any person to person transfer of the licensed premises. The director may charge a fee for review of floor plans and diagrams submitted by a licensee pursuant to this section.

C. The provisions of this section shall not be construed to prohibit in any way off-sale package sales in on-sale licensed premises, but the permission to open the premises to the public under subsections A and B shall not be granted if the licensee under the privilege provided for off-sale under an on-sale license proposes to maintain an off-sale operation with ingress and egress directly from the outside of such premises to such off-sale operation other than the ingress and egress provided for the on-sale operation of the licensed premises.

D. The provisions of this section shall apply to all applications, transfers and alterations.

4-207.02. Multiple licensees with joint premises

A. One or more on-sale spirituous liquor licensees with the same type of bar, beer and wine bar, restaurant or remote tasting room license may apply to the director for a joint premises permit. The premises of each applicant shall be adjacent to and fully contiguous to the joint premises. The proposed joint premises shall be limited to common areas that are pedestrian only and that are not immediately adjacent to a road, driveway or parking area. Application for a joint premises permit shall be on a form prescribed by the director. The application shall contain plans and diagrams that completely disclose and designate the physical arrangement of the proposed joint premises. The applicant licensee shall submit a copy of the

application to the local governing body before submitting the application to the director. The local governing body may review the application and provide an advisory recommendation to the director. The applicants shall submit a security plan that addresses the requirements prescribed in this section. The director may approve or deny the application, or approve the application for some but not all of the applicants based on the applicant's demonstration of ability to comply with the requirements prescribed in this section. If the application is approved, the joint premises area shall be considered an extension of premises for each of the approved applicants, subject to the following conditions:

1. The licensees implement security measures necessary to ensure that an individual under the legal drinking age does not purchase, possess or consume spirituous liquor on the licensed premises.

2. The licensees install and maintain temporary or permanent physical barriers around the joint premises or other security measures, including electronic surveillance and the use of security personnel and signage, that are fully in place while spirituous liquor is served and consumed. The barriers or other security measures shall be placed to achieve the following purposes:

(a) To control spirituous liquor service.

(b) To delineate the licensed premises.

(c) To control the ingress to and egress from the licensed premises.

(d) To provide for the safety of patrons.

(e) To prevent underage possession and consumption of spirituous liquor.

(f) To prevent the removal of spirituous liquor from the premises.

(g) To prevent the unauthorized carrying of spirituous liquor onto the premises.

(h) To prevent the unauthorized consumption of spirituous liquor in a public area or thoroughfare.

3. The director may require that, during the time the premises are being used as joint premises under a permit, the participating licensees identify the spirituous liquor beverages sold by each licensee by using distinguishable containers.

B. The licensees shall file with the director and may modify from time to time a schedule showing the days and time periods when the joint premises will be in use.

C. Each licensee that is approved for the joint premises shall comply fully with all applicable requirements of this title and any rules adopted pursuant to this title.

D. Each joint licensee that shares the joint premises as provided in this section may be held liable for any violation of this title. One or more licensees may be cited for a violation of this title that occurs on the premises, if the circumstances warrant the citation.

E. A licensee with joint premises privileges may not allow a person under the legal drinking age who is not accompanied by a spouse, parent, grandparent or legal guardian of legal drinking age to remain in an area on the joint premises during hours in which the primary use is the sale, dispensing or consumption of spirituous liquor after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age.

F. The department may consolidate complaints, proceedings and hearings with respect to complaints or matters against one or more licensees with joint premises permits.

G. The right of a licensee to use the joint premises may be limited or revoked by the director for a violation of this title or any rule adopted pursuant to this title.

H. The department may charge a fee in an amount prescribed by the director for the review and processing of an application submitted pursuant to this section.

I. Notwithstanding any other law, a joint premises permit may be suspended summarily and without appeal for up to ten days if the director determines that good cause exists for the suspension.

J. A permit issued pursuant to this section is not transferable.

K. A permit issued pursuant to this section shall be issued for one year and may be annually renewed.

4-207.03. Extended premises; application; requirements; fee

A. An on-sale spirituous liquor licensee may apply to the director to extend the licensed premises on an individual day or hour basis or on a regular recurring basis. The application for an extended premises shall be on a form prescribed by the director. The application shall contain plans and diagrams that completely disclose and designate the physical arrangement of the proposed extended premises. The applicant licensee shall submit a copy of the application to the local governing body at least sixty days before submitting the application to the director. The local governing body or the local governing body's designee may review the application and provide an advisory recommendation to the director. If the local governing body or the local governing body's designee completes the review and provides an advisory recommendation to the director before the conclusion of the sixty-day period, the director may act on the application before the expiration of the sixty-day period.

B. The applicant licensee shall submit with the application a security plan. The applicant licensee shall identify the security measures that will be implemented by the applicant licensee for the extended premises. The security plan shall:

1. Provide for the safety of patrons.

2. Ensure that an individual who is under the legal drinking age does not purchase, possess or consume spirituous liquor on the extended premises.

3. Prevent the unauthorized removal of spirituous liquor from the extended premises.

4. Prevent the unauthorized carrying of spirituous liquor onto the extended premises.

C. The applicant licensee shall file with the application and may modify from time to time a schedule showing the date and time periods when the extended premises will be in use. The applicant licensee shall provide at least ten days' written notice of the modification to the department.

D. The right of a licensee to use an extended premises may be limited or revoked by the director for a violation of this title or any rule adopted pursuant to this title.

E. The department may charge a fee in an amount prescribed by the director for the review and processing of applications.

F. A licensee with extended premises may not allow an individual who is under the legal drinking age and who is not accompanied by a spouse, parent, grandparent or legal guardian of legal drinking age to remain in an area on the extended premises during hours in which the primary use of the premises is the sale, dispensing or consumption of spirituous liquor after the licensee or licensee's employees know or should have known that the individual is under the legal drinking age.

4-208. Rejection as to location

A. The director shall not accept an application nor issue a license to sell or deal in spirituous liquors at a location for which a prior application has been rejected until twelve months after the date of the prior rejection.

B. No application for a license to deal in spirituous liquors shall be filed with nor accepted by the director within five years after the date of the rejection of the last of two previous applications at the same location has been rejected by the board or the director on the basis of lack of public convenience and necessity or denied on appeal pursuant to section 4-211. It shall be incumbent upon the applicant for a license filed after the expiration of the five-year period to establish that there have been significant changes of fact in respect to the location which justify the issuance of a license to deal in spirituous liquor.

4-209. Fees for license, application, issuance, renewal and transfer; late renewal penalty; seasonal operation; surcharges

A. A fee shall accompany an application for an original license or transfer of a license, or in case of renewal, shall be paid in advance. Every license expires annually, except that a license may be renewed for a two-year period pursuant to subsection M of this section if no compliance penalties have been issued to that location during the year before the renewal. A licensee who fails to renew the license on or before the due date shall pay a penalty of $150, which the licensee shall pay with the renewal fee. A license renewal that is deposited, properly addressed and postage prepaid in an official depository of the United States mail on or before the due date shall be deemed filed and received by the department on the date shown by the postmark or other official mark of the United States postal service stamped on the envelope. If the due date falls on a Saturday, Sunday or other legal holiday, the renewal shall be considered timely if it is received by the department on the next business day. The director may waive a late renewal penalty if good cause is shown by the licensee. A licensee who fails to renew the license on or before the due date may not sell, purchase or otherwise deal in spirituous liquor until the license is renewed. A license that is not renewed within sixty days after the due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee. Except an application fee for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K and leases pursuant to sections 4-203.06 and 4-203.07, an application fee for an original license or the transfer of a license shall be $100, which shall be retained by this state.

B. Issuance fees for original licenses shall be:

1. For an in-state producer's license to manufacture or produce spirituous liquor in this state, $1,500.

2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, $200.

3. For a microbrewery license, $300.

4. For a wholesaler's license to sell spirituous liquors, $1,500.

5. For a government license issued in the name of a state agency, state commission, state board, county, city, town, community college or state university or the national guard, $100.

6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, $1,500.

7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, $1,500.

8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquors in individual portions or in the original containers for consumption on the boat, $1,500.

9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, $1,500.

10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, $1,500.

11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, $1,500.

12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, $1,500. For a permit issued under section 4-205.02, subsection H allowing for the sale of beer for the consumption off the licensed premises pursuant to section 4-244, paragraph 32, subdivision (c), the director may charge a fee. For an application for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K, the director may charge a fee. The director may establish and charge fees for lease applications pursuant to sections 4-203.06 and 4-203.07.

13. For a farm winery license, $100. The director may charge a licensed farm winery a fee pursuant to section 4-205.04, subsection K.

14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, $1,000.

15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, $25.

16. The department may charge a fee for a craft distiller license.

17. The department may charge a fee for registering an alcohol delivery contractor pursuant to section 4-205.13.

C. The department may issue licenses with staggered renewal dates to distribute the renewal workload as uniformly as practicable throughout the twelve months of the calendar year. If a license is issued less than six months before the scheduled renewal date of the license, as provided by the department's staggered license renewal system, one-half of the annual license fee shall be charged.

D. The annual fees for licenses shall be:

1. For an in-state producer's license to manufacture or produce spirituous liquors in this state, $350.

2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, $50.

3. For a microbrewery license, $300.

4. For a wholesaler's license, to sell spirituous liquors, $250.

5. For a government license issued to a county, city or town, community college or state university or the national guard, $100.

6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, $150.

7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, $75.

8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquor in individual portions or in the original containers for consumption on the boat, $225.

9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, $50.

10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, $50.

11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, $500.

12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, $500, and for a restaurant license that is allowed to continue operating as a restaurant pursuant to section 4-213, subsection E, an additional amount established by the director. The department shall transfer this amount to the state treasurer for deposit in the state general fund. The director may establish an annual fee for a permit pursuant to section 4-203.07 and section 4-205.02, subsection K. The director may charge annual lease amounts pursuant to sections 4-203.06 and 4-203.07.

13. For a farm winery license, $100. The director may charge a licensed farm winery an annual fee pursuant to section 4-205.04, subsection K.

14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, $150.

15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, $25.

16. The director may charge a fee for the annual renewal of a craft distiller license.

17. The department may charge a fee for the annual registration renewal of a registered alcohol delivery contractor pursuant to section 4-205.13.

E. Where the business of an on-sale retail licensee is seasonal, not extending over periods of more than six months in any calendar year, the licensee may designate the periods of operation and a license may be granted for those periods only, on payment of one-half of the fee prescribed in subsection D of this section.

F. Transfer fees from person to person for licenses transferred pursuant to section 4-203, subsection C shall be $300.

G. Transfer fees from location to location, as provided for in section 4-203, shall be $100.

H. Assignment fees for a change of agent, as provided for in section 4-202, subsection A, an acquisition of control, as provided for in section 4-203, subsection F, or a restructuring, as provided for in section 4-203, subsection H, shall be $100, except that where a licensee holds multiple licenses and requests

multiple, simultaneous changes, the change of agent, acquisition of control or restructuring fee for the first license shall be $100 and the fee for all remaining licenses shall be $50 each, except that the aggregate fees shall not exceed $1,000 for all change of agents, $1,000 for all acquisitions of control and $1,000 for all restructurings.

I. No fee shall be charged by the department for an assignment of a liquor license in probate or an assignment pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding that assigns ownership of a business that includes a spirituous liquor license to one of the parties in the proceeding. In the case of nontransferable licenses, no fee shall be charged by the department for the issuance of a license for a licensed business pursuant to a transfer of the business in probate or pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding that assigns ownership of the business to one of the parties in the proceeding.

J. The director shall assess a surcharge of $30 on all licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section. Monies from the surcharge shall be used by the department exclusively for the costs of an auditor and support staff to review compliance by applicants and licensees with the requirements of section 4-205.02, subsection E. The department shall assess the surcharge as part of the annual license renewal fee.

K. The director shall assess a surcharge of $35 on all licenses prescribed in this section. Monies from the surcharge shall be used by the department exclusively for the costs of an enforcement program to investigate licensees who have been the subject of multiple complaints to the department. The enforcement program shall respond to complaints against licensees by neighborhood associations, by neighborhood civic groups and from municipal and county governments. The department shall assess the surcharge as part of the annual license renewal fee.

L. The director shall assess a surcharge of $20 on all licenses prescribed in subsection D, paragraphs 11 and 12 of this section and $35 on all other licenses prescribed in this section. Monies from the surcharge and from surcharges imposed pursuant to subsection K of this section shall be used by the department exclusively for the costs of a neighborhood association interaction and liquor enforcement management unit. The unit shall respond to complaints from neighborhood associations, neighborhood civic groups and local governing authorities regarding liquor violations. The director shall report the unit's activities and the use of monies from the surcharge or surcharges imposed pursuant to subsection K of this section to the board at each board meeting or as the board may direct.

M. Licenses may be renewed every two years with payment of license fees that are twice the amount designated in subsection D of this section and other applicable fees. Licensees renewing every two years must comply with annual reporting requirements. The director may adopt reasonable rules to allow licensees to renew every two years.

N. The department shall use all monies received from application fees for permits issued pursuant to section 4-205.02, subsection K, leases pursuant to sections 4-203.06 and 4-203.07 and registrations pursuant to section 4-205.13 for administrative costs associated with the permit, registration or lease and enforcement of this chapter.

4-210. Grounds for revocation, suspension and refusal to renew; notice; complaints; hearings; defense

A. After notice and hearing, the director may suspend, revoke or refuse to renew any license, registration, lease or permit issued pursuant to this chapter for any of the following reasons:

1. There occurs on the licensed premises repeated acts of violence.

2. The licensee, registrant, lessee or permittee fails to satisfactorily maintain the capability, qualifications and reliability requirements of an applicant for a license, registration, lease or permit prescribed in section 4-202, 4-203, 4-203.06, 4-203.07 or 4-205.13.

3. The licensee, registrant, lessee, permittee or controlling person knowingly files with the department an application or other document that contains material information that is false or misleading or while under oath knowingly gives testimony in an investigation or other proceeding under this title that is false or misleading.

4. The licensee, registrant, lessee, permittee or controlling person is on the premises habitually intoxicated.

5. The licensed, registered, leased or permitted business is delinquent for more than one hundred twenty days in paying taxes, penalties or interest in an amount that exceeds $250 to this state or to any political subdivision of this state.

6. The licensee or controlling person obtains, assigns, transfers or sells a spirituous liquor license without complying with this title or leases or subleases a license.

7. The licensee, registrant, lessee or permittee fails to keep for two years and make available to the department on reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.

8. The licensee, registrant, lessee, permittee or controlling person is convicted of a felony, provided that for a conviction of a corporation to serve as a reason for any action by the director, conduct that constitutes the corporate offense and was the basis for the felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation or by a high managerial agent acting within the scope of employment.

9. The licensee, registrant, lessee, permittee or controlling person violates or fails to comply with this title, any rule adopted pursuant to this title or any liquor law of this state or any other state.

10. The licensee, registrant, lessee or permittee fails to take reasonable steps to protect the safety of a customer of the licensee, registrant, lessee or permittee or any other person entering, leaving or remaining on the licensed premises when the licensee knew or reasonably should have known of the danger to the person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of the acts of violence. The duty to protect a customer or other person on the licensed premises does not limit the licensee from using, as necessary, reasonable intervention, reasonable restraint or reasonable removal of a person from the premises to prevent that person from injuring other persons on the premises or damaging or disrupting the premises.

11. The licensee, registrant, lessee, permittee or controlling person knowingly associates with a person who has engaged in racketeering, as defined in section 13-2301, or who has been convicted of a felony, and the association is of a nature as to create a reasonable risk that the licensee, registrant, lessee or permittee will fail to conform to the requirements of this title or of any criminal statute of this state.

12. A licensee that is a liquor store as defined in section 46-297 violates the restrictions on use of automatic teller machines or point-of-sale terminals regarding electronic benefit transfer cards prescribed in section 4-242.01.

13. There occurs on the licensed premises a serious act of violence. For the purposes of this paragraph, "serious act of violence" means an act of violence in which a serious injury causes the death or critical injury of a person and the injuries would be obvious to a reasonable person.

14. The licensee fails to report a serious act of violence that occurs on the licensed premises. For the purposes of this paragraph, "serious act of violence" means an act of violence in which a serious injury causes the death or critical injury of a person and the injuries would be obvious to a reasonable person.

15. The licensee, registrant, lessee or permittee violates an order of the board.

B. For the purposes of:

1. Subsection A, paragraph 8 of this section, "high managerial agent" means an officer of a corporation or any other agent of the corporation in a position of comparable authority with respect to the formulation of corporate policy.

2. Subsection A, paragraphs 9 and 10 of this section, acts or omissions of an employee of a licensee that violate this title or rules adopted pursuant to this title are deemed to be acts or omissions of the licensee. Acts or omissions by an employee or licensee committed during the time the licensed premises were operated pursuant to an interim permit or without a license may be charged as if they had been committed during the period the premises were duly licensed.

C. The director may suspend, revoke or refuse to issue, transfer or renew a license, registration, lease or permit under this section based solely on the unrelated conduct or fitness of any officer, director, managing agent or other controlling person if the controlling person retains any interest in or control of the licensee, registrant, lessee or permittee after sixty days following written notice to the licensee, registrant, lessee or permittee. If the controlling person holds stock in a corporate licensee, registrant, lessee or permittee or is a partner in a partnership licensee, registrant, lessee or permittee, the controlling person may only divest himself of the controlling person's interest by transferring the interest to the existing stockholders or partners who must demonstrate to the department that they meet all the requirements for licensure, registration, leasing or permitting. For the purposes of this subsection, the conduct or fitness of a controlling person is unrelated if it would not be attributable to the licensee, registrant, lessee or permittee.

D. If the director finds, based on clear and convincing evidence in the record, that a violation involves the use by the licensee, registrant, lessee or permittee of a drive-through or walk-up service window or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle or, with respect to a walk-up service window that prevents the licensee, registrant, lessee or permittee from fully observing the customer, and that the use of that drive-through or walk-up service window or other physical feature caused the violation, the director may suspend or terminate the licensee's, registrant's, lessee's or permittee's use of the drive-through or walk-up service window or other physical feature for the sale of spirituous liquor, in addition to any other sanction.

E. The director may refuse to transfer any license, registration, lease or permit or issue a new license, registration, lease or permit at the same location if the director has filed a complaint against the license, registration, lease, permit or location that has not been resolved alleging a violation of any of the grounds stated in subsection A of this section until the time the complaint has been finally adjudicated.

F. The director shall receive all complaints of alleged violations of this chapter and is responsible for investigating all allegations of a violation of, or noncompliance with, this title, any rule adopted pursuant to this title or any condition imposed on the licensee, registrant, lessee or permittee by the license, registration, lease or permit. When the director receives three complaints from any law enforcement agency resulting from three separate incidents at a licensed, leased or permitted establishment or by a

registrant within a twelve-month period, the director shall transmit a written report to the board setting forth the complaints, the results of any investigation conducted by the law enforcement agency or the department relating to the complaints and a history of all prior complaints against the license, registration, lease or permit and their disposition. The board shall review the report and may direct the director to conduct further investigation of a complaint or to serve a licensee, registrant, lessee or permittee with a complaint and notice of a hearing pursuant to subsection G of this section.

G. On the director's initiation of an investigation or on the receipt of a complaint and an investigation of the complaint as deemed necessary, the director may cause a complaint and notice of a hearing to be directed to the licensee, registrant, lessee or permittee that states the violations alleged against the licensee, registrant, lessee or permittee and directing the licensee, registrant, lessee or permittee, within fifteen days after service of the complaint and notice of a hearing, to appear by filing with the director an answer to the complaint. Failure of the licensee, registrant, lessee or permittee to answer may be deemed an admission by the licensee, registrant, lessee or permittee of commission of the act charged in the complaint. The director may then vacate the hearing and impose any sanction provided by this article. The director may waive any sanction for good cause shown, including excusable neglect. With respect to any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's, registrant's, lessee's or permittee's employee, the director shall consider evidence of mitigation presented by the licensee, registrant, lessee or permittee and established by a preponderance of the evidence that the employee acted intentionally and in violation of the express direction or policy adopted by the licensee, registrant, lessee or permittee and communicated to the employee and that the employee successfully completed training in a course approved by the director pursuant to section 4-112, subsection G, paragraph 2. The director may set the hearing before the director or an administrative law judge on any of the grounds stated in subsection A of this section. Instead of issuing a complaint, the director may provide for informal disposition of the matter by consent agreement or may issue a written warning to the licensee, registrant, lessee or permittee. If a warning is issued, the licensee, registrant, lessee or permittee may reply in writing and the director shall keep a record of the warning and the reply.

H. A hearing shall conform to the requirements of title 41, chapter 6, article 10. At the hearing an attorney or corporate officer or employee of a corporation may represent the corporation. The revoking, suspending or refusing to renew a license, registration, lease or permit for unpaid taxes, penalties or interest pursuant to subsection A, paragraph 5 of this section is a contested case with the department of revenue pursuant to section 42-1251.01.

I. The expiration, cancellation, revocation, reversion, surrender, acceptance of surrender or termination in any other manner of a license, registration, lease or permit does not prevent the initiation or completion of a disciplinary proceeding pursuant to this section against the licensee, registrant, lessee or permittee or license, registration, lease or permit. An order issued pursuant to a disciplinary proceeding against a license, registration, lease or permit is enforceable against other licenses, registrations, leases or permits or subsequent licenses, registrations, leases or permits in which the licensee, registrant, lessee, permittee or controlling person of the license, registration, lease or permit has a controlling interest.

J. The department shall provide the same notice as is provided to the licensee, registrant, lessee or permittee to a lienholder, which has provided a document under section 4-112, subsection B, paragraph 3, of all disciplinary or compliance action with respect to a license, registration, lease or permit issued pursuant to this title. The state is not liable for damages for any failure to provide any notice pursuant to this subsection.

K. In any disciplinary action pursuant to this title, a lienholder may participate in the determination of the action. The director shall consider mitigation on behalf of the lienholder if the lienholder proves all of the following by a preponderance of the evidence:

1. That the lienholder's interest is a bona fide security interest. For the purposes of this paragraph, "bona fide security interest" means the lienholder provides actual consideration to the licensee, registrant, lessee or permittee or the licensee's, registrant's, lessee's or permittee's predecessor in interest in exchange for the lienholder's interest. Bona fide security interest includes a lien taken by the seller of a license, registration, lease or permit as security for the seller's receipt of all or part of the purchase price of the license, registration, lease or permit.

2. That a statement of legal or equitable interest was filed with the department before the alleged conduct occurred that is the basis for the action against the license, registration, lease or permit.

3. That the lienholder took reasonable steps to correct the licensee's, registrant's, lessee's or permittee's prior actions, if any, or initiated an action pursuant to available contract rights against the licensee, registrant, lessee or permittee for the forfeiture of the license, registration, lease or permit after being provided with notice by the department of disciplinary action as provided in subsection J of this section.

4. That the lienholder was free of responsibility for the conduct that is the basis for the proposed revocation.

5. That the lienholder reasonably attempted to remain informed by the licensee, registrant, lessee or permittee about the business's conduct.

L. If the director decides not to revoke the license, registration, lease or permit based on the circumstances provided in subsection K of this section, the director may issue an order requiring either, or both, of the following:

1. The forfeiture of all interest of the licensee, registrant, lessee or permittee in the license, registration, lease or permit.

2. The lienholder to pay any civil monetary penalty imposed on the licensee, registrant, lessee or permittee.

M. If any on-sale licensee proposes to provide large capacity entertainment events or sporting events with an attendance capacity exceeding a limit established by the director, the director may request a security plan from the licensee that may include trained security officers, lighting and other requirements. This subsection exclusively prescribes the security requirements for a licensee and does not create any civil liability for this state, its agencies, agents or employees or a person licensed under this title or agents or employees of a licensee.

N. The director may consider as a mitigating factor or defense to a complaint against a licensee for a violation of subsection A, paragraph 10 or 13 of this section that the licensee acted reasonably, responsibly and as expeditiously as possible by asking for intervention by a peace officer to prevent or to break up a riot, a fight, an altercation or tumultuous conduct.

4-210.01. Authority to impose civil penalty; training

A. In lieu of or in addition to the suspension or revocation of or refusal to renew a registration pursuant to section 4-205.13, subsection G and a license authorized by section 4-210, subsection A, the director may impose a civil penalty of at least $200 and not more than $3,000 for each violation. The licensee or registrant is entitled to appeal the decision of the director to the board. The board may affirm, modify or reverse the finding and decision of the director and may decrease the civil penalty imposed by the director.

B. The director may require a licensee or registrant to pay a civil penalty assessed pursuant to subsection A of this section in a single payment or in installment payments.

C. In addition to the imposition of any other penalty authorized by this title, the director may impose a requirement that the licensee or registrant or other person attend a training program approved by the department.

4-210.02. Appeals from director

A. Except as provided in section 4-203.01, subsection E, a decision issued by the director is not final for purposes of appeal to superior court until it has first been appealed to and ruled on by the board. Any aggrieved party may appeal any final decision of the director regarding applicants or licensees to the board based on a contention that the decision was any of the following:

1. Founded on or contained errors of law which shall specifically include errors of construction or application of any relevant rules.

2. Unsupported by any competent evidence as disclosed by the entire record.

3. Materially affected by unlawful procedures.

4. Based on a violation of any constitutional provision.

5. Arbitrary or capricious.

B. The aggrieved party shall file the appeal in writing with the department within fifteen days after service of the notice of the decision of the director. The decision of the director is suspended until the determination of any appeal by the board.

C. The board or an administrative law judge shall conduct a hearing on the appeal pursuant to title 41, chapter 6, article 10 and may accept any relevant and material evidence and testimony and exercise the rights prescribed by section 12-2212 or section 4-112, subsection F. At the hearing an attorney or corporate officer or employee of a corporation may represent the corporation. The department shall prepare an official record of the hearing, including all testimony recorded mechanically or stenographically and all exhibits introduced. The department is not required to transcribe such record except pursuant to an appeal to the superior court, except that, upon written request and receipt of a reasonable fee for transcribing such record, the department may transcribe the record or allow for its transcription by the person requesting.

D. The board may affirm, reverse or modify any decision issued by the director.

4-211. Judicial review; bond

A. 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.

B. In the case of any judicial review of a decision of the department, the director may require the posting of a bond with the court to reimburse the department for reasonable costs in transcribing and preparing the record of the department. The bond is payable to the department if the court awards costs to the department pursuant to section 12-912.

4-212. Injunctions

If the board or the director has reasonable grounds to believe that a person is violating section 4-244.05 or 4-250.01 or is manufacturing, selling or dealing in spirituous liquor without a valid license, permit or registration in violation of this title, the board or the director may apply to the superior court for a temporary restraining order and other injunctive relief prohibiting the specific acts complained of by the board or the director.

4-213. Restaurant audit

A. The director may require a restaurant to submit an audit of its records to demonstrate compliance with section 4-205.02. The director shall not require an establishment to submit to such an audit more than once a year after the initial twelve months of operation and shall not audit the first three months of operation even if the establishment is allowed to continue operating as a restaurant pursuant to subsection E of this section.

B. Except as provided in subsection D of this section, the department shall audit accounts, records and operations of a licensee that cover a twelve month period. When conducting an audit, the department shall use generally accepted auditing standards. An establishment that averages at least forty percent of its gross revenue from the sale of food during the twelve month audit period shall be deemed to comply with the gross revenue requirements of section 4-205.02. The twelve month audit period shall fall within the sixteen months immediately preceding the beginning of the audit.

C. If the audit or a consent agreement that may be offered at the discretion of the director and that is signed by the licensee and the director reveals that the licensee did not meet the definition of a restaurant as prescribed in section 4-205.02 and the percentage of food sales determined by the audit or consent agreement was:

1. Less than thirty percent, notwithstanding section 4-209, subsection A, the director shall deem the license to have been surrendered or may revoke the license as provided in section 4-205.02, subsection D.

2. At least thirty percent but less than thirty-seven percent, the department shall allow the licensee a six-month period to continue to operate under the restaurant license, during which the licensee shall either:

(a) Replace the license with a bar or beer and wine bar license, except that, at the end of that six-month period, the department shall revoke the restaurant license or the licensee shall surrender the restaurant license.

(b) Obtain permission from the department to continue operating with a restaurant license pursuant to subsection E of this section.

3. At least thirty-seven percent but less than forty percent, the licensee shall be granted a period of one year to continue to operate under the restaurant license, during which the licensee shall attempt to increase the food percentage to at least forty percent. If the licensee does not increase the percentage of food sales to at least forty percent, the department shall allow the licensee a six-month period to continue to operate under the restaurant license, during which the licensee shall either:

(a) Replace the license with a bar or beer and wine bar license, except that, at the end of the six-month period, the department shall revoke the restaurant license or the licensee shall surrender the restaurant license.

(b) Obtain permission from the department to continue operating with a restaurant license pursuant to subsection E of this section.

D. The department may conduct an audit of a licensee described in section 4-209, subsection B, paragraph 12 after twelve months following the beginning of operations as a restaurant by the licensee to determine compliance by the licensee with section 4-205.02, except that the department may conduct an audit of a licensee within the first twelve months of operation if the licensee has made a substantial modification in the restaurant equipment, service or entertainment items or seating capacity during that twelve-month period, in which event the department may conduct the audit for a period of less than twelve months.

E. A restaurant licensee may continue to operate with its restaurant license if its food sales are at least thirty percent and less than forty percent and the department approves the continuation of the restaurant license pursuant to this subsection and subsections C, F, G, H and I of this section. The department shall not approve more than fifteen restaurant licenses pursuant to this subsection and subsections C, F, G, H and I of this section in any fiscal year. The department shall not approve any additional licenses pursuant to this subsection and subsections C, F, G, H and I of this section from consent agreements entered into or audits conducted in any fiscal year after 2012-2013. The department may approve a request submitted by the licensee to continue to operate with its restaurant license only if all of the following apply at the time the licensee files its request with the department:

1. The restaurant has a sufficient number of cooks, food preparation personnel and wait staff to prepare and provide the restaurant services that are necessary for the menu offered by the licensee.

2. The restaurant's equipment is of a sufficient grade and the size of the restaurant's kitchen is appropriate to the menu offered and the kitchen occupies not less than twenty percent of the total floor space of the licensed premises.

3. The menu is of a type consistent with a restaurant operation. In making a determination pursuant to this paragraph, the department may consider the proportion of food sales to alcohol sales, the price of spirituous liquor beverages and food served by the licensee and whether the licensee provides reduced price or complimentary food and beverages.

4. Not more than thirty percent of the public interior area floor space consists of pool tables, dart or arcade games, barstools, cocktail tables and similar types of seating and dance floors, and the aggregate area of all dance floors on the premises is not greater than ten percent of the total floor space of the public area of the premises.

5. The name of the restaurant does not include terms associated with alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club", "lounge", "cabaret", "cantina" or "saloon".

6. Disposable dinnerware and smallware, including dining utensils, are not used except in outdoor areas.

F. If the department intends to approve a restaurant's continuation of operation pursuant to subsection E of this section:

1. The department shall advise the governing body of the city or town if the premises are within the incorporated limits of a city or town or the county of the department's intent.

2. The city or town or the county shall post a notice for at least twenty days on the licensed premises that the licensee has made a request for continuation to operate with a restaurant license and invite bona fide residents who own, lease or reside on property within a one mile radius of the licensed premises to file written comments with the department regarding the request within thirty days after the first posting of the notice.

G. If the local jurisdiction through its governing body or its authorized agent does not object within ninety days, the licensee may continue its operation as a restaurant.

H. If the department intends to disapprove a restaurant's continuation of operation pursuant to subsection E of this section, or if the local jurisdiction or its agent timely objects to its continuation, the department shall set a hearing before the board and the local jurisdiction shall post a notice of the hearing for a period of at least twenty days on the licensed premises. The city or town or the county may testify at the hearing and bona fide residents who own, lease or reside on property within a one mile radius of the licensed premises may testify before the board regarding the licensee's request. The board shall determine whether the restaurant may continue its operation based on consideration of the criteria listed in subsection E of this section.

I. A restaurant licensee may continue to operate with its restaurant license pursuant to subsection E of this section if the restaurant and the restaurant licensee continue to meet the requirements of this subsection, subsection E of this section and any other statute. As a condition of continuing operation as a restaurant under subsection E of this section, the department may require the licensee to specifically acknowledge the representations made by the licensee regarding its operations in support of the licensee's continuing operation as a restaurant. Notwithstanding subsection A of this section, if the licensee changes its operation in any way that materially and detrimentally affects the representations made by the licensee, the department may audit the licensee or terminate the license without an audit.

J. Notwithstanding section 4-209, subsection D, paragraph 12, the state treasurer shall deposit five percent of the annual fee for a restaurant that is permitted to continue operating as a restaurant pursuant to subsection E of this section in the driving under the influence abatement fund established by section 28-1304.

4-214. Arizona wines; labeling

A. A person licensed as a farm winery pursuant to section 4-205.04 or licensed as a producer pursuant to section 4-203 may label a wine offered for sale that states that the wine is any of the following:

1. An Arizona wine or a wine from a particular county in this state, if at least seventy-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.

2. A wine from a particular federally recognized viticultural area, if at least eighty-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.

3. A wine from a particular vineyard, orchard, farm or ranch, if at least ninety-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.

4. Estate bottled, if one hundred percent of the wine by volume is produced or manufactured from a winery in a particular federally recognized viticultural area in which all grapes or other fruit were grown, crushed, fermented, processed, aged and bottled in a continuous process, the wine at no time having left the premises of the bottling winery.

B. A licensee that complies with subsection A of this section is not subject to criminal, civil or administrative action for a violation of section 4-244, paragraph 39.

4-215. Regional shopping centers; commercial offices and retail centers; extension of premises; application; approval; fee; definition

A. The owner or management of a regional shopping center that encompasses at least four hundred thousand square feet of retail space, on behalf of retail licensees located at the shopping center, may apply to the director, on a form prescribed by the director, for an extension of premises pursuant to this section.

B. Notwithstanding the square footage of a commercial office and retail center, the manager of the commercial office and retail center, jointly with one or more licensees at the commercial office and retail center, may apply, on a form prescribed by the director, for an extension of premises pursuant to this section if all of the following apply:

1. The center is under one management company.

2. The proposed extended premises are at a central location within the commercial office and retail center with limited ingress and egress.

3. The proposed extended premises are designed in a manner that the management can provide security and oversight of the extended premises.

C. The premises extension, if issued, shall allow designated on-sale retail licensees to sell spirituous liquor and to allow patrons to consume spirituous liquor throughout a designated pedestrian area of the regional shopping center or commercial office and retail center.

D. At least sixty days before submitting the application to the director, the regional shopping center or commercial office and retail center shall submit a copy of the application to the local governing body for review. The local governing body has sixty days after the regional shopping center or commercial office and retail center submits the application to the local governing body to review the application and provide advisory recommendations to the director. The director may not accept an application before the local governing body review period has elapsed or the local governing body makes its advisory recommendations, whichever is sooner.

E. The application shall include the requirement that the regional shopping center or commercial office and retail center provide plans or diagrams designating the specific extension of premises requested within the regional shopping center or commercial office and retail center. The plan shall delineate the physical arrangement of the extended premises, including showing the locations of ingress to and egress from the extended premises and other features of the extended premises as the director may require.

F. The extended premises authorized by the department may include only areas limited to pedestrian traffic and may not include or be bisected by a public or private roadway unless the private roadway is blocked to vehicular traffic or is immediately adjacent to a public or private roadway. To delineate the extended premises and to control spirituous liquor service in the extended premises, the plan may use physical barriers, signage, electronic surveillance, security guards, cordons or a combination of these barriers and strategies.

G. The application shall include a provision that the regional shopping center or commercial office and retail center designate the times of spirituous liquor service on the extended premises. The regional shopping center or commercial office and retail center may file with the director a request to modify the designated times of spirituous liquor service, and the director, for good cause shown, may modify the designated times of spirituous liquor service.

H. Retail licensees that are subject to an extension of premises are responsible for compliance with this title on the extended premises.

I. An extension of premises is subject to the following:

1. The department may charge a fee in an amount prescribed by the director for reviewing and processing an application submitted pursuant to this section.

2. The director may set day and time limits on using the extended premises and establish security requirements as a condition of approval.

3. The extended premises under this section may not overlap the licensed premises of any other licensee under this title that is not subject to the extension of premises.

4. The regional shopping center, the manager of the commercial office and retail center and on-sale retail licensees may not alter the physical arrangement of the extended premises to use additional or different space, locations of ingress or egress or accommodations without first complying with the process provided in subsection A or B of this section.

5. Notwithstanding any other law, the director may cancel or suspend an on-sale retail licensee's approval to extend its premises under this section for good cause at any time. The regional shopping center, the manager of the commercial office and retail center or the licensee may appeal an order to cancel or suspend the approval in accordance with the administrative appeal provisions provided in this title.

6. An extension of premises issued pursuant to this section is not transferable.

J. For the purposes of this section, "local governing body" means the county board of supervisors if the regional shopping center or commercial office and retail center is located in an unincorporated area or the governing body of the city or town if the regional shopping center or commercial office and retail center is located in a city or town.

4-221. Registration of stills; forfeiture; sale; proceeds

A. Every person having in his possession or custody or under his control a still or distilling apparatus shall register it with the director under the rules the director may prescribe, and every still or distilling apparatus not so registered, together with all mash, wort or wash, for distillation or for the production of spirits or alcohol, and all finished products, together with all personal property in the possession or custody of, or under the control of any person, which may be used in the manufacture or transportation of spirituous liquors, and which is found in the building or in any yard or enclosure connected with the building in which the unregistered still or distilling apparatus is located, shall be forfeited to the state.

B. The still, distilling apparatus, mash, wort, wash or finished products shall forthwith be destroyed by any peace officer, and all personal property forfeited to the state shall be sold at public auction to the highest bidder for cash on five days' notice.

C. The notice shall be posted at the courthouse in the county in which the personal property was seized or at the office of the director and shall be published in a newspaper of general circulation published in this state which is nearest to the place where the personal property was seized. After paying the expenses of the publication and the expenses of sale from the proceeds of the sale, any balance shall be paid into the general fund of the state.

4-222. Registration of retail agents; fees

A. Every person who holds a bar, beer and wine bar, liquor store, beer and wine store, club, hotel-motel or restaurant license and who is authorized by other similarly licensed retailers to act as their retail agent shall register with the director. Such registration shall be in accordance with the rules adopted by the director pursuant to section 4-112 and shall also include a listing of the names and business addresses of those similarly licensed retailers who have authorized him to act as their retail agent. While possessing a

certificate of registration, a retail agent shall be entitled to purchase and shall accept delivery of spirituous liquors for which he is licensed for and on behalf of himself and those similarly licensed retailers who have authorized him to act as their retail agent with the delivery to be made at the retail agent's licensed premises or other location authorized by the department. On the termination of such authorization by any retailer, the retail agent shall promptly notify the director. Nothing in this section shall require a wholesaler to sell malt beverages to a registered retail agent for distribution to other retailers.

B. A fee of five dollars shall be collected for each registered retailer in this state, and a fee of fifty dollars for each registered agent for a distillery, winery, brewery, importer or broker having its place of manufacture or business outside of the state.

C. The director shall issue a certificate of registration to each person so registered as provided in this section, and may, for good cause shown, cancel any certificate of registration so issued.

4-223. Authority of cities and towns to tax transactions involving spirituous liquors; prohibitions

A. In addition to the taxes provided for in this chapter, incorporated cities and towns shall have the power to levy a tax on the privilege of engaging or continuing in the business of selling spirituous liquor at retail within their corporate limits and to impose a permit tax or fee, but this section shall not apply to wholesalers licensed under section 4-209.

B. This section shall not be construed to give to incorporated cities and towns power to prohibit the manufacture, sale, distribution, and disposal of intoxicating liquors.

4-224. Local ordinances; prohibitions

A city, town or county shall not adopt ordinances or regulations in conflict with the provisions of this title or any rules adopted pursuant to this title, including, but not limited to, ordinances or regulations pertaining to hours and days of liquor sales and ordinances or regulations that conflict with the definition of restaurant in section 4-205.02. A city, town or county shall not limit any right granted by the license, by this title or by any rules adopted pursuant to this title. A city, town or county may enforce lawful zoning requirements. Zoning shall not be a basis for protesting or denying a license under this title.

4-225. Food safety; federal law; preemption

A. Subject to subsection B of this section, licensed producers, craft distillers, brewers and farm wineries are subject to the rules and exemptions prescribed by the United States food and drug administration pursuant to 21 Code of Federal Regulations part 112 relating to food safety.

B. This section applies only to production and storage spaces as defined in section 4-205.10. Production and storage spaces are not subject to nonfederal food safety guidelines adopted by local governing boards.

4-226. Exemptions

This title does not apply to the following:

1. Drugstores selling spirituous liquors only on prescription.

2. Any confectionery candy containing less than five percent by weight of alcohol.

3. Ethyl alcohol intended for use or used for the following purposes:

(a) Scientific, chemical, mechanical, industrial and medicinal purposes. For the purposes of this paragraph, medicinal purposes do not include ethyl alcohol or spirituous liquor that contains marijuana or usable marijuana as defined in section 36-2801.

(b) By those authorized to procure spirituous liquor or ethyl alcohol tax-free, as provided by the acts of Congress and regulations promulgated under the acts of Congress.

(c) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated under the acts of Congress.

(d) In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and industrial preparations or products, unfit and not used for beverage purposes.

(e) In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

4. The purchase, storage, distribution, service or consumption of wine in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise by a church recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code and in a manner not dangerous to public health or safety. This exemption does not apply to any alleged violation of section 4-244, paragraph 9, 34, 35 or 41.

5. Beer or wine produced for personal or family use that is not for sale. The beer or wine may be removed from the premises where it was made and exhibited at organized affairs, exhibitions or competitions such as homebrewers' or home winemakers' contests, tasting or judging.

6. The manufacture or sale of bitters products that have been classified and approved as a nonbeverage product or unfit for beverage purposes by the United States alcohol and tobacco tax and trade bureau. This paragraph is consistent with the classification guidelines as established and administered by the United States alcohol and tobacco tax and trade bureau.

4-227. Qualified retail cooperatives; pricing; definitions

A. A wholesaler shall sell its product to a qualified retail cooperative at prices established by the quantity of spirituous liquor being purchased.

B. As used in this section:

1. "Product" means a particular brand of spirituous liquor in a designated size container or a mix of brands and containers when sold on a combined basis established by the wholesaler that is offered on quantity discount terms established by the wholesaler.

2. "Qualified retail cooperative" means a retail cooperative of two or more retail licensees or licenses.

4-227.01. Channel pricing; definition

A. The wholesaler may employ channel pricing to sell its product to on-sale licensees at a different price than the wholesaler sells its product to off-sale licensees. All channel pricing discounts must be:

1. Based on the volume of the product delivered within a twenty-four hour period.

2. Made equally available to each retailer in that retailer's channel.

B. If an establishment has multiple licenses at the same location and the licenses are not from the same channel, the spirituous liquor shall be sold under the channel that represents the primary use of the premises.

C. For the purposes of this section, "product" means a particular brand of spirituous liquor in a designated size container or a mix of brands and containers when sold on a combined basis as established by the wholesaler that is offered in quantity discount terms established by the wholesaler.

4-228. Front entrance lock prohibited; exception

A. Except as provided in this section, an on-sale licensee shall not lock or permit to be locked the front entrance to a licensed establishment until all persons other than the licensee or the licensee's employees on duty have left the premises. This section does not prohibit locking the premises immediately after the closing of the premises if an employee and one other person remain on the premises.

B. If the holder of a club license issued pursuant to section 4-205 has bona fide concerns regarding the safety of club members and their guests, the licensee may apply to the director for permission to lock the front entrance to the licensed establishment. The application shall be on a form prescribed by the director and shall include a description of the safety concerns.

C. The director shall determine in the director's discretion whether to grant permission to lock the front entrance to a club license. The director shall consider, among other factors, the safety concerns documented by the club licensee and the location, method of operation and regulatory history of the club. Fire fighters, law enforcement officers, emergency medical personnel and the director shall have immediate access by means of a master key, master card or other similar device to the licensed establishment at all times that the establishment is occupied. At any time the director may revoke permission to lock the front entrance granted pursuant to this section.

4-229. Licenses; handguns; posting of notice

A. A person may carry a concealed handgun on the premises of a licensee who is an on-sale retailer unless the licensee posts a sign that clearly prohibits the possession of weapons on the licensed premises. The sign shall conform to the following requirements:

1. Be posted in a conspicuous location accessible to the general public and immediately adjacent to the liquor license posted on the licensed premises.

2. Contain a pictogram that shows a firearm within a red circle and a diagonal red line across the firearm.

3. Contain the words, "no firearms allowed pursuant to A.R.S. section 4-229".

B. A person shall not carry a firearm on the licensed premises of an on-sale retailer if the licensee has posted the notice prescribed in subsection A of this section.

C. It is an affirmative defense to a violation of subsection B of this section if:

1. The person was not informed of the notice prescribed in subsection A of this section before the violation.

2. Any one or more of the following apply:

(a) At the time of the violation the notice prescribed in subsection A of this section had fallen down.

(b) At the time of the violation the person was not a resident of this state.

(c) The licensee had posted the notice prescribed in subsection A of this section not more than thirty days before the violation.

D. The department of liquor licenses and control shall prepare the signs required by this section and make them available at no cost to licensees.

E. The signs required by this section shall be composed of block, capital letters printed in black on white laminated paper at a minimum weight of one hundred ten pound index. The lettering and pictogram shall consume a space at least six inches by nine inches. The letters constituting the words "no firearms allowed" shall be at least three-fourths of a vertical inch and all other letters shall be at least one-half of a vertical inch. Nothing shall prohibit a licensee from posting additional signs at one or more locations on the premises.

F. This section does not prohibit a person who possesses a handgun from entering the licensed premises for a limited time for the specific purpose of either:

1. Seeking emergency aid.

2. Determining whether a sign has been posted pursuant to subsection A of this section.

4-241. Selling or giving liquor to underage person; illegally obtaining liquor by underage person; violation; classification

A. If a licensee, an employee of the licensee or any other person questions or has reason to question that the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or entering a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person shall do all of the following:

1. Demand identification from the person.

2. Examine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced.

3. Examine the photograph in the identification and determine that the person reasonably appears to be the same person in the identification.

4. Determine that the date of birth in the identification indicates the person is not under the legal drinking age.

B. A licensee or an employee of the licensee who follows the procedures prescribed in subsection A of this section and who records and retains a record of the person's identification on this particular visit, or a licensee or an employee of the licensee who uses a biometric identity verification device to verify a person is not under the legal drinking age as provided in subsection W of this section, is not in violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure prescribed in subsection A or W of this section has been employed during the particular visit to the licensed premises by the person. A licensee or an employee of the licensee is not required to demand and examine identification of a person pursuant to subsection A or W of this section if, during this visit to the licensed premises by the person, the licensee or any employee of the licensee has previously followed the procedure prescribed in subsection A or W of this section.

C. Proof that the licensee or employee followed the entire procedure prescribed in subsection A of this section but did not record and retain a record as prescribed in subsection B of this section is an affirmative defense to a criminal charge under subsection J of this section or under section 4-244, paragraph 9 or 22 or a disciplinary action under section 4-210 for a violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure has been employed during the particular visit to the licensed premises by the person.

D. A licensee or an employee who has not recorded and retained a record of the identification as prescribed by subsection B of this section is presumed not to have followed any of the elements prescribed in subsection A of this section.

E. For the purposes of section 4-244, paragraph 22, a licensee or an employee who has not recorded and retained a record of the identification as prescribed by subsection B of this section is presumed to know that the person entering or attempting to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age.

F. It is a defense to a violation of subsection A of this section if the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is not under the legal drinking age.

G. A person penalized for a violation of subsection J of this section or section 4-244, paragraph 22 shall not be additionally penalized for a violation of subsection A or W of this section relating to the same event.

H. The defenses provided in this section do not apply to a licensee or an employee who has actual knowledge that the person exhibiting the identification is under the legal drinking age.

I. Any of the following types of records are acceptable forms for recording the person's identification:

1. A writing containing the type of identification, the date of issuance of the identification, the name on the identification, the date of birth on the identification and the signature of the person.

2. An electronic file or printed document produced by a device that reads the person's age from the identification.

3. A dated and signed photocopy of the identification.

4. A photograph of the identification.

5. A digital copy of the identification.

J. An off-sale retail licensee or employee of an off-sale retail licensee shall require an instrument of identification from any customer who appears to be under twenty-seven years of age and who is using a drive-through or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle.

K. The following written instruments are the only types of identification that are acceptable under subsection A of this section:

1. An unexpired driver license issued by this state. A driver license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.

2. An unexpired driver license issued by any other state, the District of Columbia, any territory of the United States or Canada if the license includes a picture of the person and the person's date of birth.

3. An unexpired nonoperating identification license issued pursuant to section 28-3165. An unexpired nonoperating license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.

4. A form of identification license issued by any other state, the District of Columbia, any territory of the United States or Canada if the license is substantially equivalent to a nonoperating identification license issued pursuant to section 28-3165 and includes a picture of the person and the person's date of birth.

5. An unexpired armed forces identification card that includes the person's picture and date of birth.

6. A valid unexpired passport or a valid unexpired resident alien card that contains a photograph of the person and the person's date of birth.

7. A valid unexpired consular identification card that is issued by a foreign government if the foreign government uses biometric identity verification techniques in issuing the consular identification card. For the purposes of this paragraph, "biometric identity verification techniques" has the same meaning prescribed in section 41-5001.

8. A valid unexpired border crossing card issued by the United States government that contains a photograph of the person and the person's date of birth.

L. A person who is under the legal drinking age and who misrepresents the person's age to any person by means of a written instrument of identification with the intent to induce a person to sell, serve, give or furnish spirituous liquor contrary to law is guilty of a class 1 misdemeanor.

M. A person who is under the legal drinking age and who solicits another person to purchase, sell, give, serve or furnish spirituous liquor contrary to law is guilty of a class 3 misdemeanor.

N. A person who is under the legal drinking age and who uses a fraudulent or false written instrument of identification or identification of another person or uses a valid license or identification of another person to gain access to a licensed establishment is guilty of a class 1 misdemeanor.

O. A person who uses a driver or nonoperating identification license in violation of subsection L or N of this section is subject to suspension of the driver or nonoperating identification license as provided in section 28-3309. A person who does not have a valid driver or nonoperating identification license and who uses a driver or nonoperating identification license of another in violation of subsection N of this section has the person's right to apply for a driver or nonoperating identification license suspended as provided by section 28-3309.

P. A person who knowingly influences the sale, giving or serving of spirituous liquor to a person under the legal drinking age by misrepresenting the age of such person or who orders, requests, receives or procures spirituous liquor from any licensee, employee or other person with the intent of selling, giving or serving it to a person under the legal drinking age is guilty of a class 1 misdemeanor. A licensee or employee of a licensee who has actual knowledge that a person is under the legal drinking age and who admits the person into any portion of the licensed premises in violation of section 4-244, paragraph 22 is in violation of this subsection. In addition to other penalties provided by law, a judge may suspend a driver license issued to or the driving privilege of a person for not more than thirty days for a first conviction and not more than six months for a second or subsequent conviction under this subsection.

Q. A person who is at least eighteen years of age and who is an occupant of an unlicensed premises is guilty of a class 1 misdemeanor if the person knowingly hosts on the unlicensed premises a gathering of two or more persons who are under the legal drinking age and if the person knows that one or more of the persons under the legal drinking age are in possession of or consuming spirituous liquor on the unlicensed premises.

R. For the purposes of subsection Q of this section:

1. "Hosts" means allowing or promoting a party, gathering or event at a person's place of residence or other premises under the person's ownership or control where spirituous liquor is served to, in the possession of or consumed by an underage person.

2. "Occupant" means a person who has legal possession or the legal right to exclude others from the unlicensed premises.

S. A peace officer shall forward or electronically transfer to the director of the department of transportation the affidavit required by section 28-3310 if the peace officer has arrested a person for committing an offense for which, on conviction, suspension of the license or privilege to operate a motor vehicle is required by section 28-3309, subsection A, B, C or D, or if the peace officer has confiscated a false identification document used by the person to gain access to licensed premises.

T. A person who acts under a program of testing compliance with this title that is approved by the director is not in violation of section 4-244.

U. Law enforcement agencies may use persons who are under the legal drinking age to test compliance with this section and section 4-244, paragraph 9 by a licensee if the law enforcement agency has reasonable suspicion that the licensee is violating this section or section 4-244, paragraph 9. A person who is under the legal drinking age and who purchases or attempts to purchase spirituous liquor under the direction of a law enforcement agency pursuant to this subsection is immune from prosecution for that purchase or attempted purchase. Law enforcement agencies may use a person under the legal drinking age pursuant to this subsection only if:

1. The person is at least fifteen but not more than nineteen years of age.

2. The person is not employed on an incentive or quota basis.

3. The person's appearance is that of a person who is under the legal drinking age.

4. A photograph of the person is taken not more than twelve hours before the purchase or attempted purchase. The photograph shall accurately depict the person's appearance and attire. A licensee or an employee of a licensee who is cited for selling spirituous liquor to a person under the legal drinking age pursuant to this subsection is allowed to inspect the photograph immediately after the citation is issued. The person's appearance at any trial or administrative hearing that results from a citation shall not be substantially different from the person's appearance at the time the citation was issued.

5. The person places, receives and pays for the person's order of spirituous liquor. An adult shall not accompany the person onto the premises of the licensee.

6. The person does not consume any spirituous liquor.

V. The department may adopt rules to carry out the purposes of this section.

W. In lieu of or in addition to the procedures prescribed in subsection A of this section, a licensee, an employee of the licensee or any other person who questions or has reason to question whether the person

ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or entering a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person may use a biometric identity verification device to determine the person's age. In any instance where the device indicates the person is under the legal drinking age, the attempted purchase, procurement or entry shall be denied.

4-242. Sale of liquor on credit prohibited; exceptions

A. It is unlawful for a retail licensee, or an employee or agent of a licensee, to sell or offer to sell, directly or indirectly, or to sanction the sale on credit of spirituous liquor to a retailer's customer, or to give, lend or advance money or anything of value to a retail customer for the purpose of purchasing or bartering for spirituous liquor, except that sales of spirituous liquor consumed on the retail licensed premises may be included on bills rendered to registered guests in hotels and motels, and spirituous liquor sales for on or off premises consumption may be made with credit cards approved by the director, and sales of spirituous liquor consumed on the premises of private clubs may be included on bills rendered to bona fide members.

B. Any wholesaler or producer may engage in credit transactions with any other wholesaler or producer.

4-242.01. Prohibition of automatic teller machine or point-of-sale terminal that accepts electronic benefit transfer cards on premises

A. It is unlawful for a liquor store as defined in section 46-297 to operate on the licensed premises an automatic teller machine or a point-of-sale terminal that accepts electronic benefit transfer cards issued pursuant to title 46, chapter 2, article 5 or that processes electronic benefit card transactions.

B. On or before February 1, 2014, a licensee that is a liquor store as defined in section 46-297 shall disable the ability of every automatic teller machine and point-of-sale terminal operated on the premises to accept the electronic benefit transfer card or process an electronic benefit transfer transaction.

C. The board shall ensure compliance with the requirements of this section and enforce the continued prohibition on the use of electronic benefit transfer cards.

4-243. Commercial coercion or bribery unlawful; exceptions

A. It is unlawful for a person engaged in the business of distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler of any spirituous liquor, directly or indirectly, or through an affiliate:

1. To require that a retailer purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.

2. To induce a retailer by any form of commercial bribery to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.

3. To acquire an interest in property owned, occupied or used by the retailer in the retailer's business, or in a license with respect to the premises of the retailer.

4. To furnish, give, rent, lend or sell to the retailer equipment, fixtures, signs, supplies, money, services or other things of value, subject to the exception as the rules adopted pursuant to this title may prescribe, having regard for established trade customs and the purposes of this subsection.

5. To pay or credit the retailer for advertising, display or distribution service, except that the director may adopt rules regarding advertising in conjunction with seasonal sporting events.

6. To guarantee a loan or repayment of a financial obligation of the retailer.

7. To extend credit to the retailer on a sale of spirituous liquor.

8. To require the retailer to take and dispose of a certain quota of spirituous liquor.

9. To offer or give a bonus, a premium or compensation to the retailer or any of the retailer's officers, employees or representatives.

B. This section does not prohibit any distiller, vintner, brewer, rectifier, blender or other producer or wholesaler of any spirituous liquor from:

1. Giving financial and other forms of event sponsorship assistance to nonprofit or charitable organizations for purposes of charitable fundraising that are issued special event licenses by the department. This section does not prohibit suppliers from advertising their sponsorship at such special events.

2. Providing samples to retail consumers at on-sale premises establishments according to the following procedures:

(a) Sampling operations shall be conducted under the supervision of an employee of the sponsoring producer or wholesaler.

(b) Sampling shall be limited to sixteen ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand.

(c) If requesting the on-sale retailer to prepare a drink for the consumer, the producer's or wholesaler's representative shall pay the retailer for the sample drink.

(d) The producer or wholesaler may not buy the on-sale retailer or the retailer's employees a drink during their working hours or while they are engaged in waiting on or serving customers.

(e) The producer or wholesaler may not give a keg of beer or any spirituous liquor or any other gifts or benefits to the on-sale retailer.

(f) All sampling procedures shall comply with federal sampling laws and regulations.

3. Providing samples to retail consumers on an off-sale retailer's premises according to the following procedures:

(a) Sampling shall be conducted by an employee of the sponsoring producer or wholesaler.

(b) The producer or wholesaler shall notify the department in writing or by electronic means at least five days before the sampling of the date, time and location of the sampling and of the name of the wholesaler or producer distributing the product.

(c) Sampling is limited to three ounces of beer, one and one-half ounces of wine or one ounce of distilled spirits per person per day for consumption on the premises and up to seventy-two ounces of beer and two ounces of distilled spirits per person per day for consumption off the premises.

(d) An off-sale retailer shall not allow sampling to be conducted on a licensed premises on more than twelve days in any calendar year per wholesaler or producer.

(e) Sampling shall be limited to two wholesalers or producers at any one off-sale retailer's premises on any day and shall not exceed three hours on any day per approved sampling.

(f) A producer conducting sampling shall buy the sampled product from a wholesaler or from the retailer where the sampling is being conducted. If the product for the sampling is purchased from the retailer, the amount paid for the product must be the same amount that the retailer charges for sale to the general public.

(g) The producer or wholesaler shall not provide samples to any person who is under the legal drinking age.

(h) The producer or wholesaler shall designate an area in which sampling is conducted that is in the portion of the licensed premises where spirituous liquor is primarily displayed and separated from the remainder of the off-sale retailer's premises by a wall, rope, door, cable, cord, chain, fence or other barrier. The producer or wholesaler shall not allow persons under the legal drinking age from entering the area in which sampling is conducted. If the retail location has been issued a permanent sampling privilege from the department, the requirement for separation from the remainder of the premises by wall, rope, door, cable, cord, chain, fence or other barrier is not required.

(i) The producer or wholesaler may not provide samples to the retailer or the retailer's employees.

(j) Sampling shall not be conducted in retail premises with a total of under five thousand square feet of retail space unless at least seventy-five percent of the retailer's shelf space is dedicated to the sale of spirituous liquor.

(k) The producer or wholesaler may not give spirituous liquor or any other gifts or benefits to the off-sale retailer.

(l) All sampling procedures shall comply with federal sampling laws and regulations.

C. Notwithstanding subsection A, paragraph 4 of this section, any wholesaler of any spirituous liquor may sell tobacco products or foodstuffs to a retailer at a price not less than the cost to the wholesaler.

D. Notwithstanding subsection A, paragraph 4, and subsection B, paragraph 2, subdivision (e) of this section, any wholesaler may furnish without cost promotional items to an on-sale retailer, except that the total market value of the promotional items furnished by that wholesaler to that retailer in any calendar year shall not exceed $700. For the purposes of this subsection, "promotional items" means items of equipment, supplies, novelties or other advertising specialties that conspicuously display the brand name of a spirituous liquor product. Promotional items do not include signs, dispensing or tapping machines or equipment or refrigerators.

E. Notwithstanding subsection A, paragraphs 4 and 7 of this section, a wholesaler may in the wholesaler's sole discretion accept the return of malt beverage products from a retailer under any of the following conditions:

1. The retailer's licensed premises will be closed for business for thirty or more consecutive days, and the products are likely to spoil or expire during the business closing period.

2. The retailer's licensed premises is used primarily as a music or live sporting venue with a permanent occupancy of more than one thousand people, and the products are likely to spoil or expire during the time period between venue events.

3. The retailer holds a governmental entity license and conducts less than six events per year at which products are sold, and the products are likely to spoil or expire during the time period between events.

F. It is unlawful for a retailer to request or knowingly receive anything of value that a distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler is prohibited by subsection A, D or E of this section from furnishing to a retailer, except that this subsection does not prohibit special discounts provided to retailers and based on quantity purchases.

4-243.01. Purchasing from other than primary source of supply unlawful; definitions

A. It is unlawful:

1. For any supplier to solicit, accept or fill any order for any spirituous liquor from any wholesaler in this state unless the supplier is the primary source of supply for the brand of spirituous liquor sold or sought to be sold and is duly licensed by the board.

2. For any wholesaler or any other licensee in this state to order, purchase or receive any spirituous liquor from any supplier unless the supplier is the primary source of supply for the brand ordered, purchased or received.

3. Except as provided by section 4-243.02 for a retailer to order, purchase or receive any spirituous liquor from any source other than any of the following:

(a) A wholesaler that has purchased the brand from the primary source of supply.

(b) A wholesaler that is the designated representative of the primary source of supply in this state and that has purchased such spirituous liquor from the designated representative of the primary source of supply within or without this state.

(c) A registered retail agent as defined in section 4-101.

(d) A farm winery that is licensed under section 4-205.04 and that is subject to the limits prescribed in section 4-205.04, subsection C, paragraph 7.

(e) A licensed microbrewery licensed under section 4-205.08.

(f) A craft distiller that is licensed under section 4-205.10 and that is subject to the limits prescribed in section 4-205.10, subsection C, paragraph 5.

B. All spirituous liquor shipped into this state shall be invoiced to the wholesaler by the primary source of supply. All spirituous liquor shall be unloaded and remain at the wholesaler's premises for at least twenty-four hours. A copy of each invoice shall be transmitted by the wholesaler and the primary source of supply to the department of revenue.

C. The director may suspend for a period of one year the license of any wholesaler or retailer who violates this section.

D. On determination by the department of revenue that a primary source of supply has violated this section, a wholesaler may not accept any shipment of spirituous liquor from such primary source of supply for a period of one year.

E. For the purposes of this section:

1. "Primary source of supply" means the distiller, producer, owner of the commodity at the time it becomes a marketable product, bottler or exclusive agent of any such distributor or owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler or agent or the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler or owner.

2. "Wholesaler" means any person, firm or corporation that is licensed in this state to sell to retailers and that is engaged in the business of warehousing and distributing brands of various suppliers to retailers generally in the marketing area in which the wholesaler is located.

4-243.02. Sale of beer, wine or distilled spirits by producer; limitations

A. A person who holds a producer's license may sell beer produced by the producer through the producer's own on-sale retail premises if:

1. The producer also holds an on-sale retail license.

2. The retail sale of the beer is on or adjacent to the premises of the producer.

B. A person who holds a producer's license may sell wine or distilled spirits produced by the producer at the producer's licensed premises.

4-243.03. Alternating proprietorships

On application by one or more persons, the director may approve applications for grouping two or more spirituous liquor producer, craft distiller, farm winery or microbrewery licenses at one location under a plan of alternating proprietorships if a licensed producer, craft distiller, farm winery or microbrewery has received approval of the alternating proprietorship by the United States alcohol and tobacco tax and trade bureau and the participating producers, craft distillers, farm wineries or microbreweries operate under the regulations and guidelines that are issued by the United States alcohol and tobacco tax and trade bureau. Each participating spirituous liquor producer, craft distiller, farm winery or microbrewery is responsible for filing all reports that relate to its production with the United States alcohol and tobacco tax and trade bureau and the department of revenue.

4-243.04. On-sale retail licensees; ownership interests; conditions

A. Notwithstanding section 4-243, a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor may have a direct or indirect ownership interest or a financial interest in the license, premises or business on an on-sale retail licensee if each of the following conditions are met:

1. The retail licensee purchases all spirituous liquor for sale at the premises from wholesalers that are licensed in this state.

2. The retail licensee does not purchase or sell any brand of spirituous liquor produced by the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor or by any of its subsidiaries or affiliates.

3. The sale and service of spirituous liquor at the premises is an independent business that is owned, managed and supervised by a person or entity that is not employed by and does not have an ownership interest in the retailer's license, premises or business and is not employed by and does not have an ownership interest in the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor. The person owning, managing and supervising the sale and service of spirituous liquor on the premises of

the on-sale retail licensee shall be properly licensed by the department and shall have entered into a commercial lease or operating or management agreement with the owner or operator of the premises. This paragraph does not prohibit the sale and service of spirituous liquor by employees of the owner or operator of the premises who act under the supervision of the independent licensee. This paragraph does not prevent the payment of rent, rent calculated as a percentage of gross receipts or a percentage of gross receipts from the sale of spirituous liquor to the owner or operator of the premises.

B. Notwithstanding section 4-243, a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor may directly or indirectly furnish, give, rent, lend or sell to an on-sale retail licensee equipment, fixtures, signs, furnishings, money or other things of value if each of the following conditions are met:

1. The retail licensee purchases all spirituous liquor for sale at the premises from wholesalers that are licensed in this state.

2. The retail licensee does not purchase or sell any brand of spirituous liquor produced by the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor or by any of its subsidiaries or affiliates.

3. The retail licensee is a franchisee of a person that is affiliated with the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor and the compensation paid by the retail licensee as a franchise fee or royalty is not based on revenue derived from the sale of spirituous liquor.

4-244. Unlawful acts; definition

It is unlawful:

1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board, except that the director may issue a temporary permit of any series pursuant to section 4-205.05 to a trustee in bankruptcy to acquire and dispose of the spirituous liquor of a debtor.

2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.

3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization that has obtained a special event license for the purpose of charitable fundraising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to $500 in a calendar year to an organization that is exempt from federal income taxes under section 501(c) (3), (4), (6) or (7) of the internal revenue code and not licensed under this title.

4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.

5. For a distiller, vintner or brewer to use a vehicle for trucking or transporting spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of the person's license in letters not less than three and one-half inches in height.

6. For a person to take or solicit orders for spirituous liquors unless the person is a salesman or solicitor of a licensed wholesaler, a salesman or solicitor of a distiller, brewer, vintner, importer or broker or a registered retail agent.

7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed in this state.

8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in the wholesaler's business, or in a license with respect to the premises of the wholesaler.

9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

10. For a licensee to employ a person under eighteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

11. For an on-sale retailer to employ a person under eighteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under eighteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.

12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.

13. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for the employee or consume spirituous liquor, except that:

(a) An employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may give spirituous liquor to or purchase spirituous liquor for any other person.

(b) An employee of an on-sale retail licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine of not more than four ounces per day or distilled spirits of not more than two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of the sampling.

(c) An employee of an on-sale retail licensee, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits of not more than two ounces per educational session or beer or wine of not more than four ounces per educational session, and provided that a licensee does not have more than two educational sessions in any thirty-day period.

(d) An unpaid volunteer who is a bona fide member of a club and who is not engaged in waiting on or serving spirituous liquor to customers may purchase for himself and consume spirituous liquor while

participating in a scheduled event at the club. An unpaid participant in a food competition may purchase for himself and consume spirituous liquor while participating in the food competition.

(e) An unpaid volunteer of a special event licensee under section 4-203.02 may purchase and consume spirituous liquor while not engaged in waiting on or serving spirituous liquor to customers at the special event. This subdivision does not apply to an unpaid volunteer whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.

(f) A representative of a producer or wholesaler participating at a special event under section 4-203.02 may consume small amounts of the products of the producer or wholesaler on the premises of the special event for the purpose of quality control.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for not more than thirty minutes after the state of obvious intoxication is known or should be known to the licensee for a nonintoxicated person to transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

15. For an on-sale or off-sale retailer or an employee of such retailer or an alcohol delivery contractor to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m. and 6:00 a.m., except that:

(a) A retailer with off-sale privileges may receive and process orders, accept payment or package, load or otherwise prepare spirituous liquor for delivery at any time, if the actual deliveries to customers are made between the hours of 6:00 a.m. and 2:00 a.m., at which time section 4-241, subsections A and K apply.

(b) The governor, in consultation with the governor's office of highway safety and the public safety community in this state, may issue an executive order that extends the closing time until 3:00 a.m. for spirituous liquor sales in connection with a professional or collegiate national sporting championship event held in this state.

16. For a licensee or employee to knowingly allow any person on or about the licensed premises to give or furnish any spirituous liquor to any person under twenty-one years of age or knowingly allow any person under twenty-one years of age to have in the person's possession spirituous liquor on the licensed premises.

17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6:00 a.m., except that if the governor extends the closing time for a day for spirituous liquor sales pursuant to paragraph 15 of this section it is unlawful for an on-sale retailer or an employee of such retailer on that day to allow a person to consume or possess spirituous liquor on the premises between the hours of 3:30 a.m. and 6:00 a.m.

18. For an on-sale retailer to allow an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. An on-sale retailer shall not serve employees or allow a patron of the establishment to give spirituous liquor to, purchase liquor for or drink liquor with any employee during the employee's working hours.

19. For an off-sale retailer or employee to sell spirituous liquor except in the original unbroken container, to allow spirituous liquor to be consumed on the premises or to knowingly allow spirituous liquor to be consumed on adjacent property under the licensee's exclusive control.

20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee allowing a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retailer. This paragraph also does not apply to a person consuming beer or wine from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property or to a person consuming beer or wine from a broken package in a public recreation area as part of a special event or festival that is conducted under a license secured pursuant to section 4-203.02 or 4-203.03.

21. For a person to possess or to transport spirituous liquor that is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and this state. Any property used in transporting such spirituous liquor shall be forfeited to the state and shall be seized and disposed of as provided in section 4-221.

22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. A licensee or an employee of a licensee may require a person who intends to enter a licensed premises or a portion of a licensed premises where persons under the legal drinking age are prohibited under this section to exhibit an instrument of identification that is acceptable under section 4-241 as a condition of entry or may use a biometric identity verification device to determine the person's age as a condition of entry. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the municipality shall be adopted by local ordinance and shall not interfere with the licensee's ability to comply with this paragraph. This paragraph does not apply:

(a) If the person under the legal drinking age is accompanied by a spouse, parent, grandparent or legal guardian of legal drinking age or is an on-duty employee of the licensee.

(b) If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 8, subdivision (a) and the person under the legal drinking age is any of the following:

(i) An active duty military service member.

(ii) A veteran.

(iii) A member of the United States army national guard or the United States air national guard.

(iv) A member of the United States military reserve forces.

(c) To the area of the premises used primarily for serving food during the hours when food is served.

23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than fifty ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor

drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph. This paragraph does not prohibit an on-sale retailer or employee from selling and delivering an opened, original container of distilled spirits if:

(a) Service or pouring of the spirituous liquor is provided by an employee of the on-sale retailer. A licensee shall not be charged for a violation of this paragraph if a customer, without the knowledge of the retailer, removes or tampers with a locking device on a bottle delivered to the customer for bottle service and the customer pours the customer's own drink from the bottle, if when the licensee becomes aware of the removal or tampering of the locking device the licensee immediately installs a functioning locking device on the bottle or removes the bottle and lock from bottle service.

(b) The employee of the on-sale retailer monitors consumption to ensure compliance with this paragraph. Locking devices may be used, but are not required.

24. For a licensee or employee to knowingly allow the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises. For the purposes of this paragraph, "dangerous drug" has the same meaning prescribed in section 13-3401.

25. For a licensee or employee to knowingly allow prostitution or the solicitation of prostitution on the premises.

26. For a licensee or employee to knowingly allow unlawful gambling on the premises.

27. For a licensee or employee to knowingly allow trafficking or attempted trafficking in stolen property on the premises.

28. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this title or to comply with a lawful subpoena issued under this title.

29. For any person other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retailer. This paragraph does not include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume or possess spirituous liquor. This paragraph does not apply to:

(a) Hotel or motel guest room accommodations.

(b) Exhibiting or displaying a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

30. For a licensee or employee to knowingly allow a person in possession of a firearm other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while

on the licensed premises of an on-sale retailer. It is a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person. This paragraph does not apply to:

(a) Hotel or motel guest room accommodations.

(b) Exhibiting or displaying a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

31. For any person in possession of a firearm while on the licensed premises of an on-sale retailer to consume spirituous liquor. This paragraph does not prohibit the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment.

32. For a licensee or employee to knowingly allow spirituous liquor to be removed from the licensed premises, except in the original unbroken package. This paragraph does not apply to any of the following:

(a) A person who removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(b) A person who is in licensed premises that have noncontiguous portions that are separated by a public or private walkway or driveway and who takes spirituous liquor from one portion of the licensed premises across the public or private walkway or driveway directly to the other portion of the licensed premises.

(c) A licensee of a bar, beer and wine bar, liquor store, beer and wine store, microbrewery or restaurant that has a permit pursuant to section 4-205.02, subsection H that dispenses beer only in a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed one gallon and not for consumption on the premises if:

(i) The licensee or the licensee's employee fills the container at the tap at the time of sale.

(ii) The container is sealed and displays a government warning label.

(d) A bar or liquor store licensee that prepares a mixed cocktail or a restaurant licensee that leases the privilege to sell mixed cocktails for consumption off the licensed premises pursuant to section 4-203.06 or holds a permit pursuant to section 4-203.07 and section 4-205.02, subsection K and that prepares a mixed cocktail and transfers it to a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed thirty-two ounces and not for consumption on the premises if all of the following apply:

(i) The licensee or licensee's employee fills the container with the mixed cocktail on the licensed premises of the bar, liquor store or restaurant.

(ii) The container is tamperproof sealed by the licensee or the licensee's employee and displays a government warning label.

(iii) The container clearly displays the bar's, liquor store's or restaurant's logo or name.

(iv) For a restaurant licensee licensed pursuant to section 4-205.02, the sale of mixed cocktails for consumption off the licensed premises is accompanied by the sale of menu food items for consumption on or off the licensed premises.

33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on licensed premises.

34. For a person who is under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.

35. For a person who is under twenty-one years of age to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body. For the purposes of this paragraph, "underway" has the same meaning prescribed in section 5-301.

36. For a licensee, manager, employee or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.

38. For a licensee to use a vending machine for the purpose of dispensing spirituous liquor.

39. For a licensee to offer for sale a wine carrying a label including a reference to Arizona or any Arizona city, town or geographic location unless at least seventy-five percent by volume of the grapes used in making the wine were grown in Arizona.

40. For a retailer to knowingly allow a customer to bring spirituous liquor onto the licensed premises, except that an on-sale retailer may allow a wine and food club to bring wine onto the premises for consumption by the club's members and guests of the club's members in conjunction with meals purchased at a meeting of the club that is conducted on the premises and that at least seven members attend. An on-sale retailer that allows wine and food clubs to bring wine onto its premises under this paragraph shall comply with all applicable provisions of this title and any rules adopted pursuant to this title to the same extent as if the on-sale retailer had sold the wine to the members of the club and their guests. For the purposes of this paragraph, "wine and food club" means an association that has more than twenty bona fide members paying at least $6 per year in dues and that has been in existence for at least one year.

41. For a person who is under twenty-one years of age to have in the person's body any spirituous liquor. In a prosecution for a violation of this paragraph:

(a) Pursuant to section 4-249, it is a defense that the spirituous liquor was consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise and in a manner not dangerous to public health or safety.

(b) Pursuant to section 4-226, it is a defense that the spirituous liquor was consumed for a bona fide medicinal purpose and in a manner not dangerous to public health or safety.

42. For an employee of a licensee to accept any gratuity, compensation, remuneration or consideration of any kind to either:

(a) Allow a person who is under twenty-one years of age to enter any portion of the premises where that person is prohibited from entering pursuant to paragraph 22 of this section.

(b) Sell, furnish, dispose of or give spirituous liquor to a person who is under twenty-one years of age.

43. For a person to purchase, offer for sale or use any device, machine or process that mixes spirituous liquor with pure oxygen or another gas to produce a vaporized product for the purpose of consumption by inhalation or to allow patrons to use any item for the consumption of vaporized spirituous liquor.

44. For a retail licensee or an employee of a retail licensee to sell spirituous liquor to a person if the retail licensee or employee knows the person intends to resell the spirituous liquor.

45. Except as authorized by paragraph 32, subdivision (c) of this section, for a person to reuse a bottle or other container authorized for use by the laws of the United States or any agency of the United States for the packaging of distilled spirits or for a person to increase the original contents or a portion of the original contents remaining in a liquor bottle or other authorized container by adding any substance.

46. For a direct shipment licensee, a farm winery licensee or an employee of those licensees to sell, dispose of, deliver or give spirituous liquor to an individual purchaser between the hours of 2:00 a.m. and 6:00 a.m., except that a direct shipment licensee or a farm winery licensee may receive and process orders, accept payment, package, load or otherwise prepare wine for delivery at any time without complying with section 4-241, subsections A and K, if the actual deliveries to individual purchasers are made between the hours of 6:00 a.m. and 2:00 a.m. and in accordance with section 4-203.04 for direct shipment licensees and section 4-205.04 for farm winery licensees.

47. For a supplier to coerce or attempt to coerce a wholesaler to accept delivery of beer or any other commodity that has not been ordered by the wholesaler or for which the order was canceled. A supplier may impose reasonable inventory requirements on a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers that have an agreement with the supplier.

4-244.02. Unlawful importation of spirituous liquor; exceptions

A. It is unlawful for any person, not a qualified licensee under this title, to import spirituous liquors into this state from a foreign country unless:

1. Such person is the legal drinking age.

2. Such person has been physically within such foreign country immediately prior to such importation and such importation coincides with his return from such foreign country.

3. Except as provided in subsection B, the amount of spirituous liquor imported does not exceed the amount permitted by federal law to be imported duty-free, in any period of thirty-one days, except that if the federal law prescribing such duty-free limitation is repealed or amended, then in no event shall the amount of duty-free importation into this state be more than one liter of spirituous liquor during such period.

B. To the extent permitted by federal law, a member of the Arizona national guard, the United States armed forces reserves or the armed forces of the United States may import more than one liter of spirituous liquor for personal use into this state if the importation coincides with that person's return from a tour of duty in a foreign country. A person who imports more spirituous liquor pursuant to this subsection than the amount permitted by federal law to be imported duty-free shall be responsible for the payment of any federal taxes due on the quantity of spirituous liquor that exceeds the duty-free amount. The department may issue letters of exemption to allow military personnel to import spirituous liquor pursuant to this subsection.

4-244.04. Craft producer sampling

Notwithstanding section 4-244, paragraphs 13 and 19, a representative of a licensed craft producer may consume small amounts and may serve the products of the licensed craft producer on the premises of an off-sale retailer or a retailer with off-sale privileges for the purpose of sampling the products of the craft producer. The licensee of the craft producer is liable for any violations of this title committed in connection with such sampling. The director shall regulate the manner of conducting such samplings to

prevent abusive practices. The licensed retailer shall make sales of craft producer products from the licensed retail premises.

4-244.05. Unlicensed business establishment or premises; unlawful consumption of spirituous liquor; civil penalty; seizure and forfeiture of property

A. A person owning, operating, leasing, managing or controlling a business establishment or business premises which are not properly licensed pursuant to this title and in which any of the following occur shall not allow the consumption of spirituous liquor in the establishment or on the premises:

1. Food or beverages are sold.

2. Entertainment is provided.

3. A membership fee or a cover charge for admission is charged.

4. A minimum purchase or rental requirement for goods or services is charged.

B. A person shall not consume spirituous liquor in a business establishment or on business premises which are not properly licensed pursuant to this title in which food or beverages are sold, entertainment is provided, a membership fee or a cover charge for admission is charged or a minimum purchase or rental requirement for goods or services is charged.

C. In addition to or in lieu of other fines or civil penalties imposed for a violation of this section or any other action taken by the board or director, the board or director may conduct a hearing subject to the requirements of section 4-210, subsection G to determine whether a person has violated subsection A of this section. If the board or director determines, after a hearing, that a person has violated subsection A of this section the board or director may impose a civil penalty of not less than two hundred nor more than five thousand dollars for each offense. A civil penalty imposed pursuant to this section by the director may be appealed to the board.

D. In addition to any other remedies provided by law, any monies used or obtained in violation of this chapter may be seized by any peace officer if the peace officer has probable cause to believe that the money has been used or is intended to be used in violation of this section.

E. In addition to any other remedies provided by law, the records of an establishment that is in violation of this section may be seized by any peace officer if the peace officer has probable cause to believe that the establishment is operating without a valid license issued pursuant to this title.

F. In addition to any other remedies provided by law, any amount of alcohol may be seized by any peace officer if the peace officer has probable cause to believe that the alcohol is being used or is intended to be used in violation of this section.

G. In addition to any other remedies provided by law, the following property shall be forfeited pursuant to section 13-2314 or title 13, chapter 39:

1. All proceeds and other assets that are derived from a violation of this section.

2. Anything of value that is used or intended to be used to facilitate a violation of this section.

H. A person who obtains property through a violation of this section is deemed to be an involuntary trustee of that property. An involuntary trustee and any other person who obtains the property, except a bona fide purchaser who purchases the property for value without notice of or participation in the

unlawful conduct, holds the property, including its proceeds and other assets, in constructive trust for the benefit of the persons entitled to remedies pursuant to section 13-2314 or title 13, chapter 39.

I. The board or director may adopt rules authorizing and prescribing limitations for the possession or consumption of spirituous liquor at establishments or premises falling within the scope of subsections A and B of this section. Rules adopted pursuant to this subsection shall authorize the possession or consumption of spirituous liquor only at establishments or premises which permit the consumption or possession of minimal amounts of spirituous liquor and which meet both of the following criteria:

1. The possession or consumption of spirituous liquor is permitted only as an incidental convenience to the customers of the establishment or premises.

2. The possession or consumption of spirituous liquor is permitted only within the hours of lawful sale as prescribed in this title, and is limited to no more than ten hours per day.

J. Any rules adopted pursuant to subsection I of this section shall prescribe:

1. The maximum permitted occupancy of an establishment or premises.

2. The hours during which spirituous liquor may be possessed or consumed.

3. The amount of spirituous liquor that a person may possess or consume.

4. That the director, the director's agents and any peace officer empowered to enforce the provisions of this title, in enforcing the provisions of this title, may visit and inspect the establishment or premises during the business hours of the premises or establishment. The director may charge a fee for the inspection of unlicensed premises to review an application for exemption pursuant to this section.

K. Any rules adopted pursuant to subsection I of this section may prescribe separate classifications of establishments or premises at which spirituous liquor may be possessed or consumed and may establish any other provisions relating to the possession or consumption of spirituous liquor at establishments or premises falling within the scope of subsections A and B of this section which are necessary to maintain the health and welfare of the community.

L. This section does not apply to establishments or premises that are not licensed pursuant to this title and on which occurs the consumption of spirituous liquor if the establishment or premises are owned, operated, leased, managed or controlled by the United States, this state or a city or county of this state.

4-246. Violation; classification; fine; civil penalty

A. A person violating any provision of this title is guilty of a class 2 misdemeanor unless another classification is prescribed.

B. A person violating section 4-242.01, subsection A or section 4-244, paragraph 9, 14, 34, 42 or 44 is guilty of a class 1 misdemeanor.

C. A person violating section 4-229, subsection B or section 4-244, paragraph 31 is guilty of a class 3 misdemeanor.

D. In addition to any other penalty prescribed by law, the court may suspend the privilege to drive of a person who is under eighteen years of age for a period of up to one hundred eighty days on receiving the record of the person's first conviction for a violation of section 4-244, paragraph 9.

E. In addition to any other penalty prescribed by law, a person who is convicted of a violation of section 4-244, paragraph 42 shall pay a fine of at least $500.

F. In addition to any other penalty prescribed by law, a person who is convicted of a violation of section 4-241, subsection L, M or N shall pay a fine of at least $250.

G. A person that violates section 4-244, paragraph 47 is subject to a civil penalty as prescribed in section 4-210.01.

4-247. Peace officers

No provision in this title shall be construed as limiting the rights and duties of any peace officer to enforce any provision of this chapter.

4-248. Reporting by court of convictions; definition

A. Every court having jurisdiction over violations of this title shall forward to the department a record of the conviction of a person in the court for a violation of any of the provisions of this title except section 4-241, subsection C, D, E or G, section 4-244, paragraph 9, if the violator is not a licensee or an employee or agent of a licensee, section 4-244, paragraph 20 and section 4-251.

B. For the purposes of this section "conviction" means a final conviction. A forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to a conviction.

4-249. Consumption of liquor by underage person in religious service allowed

The dispensing to or possession or consumption by a person under the legal drinking age of spirituous liquor in the performance of a religious service or ceremony is not prohibited by this title.

4-250. Distilled spirits pricing; prohibition

A. Out-of-state producers or suppliers of distilled spirits products shall not sell the products to an Arizona wholesaler at a cost higher than the lowest price at which the item was sold by the producer or supplier, or any other person, to any wholesaler anywhere in any other state or in the District of Columbia, or to any state or state agency which owns and operates a retail liquor store.

B. The director may require a producer or supplier of distilled spirits products to file an affirmation statement on a form prescribed by the director verifying the bottle and case price as well as any discounts then in effect.

4-250.01. Out-of-state person engaged in business as producer, exporter, importer, rectifier, retailer or wholesaler; violation; cease and desist order; civil penalty

A. An out-of-state person engaged in business in this state as a producer, exporter, importer, rectifier, retailer or wholesaler without a license issued under this title shall comply with this title as if licensed by this state. An out-of-state person engaged in business in this state as a producer, exporter, importer, rectifier, retailer or wholesaler shall be deemed to have consented to the jurisdiction of the department, any other agency of this state, the courts of this state and all other related laws, rules or regulations. An out-of-state person engaged in business in this state as a producer, exporter, importer, rectifier, retailer or wholesaler who violates this title is subject to a fine or a civil penalty and suspension or revocation of the right to do business in this state.

B. If the director has reasonable cause to believe that an out-of-state person engaged in business as a producer, exporter, importer, rectifier, retailer or wholesaler is acting in violation of this title, the director may serve a cease and desist order requiring the person to cease and desist the violation.

C. If an out-of-state person who is engaged in business in this state as a producer, exporter, importer, rectifier, retailer or wholesaler knowingly violates a cease and desist order issued by the director pursuant to subsection B of this section, the director may:

1. Impose a civil penalty of up to one hundred fifty thousand dollars for each violation.

2. Notify the department of revenue of the violation for the purposes of collection of any transaction privilege tax or luxury privilege tax due.

3. Notify the applicable agency or regulatory body in the state in which the person is licensed of the violation.

4. Give notice of the violation to the producers, exporters, importers, rectifiers, retailers, wholesalers, common carriers and consumers connected to the transaction if the out-of-state person has shipped liquor into the state in violation of this title.

4-251. Spirituous liquor in motor vehicles; prohibitions; violation; classification; exceptions; definitions

A. It is unlawful for any person to:

1. Consume spirituous liquor while operating or while within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state.

2. Possess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state.

B. A person who violates subsection A of this section is guilty of a class 2 misdemeanor.

C. This section does not apply to:

1. A passenger in any bus, limousine, taxi or transportation network company vehicle as defined in section 28-9551 while the vehicle is being used to provide transportation network services as defined in section 28-9551.

2. A passenger in the living quarters of a motor home as defined in section 28-4301.

D. For the purposes of this section:

1. "Motor vehicle" means any vehicle that is driven or drawn by mechanical power and that is designed primarily for use on public highways. Motor vehicle does not include a vehicle operated exclusively on rails.

2. "Open container" means any bottle, can, jar, container dispensed pursuant to section 4-244, paragraph 32, subdivision (c) or other receptacle that contains spirituous liquor and that has been opened, has had its seal broken or the contents of which have been partially removed.

3. "Passenger compartment" means the area of a motor vehicle designed for the seating of the driver and other passengers of the vehicle. Passenger compartment includes an unlocked glove compartment and any unlocked portable devices within the immediate reach of the driver or any passengers. Passenger

compartment does not include the trunk, a locked glove compartment or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

4. "Public highway or right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way maintained by the federal government, this state or a county, city or town if any part of the way is generally open to the use of the public for purposes of vehicular travel.

4-261. Warning signs; consumption of spirituous liquor during pregnancy; composition of signs; rules; inspection of premises; penalty

A. An off-sale retailer or an on-sale retailer shall post one or more signs on the premises where spirituous liquor is sold that clearly warn pregnant women of the dangers of consuming spirituous liquor during pregnancy. A sign shall be conspicuously placed in the retail establishment in a position that assures it is likely to be read.

B. The sign required by this section shall contain the following language:

"Warning

Drinking alcoholic beverages, including

distilled spirits, beer, coolers and wine,

during pregnancy can cause birth defects."

C. The department of liquor licenses and control shall prepare the signs required by this section and make them available at no cost to off-sale retailers and on-sale retailers.

D. The signs required by this section shall be composed of block, capital letters printed in black on white laminated paper at a minimum weight of one hundred ten pound index. The lettering shall consume a space at least six inches by nine inches. The letters comprising the word "warning" shall be at least three-fourths of a vertical inch and all other letters shall be at least one-half of a vertical inch.

E. An on-sale retailer shall post the sign required by this section either within twenty feet of each register where sales of spirituous liquor are made or behind the bar from which spirituous liquor is served.

F. A hotel-motel licensee shall do one of the following:

1. Post at least one sign that is required by this section and that is supplied by this state on the inside of the front door of each guest room that contains a mini-bar or in each guest room where spirituous liquor is available through room service.

2. Display the warning language as set forth in subsection B in a space measuring at least one inch by two inches on a room service bar menu, mini-bar cost list, placard, folder, advertisement tent or similar item that is placed in a conspicuous place in each guest room that assures it is likely to be read.

G. A retail licensee that uses a mobile service device for the sale of spirituous liquor shall display the sign required by this section on such mobile service device.

H. Each off-sale licensee shall conspicuously post the sign required by this section where a customer obtains the spirituous liquor.

I. The department shall adopt rules pertaining to the posting of the signs required by this section.

J. Upon a determination that a licensee is in violation of the provisions of this section, the director shall notify the licensee of the violation. If, after thirty days, the licensee has not corrected the violation, the licensee is subject to a penalty not to exceed five hundred dollars.

4-262. Display of license

All retail licensees shall display the liquor license in a conspicuous public area of the licensed premises that is readily accessible for inspection by any peace officer, distributor, wholesaler or member of the public.

4-301. Liability limitation; social host

A person other than a licensee or an employee of a licensee acting during the employee's working hours or in connection with such employment is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property, which is alleged to have been caused in whole or in part by reason of the furnishing or serving of spirituous liquor to a person of the legal drinking age.

4-302. Notice of litigation

A. A person filing a claim for relief seeking damages from a licensee and alleging that a person was injured or damage occurred which was caused in whole or in part by reason of the furnishing or serving of spirituous liquor by the licensee or an employee of the licensee to any person shall file a copy of the complaint with the department within ten days after filing the complaint.

B. A licensee who has been served with a complaint alleging the provisions of subsection A shall file a copy of the complaint with the department within ten days after the service.

C. A licensee or controlling person who files a petition in bankruptcy shall file notice of the petition with the department within ten days after the filing or entry and shall advise the department within ten days of a dismissal or discharge by any means.

D. A licensee or controlling person who files a bankruptcy dismissal or discharge shall file notice of the dismissal or discharge with the department within ten days after the filing.

4-311. Liability for serving intoxicated person or minor; definition

A. A licensee is liable for property damage and personal injuries or is liable to a person who may bring an action for wrongful death pursuant to section 12-612, or both, if a court or jury finds all of the following:

1. The licensee sold spirituous liquor either to a purchaser who was obviously intoxicated, or to a purchaser under the legal drinking age without requesting identification containing proof of age or with knowledge that the person was under the legal drinking age.

2. The purchaser consumed the spirituous liquor sold by the licensee.

3. The consumption of spirituous liquor was a proximate cause of the injury, death or property damage.

B. No licensee is chargeable with knowledge of previous acts by which a person becomes intoxicated at other locations unknown to the licensee unless the person was obviously intoxicated. If the licensee operates under a restaurant license, the finder of fact shall not consider any information obtained as a result of a restaurant audit conducted pursuant to section 4-213 unless the court finds the information relevant.

C. For the purposes of subsection A, paragraph 2 of this section, if it is found that an underage person purchased spirituous liquor from a licensee and such underage person incurs or causes injuries or property damage as a result of the consumption of spirituous liquor within a reasonable period of time following the sale of the spirituous liquor, it shall create a rebuttable presumption that the underage person consumed the spirituous liquor sold to such person by the licensee.

D. For the purposes of this section, "obviously intoxicated" means inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

4-312. Liability limitation

A. A licensee is not liable in damages to any consumer or purchaser of spirituous liquor over the legal drinking age who is injured or whose property is damaged, or to survivors of such a person, if the injury or damage is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor to that person. A licensee is not liable in damages to any other adult person who is injured or whose property is damaged, or to the survivors of such a person, who was present with the person who consumed the spirituous liquor at the time the spirituous liquor was consumed and who knew of the impaired condition of the person, if the injury or damage is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor.

B. Subject to the provisions of subsection A of this section and except as provided in section 4-311, a person, firm, corporation or licensee is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property which is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor.

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February 22, 2023

VIA EMAIL: Wes.Kuhl@azliquor.gov

Sergeant Wes Kuhl
Chief of Investigations
Arizona Department of Liquor Licenses and Control
800 W. Washington Street, 5th Floor
Phoenix, AZ 85007

RE: 2023 Rulemaking

Dear Sergeant Kuhl:

Please accept the following comments on behalf of the Arizona Craft Brewers Guild regarding the Notice of Proposed Expedited Rulemaking. We appreciate the Arizona Department of Liquor Licenses and Control's efforts in updating some of the rules. We are generally in agreement with the changes, but have the following comments:

1. A.A.C. R19-1-101(A)(27)(b). We noticed this subparagraph was slightly different than subparagraphs (c) in paragraphs (2) and (3). We recommend making these subparagraphs consistent and changing the reference to growlers in this subparagraph to read "Beer in accordance with A.R.S. § 4-244(32)(c)."
2. A.A.C. R19-1-304. Several of our brewery members use unlicensed storage. We have understood that distribution from unlicensed storage is unlawful. The changes seem to keep that position intact, but we are unsure of the meaning of subsection (C). Can a microbrewery with its wholesale privileges also make deliveries to unlicensed storage? If so, we recommend rewriting subsection (C) to apply to both wholesalers and craft producers in the lead-in sentence. Please also consider allowing a microbrewery to distribute its products from unlicensed storage with proper recordkeeping.
3. We also encourage the deletion of the term "domestic" to describe any microbrewery, since our statutes no longer differentiate between the privileges an in-state microbrewery has compared to a licensed out-of-state microbrewery.

Again, thank you for all of your efforts. We look forward to seeing you tomorrow.

Sincerely yours,

ALARCON LAW & POLICY, PLLC

By
Camila Alarcon

INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: January 16, 2024

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA**
Title 20, Chapter 5, Article 6

Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to fifty-four (54) rules and three (3) appendices in Title 20, Chapter 5, Article 6 regarding Occupational Safety and Health Standards. Specifically, these rules govern procedures relating to: (1) conducting occupational safety and health inspections; (2) issuing, abating, and contesting citations for violations of occupational safety and health standards; (3) reporting a workplace accident or fatality; (4) variances; (5) the powers of the Commission in variance-related matters; and (6) retaliation claims.

The Commission indicates rules R20-5-601, R20-5-602, R20-5-603 and R20-5-629 are exempt from review pursuant to A.R.S. § 41-1057(A)(3) in that these rules incorporate by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928 and are therefore exempt from the requirements of Title 41, Chapter 6, Article 5 of the Arizona Revised Statutes, including review requirements pursuant to A.R.S. § 41-1056. As such, review of these rules is not included in the current report.

In the prior 5YRR for these rules, which was approved by the Council in January 2020, the Commission stated it intended to conduct a rulemaking to update standards in rules

R20-5-601, R20-5-602, and R20-5-629. The Commission further stated that it intended to complete a comprehensive rulemaking to amend the rules in Article 6 based on the issues identified in the prior report by July 31, 2020. In the current report, the Commission states the prior proposed course of action was partially completed. The Commission indicates rulemaking was completed for rules R20-5-601, R20-5-602, R20-5-602.02 and R20-5-629, which were updated to incorporate Federal OSHA updates. However, the Commission indicates the comprehensive rulemaking to amend rules in Article 6 was not completed

Proposed Action

In the current report, the Commission proposes to complete the comprehensive rulemaking identified in the prior 5YRR from 2020. The Commission indicates the Governor's Office approved initial rulemaking on December 4, 2023. The Commission submitted its Notice of Proposed Rulemaking and Notice of Docket Opening on January 17, 2024 and a public hearing is scheduled for March 7, 2024. Council staff encourages the Council to discuss with the agency what month and year they anticipate submitting the rulemaking to the Council pursuant to Council rule R1-6-301(A)(14). Additionally, the Commission is evaluating whether to update rules R20-5-601, R20-5-602.02, R20-5-603, and R20-5-604 to incorporate recently adopted updates to OSHA standards as outlined in more detail below.

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

These rules outline occupational safety and health standards for construction, general industry, and agriculture. As a result of this 5YRR, the Commission has determined that the rules are effective in achieving their respective objectives and that the estimated costs of each rule are not substantially different from the economic impact statement provided when the rules were promulgated. Four rules have included further economic impact statements as part of rulemaking in the last five years: increased safety standards around Beryllium, crane operator qualifications, occupational exposure to COVID-19, and standards for tracking workplace injury all carried costs to implement but would result in greater safety and a long-term benefit.

Stakeholders are identified as those impacted by safety measures in construction, general industry, and agriculture.

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

The Commission has determined that the probable benefits of the rules reviewed outweigh the probable costs and that the rules impose the least burden and costs on the persons regulated.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received no written criticisms of the rules in the last five years outside of public comments on recent rulemakings conducted in 2020 and 2022, which were previously disclosed.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

While the Commission indicates the rules are generally clear, concise, and understandable, it states the following rules need to be amended to add clarity and understandability:

- **R20-5-608**–The definitions in this section should be reordered to be alphabetical and the incorporation of the definitions from A.R.S. § 23-401 should come first.
- **R20-5-627(B)(4)(a)**– The citation to A.R.S. § 23-417(A) has a space between 417 and (A) that should be deleted.
- **R20-5-650**– The definitions in this section should be reordered to be alphabetical.
- **R20-5-654**– In subsection (A), the term "proceedings hereunder" should be clarified by replacing the text with "proceedings pursuant to R20-5-655 and R20-5-656." Heading should add the word "Variances" before "Form of Documents; Subscription; Copies."
- **R20-5-655**– Heading should be updated to "Variances under A.R.S. § 23-411." The obsolete address stated in subsection (A) should be amended to 800 West Washington, Phoenix, Arizona 85007. Subsection (B) should be deleted to remove redundancy. Subsection (C)(1) should be changed to subsection (B) and subsections (C)(2), and (C)(3) should be broken out in to their own subsections (C) and (D).
- **R20-5-656**– The obsolete address stated in subsection (A) should be amended to 800 West Washington, Phoenix, Arizona 85007. Subsection (A) should be amended to be more concise by removing the following phrases: "Application for variance," "of the Act," and "containing the information specified in subsection (B) of this Section." Subsection (B) should be amended to be more concise by removing the following language: "Contents," and "filed pursuant to subsection (A) of this Section." Subsection (C) title sentences should be deleted and subsection (C)(1) should be changed to subsection (C) and subsections (C)(2), and (C)(3) should be broken out into their own subsections (D) and (E).
- **R20-5-657**– The entire subsection (A) should be moved into R20-5-655, as it relates only to temporary or experimental variances. The term "Renewal or" should be "Renewal of" and R20-5-657 would then be re-titled: "Federal Multi-state Variances." In subsection (B) the term "Act" is inconsistent with the definition of "Act" in R20-5-650(1). In this context, "Act" means the Federal Williams-Steiger Occupational Safety and Health Act of 1970, and the rule should be revised to clarify this distinction. Additionally, in the fifth line, the term "regulation" should be changed to "rule."
- **R20-5-658**– In subsection (A) the title sentence "Defective applications" should be removed. Subsection (A)(1) should become just subsection (A). In addition, subsection (A) should be amended to state "If an application filed pursuant to rule R20-5-655,

R20-5-656, or R20-5-657...” Subsections (A)(2)-(4) should be deleted. Subsection (B) title sentence should be deleted and subsection (B)(1) should become Subsection (B) and be amended to state “The Commission shall cause to be published in statewide newspapers a notice of the filing of an approved application which shall include:” and subsections (B)(2)(a)-(d) should become (B)(1)-(4) respectively.

- **R20-5-659**– The title sentences for subsections (A)-(B) should be removed.
- **R20-5-661**– Subsections (A) and (B) should be combined to be more concise.
- **R20-5-663**– The title should be changed to “Commission; Powers and Duties.” The title sentences for subsections (A), (B), and (C) should be removed for conciseness. Subsection (B)(1) should become subsection (B) and amended to start with “Insubordinate conduct at any hearing...” Subsection (B)(2) should become subsection (C) and the current subsection (C) should become subsection (D). In subsection (D) the “Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona” should be amended to “...Occupational Safety and Health Rules of Procedure.”
- **R20-5-664**– The title sentences for subsections (A) and (B) should be deleted for conciseness.
- R20-5-665– Typographical errors in subsection (A) need to be corrected. In subsection (A), “. . . of the commission. After consideration . . .” should be changed to “. . . of the commission after consideration. . .” In addition, the title sentences for subsections (A), (B), and (C) should be deleted for conciseness.
- **R20-5-666**– The title sentences for subsections (A) and (B) should be deleted for conciseness. The first sentence of subsection (A)(1) should become section (A).
- **R20-5-667**– The heading should be updated to “Variance Hearings” for clarity. The title sentences for subsections (A), (B), (C)(1), (C)(2), (D), and (E) should be deleted for conciseness. The first sentence of subsection (C)(1) should become subsection (C) for clarity. Typographical errs in subsections (A) and (B) should be amended. In subsection (A), “...the party applicant for relief...” should be changed to “...the party applying for relief...” In subsection (B), “...party applicant shall...” should be changed to “... party applying for relief shall...”
- **R20-5-609(B); R20-5-610(A); R20-5-611(C); R20-5-613(B); R20-5-614(E); R20-5-615(A), (B); R20-5-617; R20-5-618(A), (B); R20-5-619; R20-5-621(A); R20-5-623(B); R20-5-625(C); R20-5-626; R20-5-650; R20-5-654(B), R20-5-659(B)(6); R20-5-666(A)**– The references to “he” “him” or “his” should be revised to be gender neutral.
- **R20-5-682**– Subsection (B) should be amended to add clarity to what the “date of receipt is.”

6. <u>Has the agency analyzed the rules’ consistency with other rules and statutes?</u>

The Commission indicates the following rules should be reviewed or amended regarding their consistency with other rules and statutes:

- **R20-5-601**– Federal OSHA updated COVID-19 Vaccination and Testing requirements on November 5, 2021. The Commission is considering whether the adoption of the newer standards is appropriate.
- **R20-5-602.02**– Federal OSHA adopted new standards November 5, 2021 that amended 29 CFR 1910 Subpart U outlining COVID-19 Vaccination and Testing requirements. The Commission is considering whether the adoption of the newer standards is appropriate.
- **R20-5-603**– Federal OSHA adopted new standards February 27, 2006, made updates on June 8, 2011, and added reference to updated COVID-19 Vaccination and testing requirements on November 5, 2021, The Commission is considering whether the adoption of the newer standards and updates is appropriate.
- **R20-5-604**– Federal OSHA adopted new standards on July 30, 2020. The Commission is considering whether the adoption of the newer standards is appropriate.
- **R20-5-608**– "Act" should be defined as "the Arizona Occupational Safety and Health Act of 1972." In subsection (E), the reference to "subsection A of this Section" should be changed to "R20-5-609."
- **R20-5-609**– In subsection (C), the reference to "A.R.S. § 23-418 of the Act" should be changed to "A.R.S. § 23-418."
- **R20-5-614**– A subsection (F) should be added that states "Small business inspections, qualifying under the Small Business Bill of Rights A.R.S. § 41-1009, shall be subject to the provisions in A.R.S. § 41-1009" to ensure small business inspections are conducted consistent with A.R.S. § 41-1009.
- **R20-5-615**– A subsection (E) should be added that outlines certain protections for employers during an inspection or investigation being conducted by the division or commission. Subsection (E) should state: E. An employee of the division or the commission may not: 1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney. 2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the commission shall inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time. 3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.
- **R20-5-618**– The citation to A.R.S. § 23-408(E) in subsection (A) should reference A.R.S. § 23-408.
- **R20-5-619**– The two citations to A.R.S. § 23-408(E) should reference A.R.S. § 23-408.
- **R20-5-621**– The two citations to A.R.S. § 23-408(E) in subsections (B) and (C) should reference A.R.S. § 23-408. Reference to R20-5-619(A) in subsection (C) should reference R20-5-619 (without (A)).
- **R20-5-622**– Subsection (A) should cite A.R.S. § 23-418 and A.R.S. § 23-418.01. In subsection (B) the Division Director should also consider "quick-fix abatement" and the reference to "A.R.S. § 23-418 of the Act" should just reference "A.R.S. § 23-418."
- **R20-5-623**– The reference to A.R.S. § 23-471(A) in subsection (B) should be to A.R.S. § 23-420.

- **R20-5-624**– The title to the rule should be amended to be "Employer and Employee Contests before the Administrative Law Judge."
- **R20-5-621(D); R20-623(B), (C); R20-5-624(A), (B); R20-5-625(B), (C)**– References to "Hearing Division" and "Review Commission" in the referenced sections should be amended to reference the "Office of Administrative Hearings" and "Review Board."
- **R20-5-625**– the term "correct" should be amended to "abate" in the title and subsections (A), (B), and (C) and the term "correction" should be changed to "abatement."
- **R20-5-626**– The reference to R20-5-624 should be to A.R.S. § 23-417(A).
- **R20-5-629**– Federal OSHA adopted new standards since May 14, 2019, to ensure consistency with the Federal OSHA standards the references to "May 14, 2019" should be amended to "July 21, 2023."
- **R20-5-652**– The term "State of Arizona Hearing Division" should be changed to "Office of Administrative Hearings."
- **R20-5-655**– In subsection (A) the reference to "A.R.S. § 23-411 of the Act" should be amended to A.R.S. § 23-411(B)." Additionally, "subsection (B) of this section" should be changed to A.R.S. § 23-411(C). Subsection (E) should be added authorizing renewal or extension of rules or orders issued under A.R.S. § 23-411.
- **R20-5-663**– Subsection (A)(8) should reference A.R.S. §23-405(5), rather than A.R.S. § 23-405.5.
- **R20-5-669**– The reference to "A.R.S. § 23-413 of the Act" should be amended to "A.R.S. § 23-413."
- **R20-5-680**– The reference to A.R.S. § 23-408(F) in subsection (A)(1) should be to A.R.S. § 23-408. The reference to "Administrative Law Judge Division" in subsection (B)(6) should be changed to "Administrative Law Judge." Finally, the reference to A.R.S. § 23-408(D) in subsection (D)(1) should be changed to A.R.S. § 23-408.
- **R20-5-681**– Subsection (2) should be revised to ensure consistency with the Federal Whistleblower's Investigation Manual.
- **R20-5-682**– The reference to A.R.S. § 23-408(F) in subsection (A) should be changed to A.R.S. § 23-408. Additionally, subsection (C) should be revised to ensure consistency with the Federal Whistleblower's Investigation Manual.
- **R20-5-683**– A new rule should be added to outline the procedure for reconsideration of an Initial Determination consistent with A.R.S. § 23-425.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives. Specifically, the Commission indicates it conducted 2,644 inspections and documented 3,307 citations issued between 2019 and 2022. Of the citations issued, 94 were contested.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission indicates that the rules are enforced as written to the extent that they are consistent with statute.

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

The Commission states that except for R20-5-602.01 (Subpart T, Commercial Diving Operations), R20-5-605 (Hoes for Weeding or Thinning Crops), and R20-5-628 (Safe Transportation of Compressed Air or Other Gases), the rules in this Article are not more stringent than corresponding federal law or regulation. The corresponding federal law is the Occupational Safety and Health Act of 1970, as amended. The corresponding federal regulations are 29 CFR 1904, 1910, 1926, and 1928. For the rules that are more stringent than corresponding federal law and regulation, these rules were adopted pursuant to authority under 29 CFR 1953.5(A) (Special provisions for standards changes).

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Commission indicates there have been no rules adopted after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Commission relates to fifty-four (54) rules and three (3) appendices in Title 20, Chapter 5, Article 6 regarding Occupational Safety and Health Standards. The Commission indicates the rules could be made more clear, concise, understandable, and consistent with other rules and statutes. The Commission indicates the Governor's Office approved initial rulemaking on December 4, 2023. The Commission submitted its Notice of Proposed Rulemaking and Notice of Docket Opening on January 17, 2024 and a public hearing is scheduled for March 7, 2024. Council staff encourages the Council to discuss with the agency what month and year they anticipate submitting the rulemaking to the Council pursuant to Council rule R1-6-301(A)(14). Additionally, the Commission is evaluating whether to update rules R20-5-601, R20-5-602.02, R20-5-603, and R20-5-604 to incorporate recently adopted updates to OSHA standards.

Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR

P.O. Box 19070
Phoenix, Arizona 85005-9070

GAETANO TESTINI, DIRECTOR
PHONE: (602) 542-5781
FAX: (602) 542-6783

August 30, 2023

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 6, Five-year Review Report

Dear Ms. Sornsin:

The Industrial Commission of Arizona ("Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 6. The Commission has timely filed this report on or before Thursday, August 31, 2023.

An electronic copy of this cover letter, the report, the rules being reviewed, the general and specific statutes authorizing the rules, and the economic impact statement (R20-5-601,602,602.02 and 629), are concurrently submitted by email to grrc@azdoa.gov. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 6 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602) 542-5293 or Attorney Sophia Cox at (602) 542-3556.

Sincerely,

Gaetano Testini
Director
SC/lr
Enclosures

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission") was created in 1925 as a result of legislation (the Arizona Workman's Compensation Act) implementing the constitutional provisions establishing a workers' compensation system. From 1925 to 1969, the workers' compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers' compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers' compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers' compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 6, as well as other substantive policy statements and all rules, which are available on the Commission's website.

About Article 6 Generally

Article 6 contains occupational safety and health standards for construction, general industry, and agriculture. Article 6 also includes rules and procedures relating to: (1) conducting occupational safety and health inspections; (2) issuing, abating, and contesting citations for violations of occupational safety and health standards; (3) reporting a workplace accident or fatality; (4) variances; (5) the powers of the Commission in variance-related matters; and (6) retaliation claims.

Rulemaking on R20-5-601, R20-5-602, R20-5-602.02, and R20-5-629 in 2020 and 2022

The Commission conducted the following rulemaking in 2020 and 2022 to amend R20-5-601, R20-5-602, R20-5-602.02, and R20-5-629. These rulemakings were exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

- R20-5-601 (effective February 11, 2020) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1926, as published on September 1, 2016 (OSHA's final rule titled "Occupational Exposure to Respirable Crystalline Silica; Correction"), January 9, 2017 (OSHA's final rule titled "Occupational Exposure to Beryllium", and November 9, 2018 (OSHA's final rule titled Cranes and Derricks in Construction: Operator Qualification).
- R20-5-601 (effective July 8, 2022) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1926 as of February 24, 2021.
- R20-5-602 (effective February 11, 2020) – Amended to incorporate by reference recent OSHA rule updates to 29 CRF 1910, as published on September 1, 2016 (final rule titled "Occupational Exposure to Respirable Crystalline Silica; Correction"), November 18, 2016 (final rule titled "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)", January 9, 2017 (final rule titled "Occupational Exposure to Beryllium", and May 7, 2018 (final rule titled "Revising the Beryllium Standard for General Industry".
- R20-5-602 (effective July 8, 2022) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1910 as of July 14, 2020.
- R20-5-602.02 (effective February 16, 2022) – Adopted to incorporate by reference non-expired/non-withdrawn standards in the COVID-19 Healthcare Rule; published in 29 CFR 1910(U) as of June 21, 2021.
- R20-5-629 (effective February 11, 2020) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1904, as published on January 25, 2019, in OSHA's Final Rules titled "Tracking of Workplace Injuries and Illnesses".
- R20-5-629 (effective July 8, 2022) – Amended to incorporate by reference OSHA rule updates to 29 CFR 1904 as of May 14, 2019.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 6 have general and specific authorization under A.R.S. § 23-107, A.R.S. § 23-405(4) and A.R.S. § 23-410. A.R.S. § 23-405(4) states that "the Commission shall promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the [Arizona Division of Occupational Safety and Health]." A.R.S. § 23-410 sets forth the process for developing and updating safety and health standards and rules.

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission's overarching objectives regarding Article 6, in no particular order with respect to priority, are to promulgate safety and health standards that are at least as effective as those of the Occupational Safety and Health Administration and set forth procedures and regulations that are necessary for the efficient functioning of the Arizona Division of Occupational Safety and Health ("ADOSH").

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926.

R20-5-601. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

R20-5-602. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

R20-5-602.01. Subpart T, Commercial Diving Operations

R20-5-602.01. The rule adopts the commercial diving standards contained in Subpart T of the Federal OSHA standards for General Industry, as published in 29 CFR 1910, with amendments as specified in R20-5-602. The rule rejects the exemption set forth in 29 CFR 1910.401(a)(2)(ii) for diving operations performed solely for search, rescue, or related public safety purposes by or under the control of a government agency.

R20-5-602.02. Subpart U, COVID-19 Healthcare Standards

R20-5-602.02. The rule adopts the non-expired/non-withdrawn COVID-19 healthcare standards contained in Subpart U of the Federal OSHA standards for General Industry, as published in 29 CFR 1910 as of June 21, 2021.

R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928

R20-5-603. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913

R20-5-604. The rule establishes procedures for safeguarding individual privacy and access to identifiable employee medical information.

R20-5-605. Hoes for Weeding or Thinning Crops

R20-5-605. The rule provides that a hoe less than four feet long may not be used absent specific exempt operations, including greenhouse or nursery operations.

R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604

R20-5-606. The rule defines terms, including “Assistant Secretary” and “OSHA,” that are used in federal rules incorporated by reference in R20-5-601 through R20-5-604, so as to be meaningful and consistent in the context of Arizona’s occupational safety and health program.

R20-5-608. Definitions

R20-5-608. The rule defines terms that are utilized in Article 6 to make the rules understandable, to promote clarity in the rules without needless repetition, and to afford consistent interpretation.

R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards

R20-5-609. The rule describes the notices that employers must post, sets forth posting requirements, and describes the information that employers must provide employees upon request.

R20-5-610. Authority for Inspection

R20-5-610. The rule describes the circumstances under which ADOSH and representatives of the Secretary of Health, Education and Welfare may conduct inspections pursuant to the Arizona Occupational Safety and Health Act of 1972 or related law.

R20-5-611. Objection to Inspection

R20-5-611. The rule provides authorization and the procedure for obtaining an inspection warrant when a compliance safety and health officer is refused entry into a workplace or when an inspection is otherwise obstructed.

R20-5-612. Entry Not a Waiver

R20-5-612. The rule specifies that a waiver of any cause of action, citation, or penalty may not be granted in return for permission to enter a work site.

R20-5-613. Advance Notice of Inspections

R20-5-613. The rule establishes the situations and conditions under which the ADOSH Director is authorized to give advance notice of an inspection. The rule also describes the employer's responsibilities in the event of advance notice of an inspection.

R20-5-614. Conduct of Inspections

R20-5-614. The rule describes the rights and responsibilities of an ADOSH compliance safety and health officer during an ADOSH inspection.

R20-5-615. Representatives of Employers and Employees

R20-5-615. The rule describes the rights and responsibilities of employer and employee representatives during an ADOSH inspection.

R20-5-616. Trade Secrets

R20-5-616. The rule describes the procedures to be followed by ADOSH compliance safety and health officers when trade secrets are encountered during an ADOSH investigation.

R20-5-617. Consultation with Employees

R20-5-617. The rule authorizes the ADOSH compliance safety and health officer to privately question or consult with employees during the course of an ADOSH inspection and protects an employee's right to report safety and health violations.

R20-5-618. Complaints by Employees

R20-5-618. The rule describes the requirement for providing a copy of a complaint submitted pursuant to A.R.S. § 23-408(I) to an employer and describes the circumstances under which an occupational safety and health inspection will be conducted.

R20-5-619. Inspection Not Warranted; Informal Review

R20-5-619. The rule describes the procedure for a complaining party under A.R.S. § 23-408(I) to challenge the ADOSH Director's determination that an inspection is not warranted. The rule also describes the Commission's informal review procedure.

R20-5-621. Citations: Notices of De Minimis Violations

R20-5-621. The rule sets forth procedures related to the issuance of citations and notices of de minimis violations, review rights related to ADOSH investigations, and the necessary content that must be included in a citation.

R20-5-622. Proposed Penalties

R20-5-622. The rule describes requirements relating to the issuance of penalties pursuant to A.R.S. §§ 23-418 and 23-418.01.

R20-5-623. Posting of Citations

R20-5-623. The rule describes when a citation must be posted, how long it must be posted, and where a citation must be posted if it is not practicable to post it at the violation site. The rule also describes when an employer may post a notice of contest.

R20-5-624. Employer and Employee Contests before the Hearing Division

R20-5-624. The rule specifies that all notices of contest and abatement period appeals be immediately transmitted to the Administrative Law Judge Division for adjudication.

R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued

R20-5-625. The rule describes the procedures related to issuance and contest of a notification of failure to correct a violation.

R20-5-626. Informal Conferences

R20-5-626. The rule provides affected parties an opportunity to hold an informal conference with the Commission to settle citation, penalty, and abatement issues outside of the formal hearing process.

R20-5-627. Abatement Verification

R20-5-627. The rule describes how an employer certifies abatement; what documents are required; the procedure for preparing an abatement plan, progress reports, and employee notification; and how to tag moveable equipment involved in a violation.

R20-5-628. Safe Transportation of Compressed Air or Other Gases

R20-5-628. The rule prohibits the use of PVC piping in a place of employment to transport compressed air or other compressed gases in above-ground installations.

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

R20-5-629. This rule is exempt from the requirements of A.R.S. § 41-1056 under A.R.S. § 41-1057(A)(3).

R20-5-650. Definitions

R20-5-650. The rule defines terms that are utilized in R20-5-650 through R20-5-669 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.

R20-5-651. Petitions for Amendments

R20-5-651. The rule provides the process for a person to petition the Commission in writing to revise, amend, or revoke any provision in R20-5-650 through R20-5-669.

R20-5-652. Effects of Variances

R20-5-652. The rule prospectively limits the effectiveness of a variance. If an entity requesting a variance has a pending citation related to the issue of the variance petition, the rule allows the Commission the option of delaying the variance proceeding until the related issues have been cleared.

R20-5-653. Public Notice of a Granted Variance

R20-5-653. The rule identifies how approved variances should be communicated to the public.

R20-5-654. Form of Documents; Subscription; Copies

R20-5-654. The rule sets forth the required form of a variance application and how a variance application must be processed.

R20-5-655. Variances

R20-5-655. The rule describes how an employer or class of employers may apply for a temporary variance from ADOSH rules under A.R.S. § 23-411.

R20-5-656. Variances under A.R.S. § 23-412

R20-5-656. The rule describes how an employer or class of employers may apply for a permanent variance from OSHA rules under A.R.S. § 23-412.

R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances

R20-5-657. The rule provides for renewals or extensions of temporary or experimental variances and provides that ADOSH will honor variances granted by Federal OSHA to multi-state corporations operating in Arizona.

R20-5-658. Action on Applications

R20-5-658. The rule describes the action the Commission takes regarding defective and adequate applications for variances.

R20-5-659. Request for Hearings on Petition

R20-5-659. The rule describes how a party can request a hearing on an order issued under A.R.S. §§ 23-411 or 23-412 and the Commission's right to modify a variance order following a request for hearing.

R20-5-660. Consolidation of Proceedings

R20-5-660. The rule allows the Commission to consolidate variance proceedings that involve the same or closely-related issues.

R20-5-661. Notice of Hearing

R20-5-661. The rule describe the procedures for service of a notice of hearing and the required contents of a notice of hearing.

R20-5-662. Manner of Service

R20-5-662. The rule describes how documents must be served with regard to variance-related hearings.

R20-5-663. Industrial Commission; Powers and Duties

R20-5-663. The rule outlines the powers and duties of the Commission with regard to variance hearings. The rule was modeled after federal regulations set forth in 29 CFR 1905.22.

R20-5-664. Prehearing Conferences

R20-5-664. The rule identifies topics for pre-hearing conferences for variance-related hearings.

R20-5-665. Consent Findings and Rules or Orders

R20-5-665. The rule allows parties to settle variance-related matters prior to or during a hearing. The rule is modeled after federal regulations set forth in 29 CFR 1905.24.

R20-5-666. Discovery

R20-5-666. The rule describes the discovery (obtaining information and exchange of documents and exhibits) that may take place between parties prior to a variance-related hearing.

R20-5-667. Hearings

R20-5-667. The rule describes the Commission's process for the adjudication of variance-related matters during a hearing. The rule was modeled after federal regulation 29 CFR 1905.26 with the exception of several minor changes needed to conform the rule to the state's program.

R20-5-668. Decisions of the Commission

R20-5-668. The rule sets forth the procedure the Commission must follow in reaching its conclusion and decision in variance-related hearings.

R20-5-669. Judicial Review

R20-5-669. The rule provides a mechanism for obtaining review of a Commission order in variance-related hearings.

R20-5-670. Field Sanitation

R20-5-670. The rule describes requirements for providing drinking water, hand washing facilities, and toilet facilities for employees engaged in agricultural hand-labor operations.

R20-5-680. Protected Activity

R20-5-680. The rule defines terms used in A.R.S. § 23-425 and provides for processing employee discharge or discrimination complaints under § 23-425.

R20-5-681. Elements of a Violation of A.R.S. § 23-425

R20-5-681. The rule describes the elements of a violation of A.R.S. § 23-425.

R20-5-682. Procedure

R20-5-682. The rule describes the procedure for filing a complaint under A.R.S. § 23-425.

Appendix A. Sample Abatement – Certification Letter (Nonmandatory)

Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)

Appendix C. Sample Warning Tag (Nonmandatory)

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached

The Commission conducted 2,644 inspections and documented 3,307 citations issued between 2019 and 2022. Of the citations issued, 94 were contested. The rules reviewed are effective in achieving their respective objectives.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency

The following rules have a consistency issue and should be reviewed and/or amended:

R20-5-601– Federal OSHA updated COVID-19 Vaccination and Testing requirements on November 5, 2021. The Commission is considering whether the adoption of the newer standards is appropriate.

R20-5-602.02– Federal OSHA adopted new standards November 5, 2021 that amended 29 CFR 1910 Subpart U outlining COVID-19 Vaccination and Testing requirements. The Commission is considering whether the adoption of the newer standards is appropriate.

R20-5-603– Federal OSHA adopted new standards February 27, 2006, made updates on June 8, 2011, and added reference to updated COVID-19 Vaccination and testing

requirements on November 5, 2021, The Commission is considering whether the adoption of the newer standards and updates is appropriate.

R20-5-604– Federal OSHA adopted new standards on July 30, 2020. The Commission is considering whether the adoption of the newer standards is appropriate.

R20-5-608-R20-5-683– The Industrial Commission of Arizona is waiting on approval from the Governor's office pursuant to A.R.S. § 41-1039 to commence a comprehensive rulemaking. The rulemaking will address the following inconsistency amendments:

- R20-5-608– "Act" should be defined as "the Arizona Occupational Safety and Health Act of 1972." In subsection (E), the reference to "subsection A of this Section" should be changed to "R20-5-609."
- R20-5-609– In subsection (C), the reference to "A.R.S. § 23-418 of the Act" should be changed to "A.R.S. § 23-418."
- R20-5-614– A subsection (F) should be added that states "Small business inspections, qualifying under the Small Business Bill of Rights A.R.S. § 41-1009, shall be subject to the provisions in A.R.S. § 41-1009" to ensure small business inspections are conducted consistent with A.R.S. § 41-1009.
- R20-5-615– A subsection (E) should be added that outlines certain protections for employers during an inspection or investigation being conducted by the division or commission. Subsection (E) should state:

  E. An employee of the division or the commission may not:

  1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney.

  2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the commission shall

inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time.

3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.

- R20-5-618– The citation to A.R.S. § 23-408(E) in subsection (A) should reference A.R.S. § 23-408.
- R20-5-619– The two citations to A.R.S. § 23-408(E) should reference A.R.S. § 23-408.
- R20-5-621– The two citations to A.R.S. § 23-408(E) in subsections (B) and (C) should reference A.R.S. § 23-408. Reference to R20-5-619(A) in subsection (C) should reference R20-5-619 (without (A)).
- R20-5-622– Subsection (A) should cite A.R.S. § 23-418 and A.R.S. § 23-418.01. In subsection (B) the Division Director should also consider "quick-fix abatement" and the reference to "A.R.S. § 23-418 of the Act" should just reference "A.R.S. § 23-418."
- R20-5-623– The reference to A.R.S. § 23-471(A) in subsection (B) should be to A.R.S. § 23-420.
- R20-5-624– The title to the rule should be amended to be "Employer and Employee Contests before the Administrative Law Judge."
- R20-5-621(D); R20-623(B), (C); R20-5-624(A), (B); R20-5-625(B), (C)– References to "Hearing Division" and "Review Commission" in the referenced sections should be amended to reference the "Office of Administrative Hearings" and "Review Board."
- R20-5-625– the term "correct" should be amended to "abate" in the title and subsections (A), (B), and (C) and the term "correction" should be changed to "abatement."
- R20-5-626– The reference to R20-5-624 should be to A.R.S. § 23-417(A).
- R20-5-629– Federal OSHA adopted new standards since May 14, 2019, to ensure consistency with the Federal OSHA standards the references to "May 14, 2019" should be amended to "July 21, 2023."

- R20-5-652– The term "State of Arizona Hearing Division" should be changed to "Office of Administrative Hearings."
- R20-5-655– In subsection (A) the reference to "A.R.S. § 23-411 of the Act" should be amended to A.R.S. § 23-411(B)." Additionally, "subsection (B) of this section" should be changed to A.R.S. § 23-411(C). Subsection (E) should be added authorizing renewal or extension of rules or orders issued under A.R.S. § 23-411.
- R20-5-663– Subsection (A)(8) should reference A.R.S. §23-405(5), rather than A.R.S. § 23-405.5.
- R20-5-669– The reference to "A.R.S. § 23-413 of the Act" should be amended to "A.R.S. § 23-413."
- R20-5-680– The reference to A.R.S. § 23-408(F) in subsection (A)(1) should be to A.R.S. § 23-408. The reference to "Administrative Law Judge Division" in subsection (B)(6) should be changed to "Administrative Law Judge." Finally, the reference to A.R.S. § 23-408(D) in subsection (D)(1) should be changed to A.R.S. § 23-408.
- R20-5-681– Subsection (2) should be revised to ensure consistency with the Federal Whistleblower's Investigation Manual.
- R20-5-682– The reference to A.R.S. § 23-408(F) in subsection (A) should be changed to A.R.S. § 23-408. Additionally, subsection (C) should be revised to ensure consistency with the Federal Whistleblower's Investigation Manual.
- R20-5-683– A new rule should be added to outline the procedure for reconsideration of an Initial Determination consistent with A.R.S. § 23-425.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement

The rules reviewed are enforced as written to the extent they are consistent with statute.

6. Clarity, conciseness, and understandability of the rules

Although the rules in Article 6 are, for the most part, clear, concise, and understandable, the following rules need to be reviewed and/or amended to add clarity and understandability:

R20-5-608-R20-5-683– The Industrial Commission of Arizona is waiting on approval from the Governor's office pursuant to A.R.S. § 41-1039 to commence a comprehensive rulemaking. The rulemaking will address the following amendments to make the rules clearer, more concise, and more understandable:

- R20-5-608–The definitions in this section should be reordered to be alphabetical and the incorporation of the definitions from A.R.S. § 23-401 should come first.
- R20-5-627(B)(4)(a)– The citation to A.R.S. § 23-417(A) has a space between 417 and (A) that should be deleted.
- R20-5-650– The definitions in this section should be reordered to be alphabetical.
- R20-5-654– In subsection (A), the term "proceedings hereunder" should be clarified by replacing the text with "proceedings pursuant to R20-5-655 and R20-5-656." Heading should add the word "Variances" before "Form of Documents; Subscription; Copies."
- R20-5-655– Heading should be updated to "Variances under A.R.S. § 23-411." The obsolete address stated in subsection (A) should be amended to 800 West Washington, Phoenix, Arizona 85007. Subsection (B) should be deleted to remove redundancy. Subsection (C)(1) should be changed to subsection (B) and subsections (C)(2), and (C)(3) should be broken out in to their own subsections (C) and (D).
- R20-5-656– The obsolete address stated in subsection (A) should be amended to 800 West Washington, Phoenix, Arizona 85007. Subsection (A) should be amended to be more concise by removing the following phrases: "Application for variance," "of the Act," and "containing the information specified in subsection (B) of this Section." Subsection (B) should be amended to be more concise by removing the following language: "Contents," and "filed pursuant to subsection (A) of this Section." Subsection (C) title sentences should be deleted and subsection (C)(1)

should be changed to subsection (C) and subsections (C)(2), and (C)(3) should be broken out into their own subsections (D) and (E).

- R20-5-657– The entire subsection (A) should be moved into R20-5-655, as it relates only to temporary or experimental variances. The term "Renewal or" should be "Renewal of" and R20-5-657 would then be re-titled: "Federal Multi-state Variances." In subsection (B) the term "Act" is inconsistent with the definition of "Act" in R20-5-650(1). In this context, "Act" means the Federal Williams-Steiger Occupational Safety and Health Act of 1970, and the rule should be revised to clarify this distinction. Additionally, in the fifth line, the term "regulation" should be changed to "rule."
- R20-5-658–In subsection (A) the title sentence "Defective applications" should be removed. Subsection (A)(1) should become just subsection (A). In addition, subsection (A) should be amended to state "If an application filed pursuant to rule R20-5-655, R20-5-656, or R20-5-657…" Subsections (A)(2)-(4) should be deleted. Subsection (B) title sentence should be deleted and subsection (B)(1) should become Subsection (B) and be amended to state "The Commission shall cause to be published in statewide newspapers a notice of the filing of an approved application which shall include:" and subsections (B)(2)(a)-(d) should become (B)(1)-(4) respectively.
- R20-5-659– The title sentences for subsections (A)-(B) should be removed.
- R20-5-661– Subsections (A) and (B) should be combined to be more concise.
- R20-5-663– The title should be changed to "Commission; Powers and Duties." The title sentences for subsections (A), (B), and (C) should be removed for conciseness. Subsection (B)(1) should become subsection (B) and amended to start with "Insubordinate conduct at any hearing…" Subsection (B)(2) should become subsection (C) and the current subsection (C) should become subsection (D). In subsection (D) the "Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona" should be amended to "…Occupational Safety and Health Rules of Procedure."
- R20-5-664– The title sentences for subsections (A) and (B) should be deleted for conciseness.

- R20-5-665– Typographical errors in subsection (A) need to be corrected. In subsection (A), ". . . of the commission. After consideration . . ." should be changed to ". . . of the commission after consideration. . ." In addition, the title sentences for subsections (A), (B), and (C) should be deleted for conciseness.
- R20-5-666– The title sentences for subsections (A) and (B) should be deleted for conciseness. The first sentence of subsection (A)(1) should become section (A).
- R20-5-667– The heading should be updated to "Variance Hearings" for clarity. The title sentences for subsections (A), (B), (C)(1), (C)(2), (D), and (E) should be deleted for conciseness. The first sentence of subsection (C)(1) should become subsection (C) for clarity. Typographical errs in subsections (A) and (B) should be amended. In subsection (A), "…the party applicant for relief…" should be changed to "…the party applying for relief…" In subsection (B), "…party applicant shall…" should be changed to "… party applying for relief shall…"
- R20-5-609(B); R20-5-610(A); R20-5-611(C); R20-5-613(B); R20-5-614(E); R20-5-615(A), (B); R20-5-617; R20-5-618(A), (B); R20-5-619; R20-5-621(A); R20-5-623(B); R20-5-625(C); R20-5-626; R20-5-650; R20-5-654(B), R20-5-659(B)(6); R20-5-666(A)– The references to "he" "him" or "his" should be revised to be gender neutral.
- R20-5-682– Subsection (B) should be amended to add clarity to what the "date of receipt is."

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report aside from comments disclosed in the previous rulemakings.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer

impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules

In the last five years, the economic impact of changes to R20-5-601, R20-5-602, R20-5-602.02 and R20-5-629 were discussed through economic impact statements included during the rulemaking process. For all other rules, the estimated economic, small business, and consumer impact of the rules is not substantially different from the economic impact statement provided at the time the rules were promulgated and in prior five-year review reports.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states

No business competitiveness analysis has been submitted to the Commission regarding Article 6.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report

The previous Five-Year Review Report Course of action was partially completed. Rulemaking was completed for R20-5-601, 602, 602.02 and 629 which were updated to incorporate Federal OSHA updates. The remaining actions outlined by the agency's previous five-year-review are currently being addressed in an active rulemaking of Article 6. The Governor's office approved initial rulemaking on December 4, 2023. The Commission submitted its Notice of Proposed Rulemaking and Notice of Docket Opening on January 17, 2024. Public Hearing is scheduled for March 7, 2024. If no substantial changes are made after the March 7, 2024, Public Hearing, the Commission anticipates submitting the rules to the Council in May 2024. The remaining rulemaking for Article 6 was initially delayed due to additional rulemakings that the Commission has been working on and not having the staffing to complete them all simultaneously. The ICA repealed and

overhauled Articles 2, 7, and 11 into Article 15 in 2022 and amended Articles 4, 5, and 10 between 2020 and 2023. Additionally, the ICA created and amended Article 14 in 2022. The ICA is currently working on the Article 6 active rulemaking and active rulemakings for Articles 8 and 9 and planning a large rulemaking for Article 1.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated

The Commission has determined that the probable benefits of the rules reviewed outweigh the probable costs and that the rules impose the least burden and costs on the persons regulated.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law

With the exception of R20-5-602.01, R20-5-605 and R20-5-628, the rules reviewed are not more stringent than federal law, specifically, the federal Occupational Safety and Health Act of 1970, as amended, and regulations thereunder in 29 CFR 1904, 1910, 1926, and 1928. These more stringent statutes were adopted pursuant to authority under 29 CFR 1953.5(A).

13. For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037

There have been no rules adopted after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Commission is currently working on a comprehensive rulemaking to update the rules in Article 6, sections R20-5-608-R20-5-683. The Governor's office approved initial rulemaking on December 4, 2023. The Commission submitted its Notice of Proposed Rulemaking and Notice of Docket Opening on January 17, 2024. Public Hearing is scheduled for March 7, 2024. If no substantial changes are made after the March 7, 2024, Public Hearing, the Commission anticipates submitting the rules to the Council in May 2024.

The Commission will review and evaluate whether additional changes to Article 6, as discussed in Section 4 (above), are appropriate.

ECONOMIC IMPACT STATEMENT

ECONOMIC IMPACT STATEMENT

R20-5-601 (effective February 11, 2020) and R20-5-602 (effective February 11, 2020)

A summary of the economic, small business and consumer impact:
The Industrial Commission anticipates that the rule changes related to OSHA's Final Rule titled "Occupational Exposure to Respirable Crystalline Silica; Correction" will have no economic impact as the purpose of the Final Rule was to merely correct typographical errors in the formulas for the preceding PELs. There are no costs to be borne by the rule.

The Industrial Commission anticipates that the rule change related to OSHA's Final Rule titled "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)" will involve little to no additional costs. Federal OSHA reported that the final falling-object provisions will involve no new costs or benefits. Federal OSHA found that slips, trips, and falls constitute a significant risk, and estimated that the final standard will prevent 29 fatalities and 5,842 lost work-day injuries annually, resulting in a substantial reduction of significant risk of material harm for the exposed population of approximately 5.2 million employees in general industry and a net annual benefit of $309.5 million. Federal OSHA reported that, among SBA-defined small entities, compliance costs would be less than 3% of profits for nearly all industries, and larger than 1% for only two industries: NAICS 2213, Water, Sewage and Other Systems (5.3 percent); and NAICS 5617, Services to Buildings and Dwellings (2.6 percent). For entities with fewer than 20 employees, federal OSHA estimated that compliance costs as a percent of profits would be less than 5% for nearly all industries, and larger than 2% for only two industries: NAICS 2213, Water, Sewage and Other Systems (11.7 percent); and NAICS 5617, Services to Buildings and Dwellings (4.2 percent). Federal OSHA clarified, consolidated, and simplified the compliance and reporting requirements applicable to small entities to the extent practicable.

The Industrial Commission anticipates that the rule change related to OSHA's Final Rule titled "Occupational Exposure to Beryllium" will have an economic impact within the industry application groups based on federal OSHA's analysis. Federal OSHA reported that the following application groups would be affected by the new standard: Beryllium Production, Beryllium Oxide Ceramics and Composites, Nonferrous Foundries, Secondary Smelting, Refining, and Alloying, Precision Turned Products, Copper Rolling, Drawing, and Extruding, Fabrication of Beryllium Alloy Products, Welding, Dental Laboratories, Aluminum Production, Coal-Fired Electric Power Generation, and Abrasive Blasting. Federal OSHA then developed quantitative estimates of the compliance costs of the rule for each of the affected industry sectors. The estimated compliance costs were compared with industry revenues and profits to provide a screening analysis of the economic feasibility of complying with the rule and an evaluation of the economic impacts. Industries with unusually high costs as a percentage of revenues or profits were further analyzed for possible economic feasibility issues. After performing these analyses, federal OSHA found that compliance with the requirements of the rule would be economically feasible in every affected industry sector. Federal OSHA estimated the rule would prevent 90 fatalities and 46 new cases of

chronic beryllium disease annually once the full effects are realized. Federal OSHA projected the nation-wide annualized costs, which includes control costs, rule familiarization, exposure assessment, regulated areas, beryllium work areas, medical surveillance, medical removal, written exposure control plan, protective work clothing and equipment, hygiene areas and practices, housekeeping, training and respirators, to be $73,868,230.00. Federal OSHA projected the annual benefits, which includes the prevention of 4 fatal lung cancer cases, 86 chronic beryllium disease cases, 90 beryllium-related deaths, and 46 beryllium related non-fatal cases, to be $560,873,424.00, resulting in annual net benefits of approximately $487 million. Federal OSHA made several changes in the final beryllium rule to minimize significant impacts on small entities. Federal OSHA removed skin contact as a trigger for medical surveillance, reduced the frequency of medical surveillance from annually to biennially, and added a performance option, as an alternative to scheduled monitoring, to allow employers to comply with exposure assessment requirements, allowing more flexibility, and often lower cost, in complying with the exposure assessment requirements.

The Industrial Commission anticipates that the rule change related to OSHA's Direct Final Rule titled "Revising the Beryllium Standard for General Industry" will not have a significant economic impact and may result in annual savings. Federal OSHA reports that the Direct Final Rule is not an "economically significant regulatory action" under Executive Order 12866, or a "major rule" under the Congressional Review Act, and its impacts do not trigger the analytical requirements of the Unfunded Mandates Reform Act. According to federal OSHA, neither the benefits nor the costs of the Direct Final Rule will exceed $100 million in any given year. The Direct Final Rule would, however, result in a net cost savings for employers in primary aluminum production and coal-fired utilities, which are the only industries in General Industry covered by the 2017 Beryllium Final Rule that OSHA identified with operations involving materials containing only trace beryllium (less than 0.1% beryllium by weight). Federal OSHA has estimated a net annual cost savings of $0.36 million per year for this Direct Final Rule.

The Industrial Commission anticipates the adoption of changes related to OSHA's Final Rule titled "Cranes and Derricks in Construction: Operator Qualification" will have an economic impact. Federal OSHA determined that the most significant costs of the changes to the standard are associated with the requirements to perform the operator competency evaluation, document the evaluations, and provide any additional training needed by operators. Federal OSHA estimates employers impacted by this rule employ approximately 117,130 crane operators. Federal OSHA accordingly estimates the annual national cost to the industry will be $1,481,000.00 for the performance of operator competency evaluations, $62,000.00 for documenting those evaluations, and $94,000.00 for any additional training needed for operators. Federal OSHA's estimate of the total annual cost of compliance is $1,637,000.00.

Additionally, the Final Rule, "Cranes and Derricks in Construction: Operator Qualification" removes the requirement for certification by capacity and allows employers to rely on either "type or capacity" or "type only" crane certifications, leaving only certification by crane type as the obligation of the crane standard. To calculate the cost-savings of additional certifications that would be avoided by the Final Rule, federal OSHA estimated the number of crane operators not yet in compliance with the type-and-capacity certification requirement and multiplied that estimate by the estimated cost of obtaining such certification. Federal OSHA also expects some cost savings from the changes to the rule, including a large one-time cost savings from dropping the requirement that crane operators be certified by capacity because that change eliminates the need for a very large number of operators to get an additional certification. Using a standard 10-year horizon, federal OSHA reported that the result is an annualized cost savings of $3,010,000 at a discount rate of 3%, and an annualized cost savings of $3,656,000 at a discount rate of 7%. Moreover, Federal OSHA expects cost savings for the elimination of a small number of ongoing annual certifications due to an operator moving to a higher capacity crane, producing an additional annual cost savings of $426,000.00. Hence, along with the one-time cost savings due to omitted certifications, the total cost savings for these two elements are reported to be $3,436,000 ($3,010,000.00 + $426,000.00) at a 3% discount, and total cost savings for these two elements of $4,082,000.00 ($3,656,000.00 + $426,000.00) at a 7% discount rate. Federal OSHA estimates a cost savings of approximately $1,752,000.00, at a discount rate of 3% over 10 years, and $2,388,000.00 at a discount rate of 7% over 10 years. Federal OSHA concluded that, on average, the impact of costs on employers will be low because most employers are currently providing some degree of operator training and performing operator competency evaluations to comply with the previous 29 CFR 1926.1427(k), and were previously doing so to comply with §§ 1926.550, 1926.20(b)(4), and 1926.21(b)(2). Employers who currently provide insufficient training will incur new compliance costs. Although federal OSHA anticipates that a few employers might incur significant new costs, the agency concluded that, for purposes of the Regulatory Flexibility Act, the changes to the standard will not have a significant economic impact on a substantial number of small entities.

R20-5-601 (effective July 8, 2022) and R20-5-602 (effective July 8, 2022)

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

The Industrial Commission anticipates that the rule change related to OSHA's September 30, 2019 Final Rule titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors" is not economically significant and will result in cost savings. The Final Rule does not impose any new requirements on employers. The rule merely delayed the compliance deadlines for nearly all provisions of the standards to September 30, 2020. Federal OSHA's final economic analysis shows that this compliance date extension will result in a net cost savings for the affected industries. At a 3 percent discount rate over 10 years, the extension will result in net annual cost savings of $0.36 million per year; at a discount rate of

7 percent over 10 years, the net annual cost savings is $0.85 million per year. When the Department uses a perpetual time horizon, the annualized cost savings of the Final Rule is $0.42 million with a 7 percent discount rate.

The Industrial Commission anticipates that the rule change related to OSHA's Final Rule titled "Revising the Beryllium Standard for General Industry" will have no additional costs and may result in cost savings. The Final Rule does not impose any new employer obligations or increase the overall cost of compliance, and some of the changes would clarify and simplify compliance in such a way that results in cost savings. In addition, none of the proposed revisions would require any new controls or other technology. Federal OSHA's final economic analysis shows that these changes will result in unquantifiable cost savings, largely due to the prevention of misinterpretation and misapplication of the standard. Because federal OSHA has determined that this Final Rule will decrease the costs of compliance by preventing misinterpretation and misapplication of the standard, and would require no new controls or other technology, federal OSHA has also determined that the rule is both technologically and economically feasible.

The Industrial Commission anticipates that the rule change related to OSHA's August 31, 2020, Final Rule titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors" will lead to cost savings. Federal OSHA estimated that Final Rule, "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors" would lead to total annualized cost savings of $2.5 million at a 3% discount rate over 10 years; at a discount rate of 7% over 10 years, the annualized cost savings would be $2.6 million. Federal OSHA determined that the changes will maintain safety and health protections for workers, while facilitating compliance with the standards and yielding cost savings.

The Industrial Commission anticipates that the rule change related to OSHA's September 15, 2020, Final Rule titled "Cranes and Derricks in Construction: Railroad Roadway Work" will have a minimal economic impact and will result in some cost savings. Federal OSHA estimated that the September 15, 2020 Final Rule will result in cost savings for impacted employers in an amount of the difference between the full cost of the existing rules and the residual costs left after the exemptions contained in the Final Rule are in effect. Federal OSHA estimates the nationwide costs saving to be $17.1 million per year at a discount rate of 3%.

The Industrial Commission anticipates that the rule change related to federal OSHA's February 24, 2021, Final Rule titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction" will have no economic impact. The February 24, 2021 Final Rule merely corrected inadvertent errors contained in the August 31, 2020 Final Rule.

R20-5-602.02 (effective February 16, 2022)

A summary of the economic, small business and consumer impact:
The Industrial Commission anticipates the adoption of a new section incorporating federal OSHA's Final Rule titled "Occupational Exposure to COVID-19; Emergency Temporary Standard; Interim Final Rule" will have an economic, small business, and consumer impact. Federal OSHA estimated that the total national costs associated with the COVID-19 Healthcare Rule to be $3.969 billion. Based on data from March 19 through April 19, 2021, federal OSHA estimated that, over a six-month period, the COVID-19 Healthcare Rule would prevent 295,284 health-care worker COVID-19 infections and 776 health-care worker deaths nationally. Federal OSHA estimated the total monetized value associated with the COVID-19 Healthcare Rule to be between $14.6 and $26.8 billion. Based on its analysis, federal OSHA determined that the benefits of the COVID-19 Healthcare Rule would significantly exceed the annual costs.

Federal OSHA, also estimated the compliance costs per establishment for the entire COVID-19 Healthcare Rule to be between $1,726 (for Other Residential Care Facilities) and $110,445 (for General Medical and Surgical Hospitals), with the industry average cost per establishment being approximately $5,000. Depending on the setting, estimated costs would be associated with rule familiarization and development of a COVID-19 plan; patient screening and management; standard and transmission-based precautions; personal protective equipment; aerosol-generating healthcare procedures on a person with suspected or confirmed COVID-19; physical distancing; physical barriers; ventilation; cleaning and disinfection; health screening and medical management; vaccine-related paid leave; training; recordkeeping; and reporting. Based upon its analysis, federal OSHA concluded that the COVID-19 Healthcare Rule would be economically feasible for all covered industries. However, because many of the standards in the COVID-19 Healthcare Rule have now expired or been withdrawn, the costs of compliance for covered employers will be far less than estimated by federal OSHA.

The Industrial Commission also estimates it will incur some minimal costs related to staff time involved in rulemaking, training to enforce the standards and staff time to enforce the standards. However, the Industrial Commission did not anticipate any new full time employees would be necessary to perform the administrative duties related to the COVID-19 Healthcare rule.

R20-5-629 (effective February 11, 2020)

A summary of the economic, small business and consumer impact:
The Industrial Commission anticipates that the rule change incorporating by reference the recent amendments to federal safety standards related to the tracking of workplace injuries and illnesses will have a cost saving impact. Federal OSHA estimates that the rule will have net cost savings of $15.9 million per year at a 3% discount rate, including $8.4 million per year for the private sector and $7.5 million per year for the government. Annualized at a 7% discount rate, the rule is reported to result in a net cost savings of $15.86 million per year, including $8.37 million per

year for the private sector and $7.5 million per year for the government. Annualized at a perpetual 7% discount rate, the rule is reported to have net cost savings of $16 million per year nationally.

R20-5-629 (effective July 8, 2022)

A summary of the economic, small business and consumer impact:
The Industrial Commission anticipates that the rule change in connection with the implementation of OSHA's Final Rule titled "Standards Improvement Project-Phase IV" will result in cost savings. Federal OSHA reports that the Final Rule "Standards Improvement Project – Phase IV" will result in employer cost savings and paperwork reductions. Federal OSHA estimates that one revision (updating the method of identifying and calling emergency medical services) could increase construction employers' nationwide combined costs by about $32,000 per year while two provisions (reduction in the number of necessary employee x-rays and elimination of posting requirements for residential construction employers) provide estimated combined cost savings of $6.1 million annually. The agency did not estimate or quantify benefits to employees from reduced exposure to x-ray radiation or to employers for the reduced cost of storing digital x-rays rather than x-ray films. The agency concluded that the revisions do not have any significant economic impact on small businesses.

RULES REVIEWED

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of February 24, 2021, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after February 24, 2021.

R20-5-601.01. Expired

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of July 14, 2020, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after July 14, 2020.

R20-5-602.01. Subpart T, Commercial Diving Operations

Each employer shall comply with the standards in Subpart T of the Federal Occupational Safety and Health Standards for the General Industry as published in 29 CFR 1910, with amendments as specified in R20-5-602, except that the exemption set forth in 29 CFR 1910.401(a)(2)(ii) shall not apply. Subpart T shall apply to any diving operation performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency.

R20-5-602.02. Subpart U; COVID-19 Healthcare Standards

Unless expired or withdrawn by the Federal Occupational Safety and Health Administration and except as otherwise provided in Arizona Revised Statutes ("A.R.S."), Title 23, Chapter 2, Articles 8 and 8.1 and A.R.S. § 23-425, each covered employer shall comply with the standards in Subpart U of the Federal Occupational Safety and Health Standards for the General Industry, as published in 29 CFR 1910(U). For purposes of this section, a "covered employer" means an employer subject to Subpart U, as set forth in 29 CFR 1910.502. Copies of the referenced material is available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This

incorporation by reference does not include amendments or editions to 29 CFR 1910(U) published after June 21, 2021.

R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928

Each employer shall comply with the standards in Subparts A through D inclusive of the Federal Occupational Safety and Health Standards for Agriculture, as published in 29 CFR 1928, with amendments as of March 7, 1996, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This incorporation by reference does not include amendments or editions to 29 CFR 1928 published after March 7, 1996.

R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913

Each employer pursuant to A.R.S. § 23-403(B) shall comply with Federal Regulations, Title 29, Part 1913, with amendments as of May 23, 1980 (amendments of May 23, 1980 on file with the Secretary of State), which are hereby adopted and incorporated by reference as if set forth fully herein. This regulation applies to OSHA Access to Employee Medical Records.

R20-5-605. Hoes for Weeding or Thinning Crops

A. The use of a hoe with a handle less than four feet in length for weeding or thinning crops is prohibited. This prohibition is based upon the existence of other practical and adequate alternatives to the use of these short-handle hoes.

B. This rule does not apply to greenhouse or nursery operations.

R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604

For the purposes of the standards enumerated in the federal occupational safety and health standards incorporated into R20-5-601, R20-5-602, R20-5-603, and R20-5-604:

1. "Agency" means the Industrial Commission of Arizona.
2. "Assistant Secretary" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
3. "Assistant Secretary of Labor for Occupational Safety and Health" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
4. "Office of the Solicitor of Labor" means Legal Counsel for the Industrial Commission of Arizona.
5. "OSHA" means Arizona Division of Occupational Safety and Health.

R20-5-607. Expired

R20-5-608. Definitions

A. "Act" means the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).

B. The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in these rules.

C. "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing fifteen working days, the day of the receipt of any notice shall not be included, and the last day of the fifteen working days shall be included.

D. "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Division, Industrial Commission of Arizona, to conduct inspections.

E. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, stores, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with requirements of subsection (A) of this Section.

R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards

A. Each employer shall post and keep posted a notice or notices, to be furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Industrial Commission. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

B. Copies of the Act, all regulations published in this Chapter and applicable standards will be available at all offices of the Arizona Division of Occupational Safety and Health. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

C. Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of A.R.S. § 23-418 of the Act.

R20-5-610. Authority for Inspection

A. The Director of the Division of Occupational Safety and Health or his authorized representative upon presentation of credentials shall be permitted to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, or place of environment where work is performed by an employee of an employer; to inspect and investigate during

regular working hours and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee and to review records required by the Act and regulations published in this Article and other records which are directly related to the purpose of the inspection.

B. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Williams-Steiger Occupational Safety and Health Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education and Welfare under Section 8 of the Williams-Steiger Occupational Safety and Health Act and pursuant to 29 CFR Part 1903 shall not affect the authority of any state to conduct inspections in accordance with agreements and plans under Section 18 of the Williams-Steiger Occupational Safety and Health Act.

C. Prior to inspecting areas containing information which is classified by an agency of the United States government in the interests of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

R20-5-611. Objection to Inspection

A. Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to privately question any employer, owner, operator, agent, or employee, in accordance with rule R20-5-610, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with rule R20-5-615, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefore to the Director of the Division. The Director shall immediately consult with the Industrial Commission and its legal counsel, who shall promptly take appropriate action, including compulsory process if necessary.

B. Compulsory process may be sought in advance of an inspection or reinvestigation if, in the judgment of the Director of the Division and the Industrial Commission Chief Legal Counsel, circumstances exist including but not limited to specific evidence of an existing violation or reasonable legislative or administrative standards for conducting an inspection which make pre-inspection process desirable or necessary.

C. With the approval of the Industrial Commission, and the Industrial Commission Chief Legal Counsel, compulsory process may also be obtained by the Director of the Division or his designee.

D. For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

R20-5-612. Entry Not a Waiver

Any permission to enter, inspect, review records, or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

R20-5-613. Advance Notice of Inspections

A. Advance notice of inspections may not be given except in the following situations:

1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
3. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in an inspection; and
4. In other circumstances where the Division Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

B. In the situations described in subsection (A) of this Section, advance notice of inspections may be given only if authorized by the Division Director. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See rule R20-5-615(B) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this subsection promptly to inform the authorized representative of the employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer to promptly inform such representative of the inspection may be subject to citation and penalty under A.R.S. § 23-408 of the Act. Advance notice in any of the situations described in subsection (A) of this Section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and other unusual circumstances.

R20-5-614. Conduct of Inspections

A. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in rule R20-5-610 which they wish to review.

B. Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.

C. In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to ensure that such actions with flash, spark producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with

all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

D. The conduct of inspections shall be such as to preclude unreasonable disruption to the operations of the employer's establishment.

E. At the conclusion of an inspection, a Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

R20-5-615. Representatives of Employers and Employees

A. Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

B. Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

C. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

D. Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of rule R20-5-616(B). With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

R20-5-616. Trade Secrets

A. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with provisions of A.R.S. § 23-426.

B. Upon the request of an employer, any authorized representative of employees under rule R20-5-615 in an area containing trade secrets shall be an employee in that area or an employee

authorized by the employer to enter that area. Where there is no such representative or employee, a Compliance Safety and Health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

R20-5-617. Consultation with Employees

Compliance Safety and Health Officers may privately consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act, which he has reason to believe exists in the workplace, to the attention of the Compliance Safety and Health Officer.

R20-5-618. Complaints by Employees

A. A copy of a complaint submitted pursuant to A.R.S. § 23-408(E) shall be provided to the employer or his agent by the Director of the Division of Occupational Safety and Health or his representative no later than the time of inspection, except that, upon the request of the person giving such notice, his name shall not appear in such copy or in any record published, released, or made available by the Arizona Division of Occupational Safety and Health.

B. If upon receipt of such notification the Division Director determines that the complaint meets the requirements set forth in subsection (A) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

R20-5-619. Inspection Not Warranted; Informal Review

If the Division Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint in accordance with A.R.S. § 23-408(E), he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Industrial Commission and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Industrial Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Industrial Commission, at their discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Industrial Commission shall affirm, modify, or reverse the determination of the Division Director and furnish the complaining party and the employer a written notification of their decision and the reasons therefore. The decision of the Industrial Commission shall be final and not subject to further review. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of A.R.S. § 23-408(E).

R20-5-620. Expired

R20-5-621. Citations: Notices of De Minimis Violations

A. The Division Director shall review the inspection reports of the Compliance Safety and Health Officer. If, on the basis of the report, the Division Director believes that the employer has

violated a requirement of A.R.S. § 23-403 of the Act, of any standard, rule or order promulgated pursuant to A.R.S. § 23-410 of the Act, or of any substantive rule published in these rules, he shall, if appropriate, consult with the Industrial Commission's counsel and shall issue to the employer either a citation or notice of de minimis violations. An appropriate citation or notice of de minimis violation shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

B. If a citation or notice of de minimis violation issued for a violation alleged in a request for inspection under A.R.S. § 23-408(E), a copy of the citation or notice of de minimis violation shall also be sent to the employee or representative of employees who made such request or notification.

C. After an inspection, if the Division Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under A.R.S. § 23-408(E), the informal review procedures prescribed in rule R20-5-619(A) shall be applicable. After considering all views presented, the Industrial Commission shall affirm the determination of the Division Director, order a reinspection, or issue a citation if the Industrial Commission believes that the inspection disclosed a violation. The Industrial Commission shall furnish the complaining party and the employer with a written notification of their determination and the reasons therefore. The determination of the Industrial Commission shall be final and not subject to review.

D. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless a citation is affirmed by the Hearing Division or the Review Commission.

R20-5-622. Proposed Penalties

A. All employers shall be notified of any proposed penalties, issued pursuant to A.R.S. § 23-418, by certified mail or by a signed verification in person.

B. The Division Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations in accordance with the provisions of A.R.S. § 23-418 of the Act.

C. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

R20-5-623. Posting of Citations

A. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation

shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which the employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

B. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under A.R.S. § 23-471(A) shall not affect his posting responsibility under this rule unless and until the Hearing Division and/or Review Commission issues a final order vacating the citation.

C. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Hearing Division and/or Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

R20-5-624. Employer and Employee Contests before the Hearing Division

A. All notices to contest citations and/or penalties shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

B. Any affected employee or employee representative appealing the period allowed an employer to abate a particular violation shall submit the notice of contest to the Division Director who shall immediately transmit such notice to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued

A. All employers failing to correct an alleged violation for which a citation has been issued, within the period permitted for its correction, shall be notified of such failure and any proposed penalties issued pursuant to A.R.S. § 23-418 by certified mail or by signed verification in person.

B. All notices to contest a notification of failure to correct a violation and of proposed additional penalty shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

C. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Industrial Commission and not subject to review by any court or agency unless within fifteen working days from the receipt of such notification, the employer notifies the Division Director in writing that he intends to contest the notification or the proposed additional penalty before the Hearing Division.

R20-5-626. Informal Conferences

At the request of an affected employer, employee, or representative of employees, the Industrial Commission, or their designee, may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to rules and procedures prescribed by the Industrial Commission. If the conference is requested by the employer, an affected

employee or his representative shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. Any party may be represented by counsel in such conference. No such conference or request for such conference shall operate as a stay of any fifteen working day period for filing a notice of intention to contest as prescribed in rule R20-5-624.

R20-5-627. Abatement Verification

A. Scope and application. This Section applies to employers, as defined in A.R.S. § 23-401, who receive a citation for a violation of the Arizona Occupational Safety and Health Act.

B. Definitions:

1. Abatement means action by an employer to comply with a cited standard or rule or to eliminate a recognized hazard, as defined in A.R.S. § 23-401, identified by the Division during an inspection.
2. Abatement date means:
    a. For an uncontested citation item, the later of:
        i. The date in the citation for abatement of the violation;
        ii. The date approved by the Division as a result of a petition for modification of the abatement date (PMA); or
        iii. The date for abatement completion as established in a citation by an informal conference agreement.
    b. For a contested citation item for which an administrative law judge has issued a final decision affirming the violation, the later of:
        i. The date identified in the final decision for completion of abatement;
        ii. The date computed by adding the original period allowed for abatement in the citation to begin 15 days from the final decision date of an administrative law judge; or
        iii. The date established by a formal settlement agreement.
3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.
4. Final order date means:
    a. The date on which an uncontested citation is deemed final under A.R.S. § 23-417 (A); or
    b. For a contested citation item: The date on which a decision or order of an administrative law judge becomes final under A.R.S. § 23-421 or § 23-423.
5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between workplaces.

C. Abatement certification.

1. Within 10 calendar days after the abatement date, an employer shall certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2). An employer may use Appendix A to certify abatement.
2. An employer is not required to certify abatement if a Compliance Safety and Health Officer, during an onsite inspection:
    a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and

b. Notes the abatement action on the citation.

3. An employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by subsection (H), the completion date and method of abatement and a statement that affected employees and their representatives have been informed of the completed abatement.

D. Abatement documentation.

1. Within 10 days after the abatement date, an employer shall submit to the Division, documents which evidence that abatement is complete for each willful or repeat violation and for any serious violation for which abatement documentation is required.
2. Documents which evidence that abatement is complete may include documents for purchase or repair of equipment, photographs or videos of the abatement, or other written records.

E. Abatement plans.

1. The Division may require an employer to submit an abatement plan, except for a nonserious violation, when the time permitted for abatement is more than 90 days. The citation shall state that an abatement plan is required. An employer may use Appendix B for an abatement plan. An employer shall submit an abatement plan for each cited violation within 25 days from the date of a final order when the citation states that a plan is required. In the abatement plan, the employer shall identify:
    a. The violation,
    b. The steps necessary to achieve abatement,
    c. A schedule for completing abatement, and
    d. How the employer will protect employees from the violative condition until abatement is complete.

F. Progress reports.

1. The Division may require an employer who submits an abatement plan under subsection (E), to submit periodic progress reports for each cited violation. If the Division requires a periodic progress report, the citation shall include the following information:
    a. Periodic progress reports are required and the cited violations for which periodic progress reports are required;
    b. The date on which an initial progress report must be submitted. The date of the initial progress report shall be no sooner than 30 days after the submission date required for abatement;
    c. Whether additional progress reports are required; and
    d. The date on which additional progress reports shall be submitted.
2. For each violation, the employer shall summarize in the progress report, the action taken to achieve abatement and the date the action was taken.

G. Employee notification.

1. An employer shall inform affected employees and the employees' representative of abatement activities covered by this Section by posting a copy of each document submitted to the Division or a summary of the document at the location of the cited violation.
2. For employers who have mobile work operations, the employer shall:

a. Post each document or a summary of the document submitted to the Division in a conspicuous place where it can be readily seen by employees and the employee representative; or
b. Take other steps to communicate fully to affected employees and the employees' representative about abatement actions.

3. The employer shall inform employees and the employees' representative of the right to examine and copy all abatement documents submitted by the employer to the Division.
    a. An employee or an employee representative shall submit a written request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted to the Division.
    b. An employer shall comply with an employee's or employee representative's written request to examine and copy abatement documents within five working days of receiving the request.
4. An employer shall ensure that notice in subsection (G)(1) to employees and a employee representative is provided at the same time or before the information is provided to the Division and that abatement documents are:
    a. Not altered, defaced, or physically covered by other material; and
    b. Remain posted for at least three working days after submission to the Division.

H. Transmitting abatement documents.

1. An employer shall include, in each submission required by this Section, the following information:
    a. The employer's name and address;
    b. The inspection number to which the submission relates;
    c. The citation, item number, and location to which the submission relates;
    d. A statement that the information submitted is accurate; and
    e. The signature of the employer or the employer's authorized representative.
2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.

I. Movable equipment.

1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within or between workplaces. The Division shall deem attaching a copy of the citation to the equipment to meet the tagging requirement of subsection (I)(3) and the posting requirement of R20-5-623.
2. The employer shall use a warning tag to warn employees about the nature of the violation involving the movable equipment and identifies the location of the violation. An employer may use the tag in Appendix C to meet this requirement.
3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation to the equipment as follows:
    a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation within eight hours after the employer receives the citation; and
    b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation before moving the equipment within or between workplaces.
4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the

requirements of this Section when the information required by subsection (I)(2) is included on the tag.

5. An employer shall ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or physically covered by other material.
6. An employer shall ensure that the tag or copy of the citation attached to movable equipment remains attached until:
    a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
    b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
    c. The Division, administrative law judge, or Review Board vacates the citation.

Appendix A. Sample Abatement - Certification Letter (Nonmandatory)
(Attached at the end of rules reviewed)

Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)
(Attached at the end of rules reviewed)

Appendix C. Sample Warning Tag (Nonmandatory)
(Attached at the end of rules reviewed)

R20-5-628. Safe Transportation of Compressed Air or Other Gases
An employer shall not use Polyvinyl Chloride (PVC) piping in a place of employment for the transportation and distribution of compressed air or other compressed gases in an above-ground installation.

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904
Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of May 14, 2019, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after May 14, 2019.

R20-5-630. Repealed

R20-5-631. Repealed

R20-5-632. Repealed

R20-5-633. Repealed

R20-5-634. Repealed

R20-5-635. Repealed

R20-5-636. Repealed

R20-5-637. Repealed

R20-5-638. Repealed

R20-5-639. Repealed

R20-5-640. Repealed

R20-5-641. Repealed

R20-5-642. Repealed

R20-5-643. Repealed

R20-5-644. Repealed

R20-5-645. Repealed

R20-5-646. Emergency Expired

R20-5-647. Reserved

R20-5-648. Reserved

R20-5-649. Reserved

R20-5-650. Definitions

As used in rules R20-5-650 through R20-5-669 inclusive, unless the context clearly requires otherwise:

1. "Act" means the Arizona Occupational Safety and Health Act of 1972 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
2. "Commission" means the Industrial Commission of Arizona.
3. "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.
4. "Party" means a person admitted to participate in a hearing conducted in accordance with subsection (3). An applicant for relief and any affected employee shall be entitled to be named as parties.
5. "Affected employee" means an employee or any one of his authorized representatives, such as his collective bargaining agent, who would be affected by the granting or denial of a variance.

R20-5-651. Petitions for Amendments
Any person may at any time petition the Commission in writing to revise, amend, or revoke any provisions of rules R20-5-650 through R20-5-669 inclusive. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

R20-5-652. Effects of Variances
All variances granted hereunder shall have only future effect. In their discretion, the Commission may decline to entertain an application for variance on the subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Federal Occupational Safety and Health Review Commission, State of Arizona Hearing Division or the Arizona Review Board until the completion of such proceeding.

R20-5-653. Public Notice of a Granted Variance
Every final action granting a variance, shall be published in statewide newspapers. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

R20-5-654. Form of Documents; Subscription; Copies
A. No particular form is prescribed for applications and other papers which may be filed in proceedings hereunder. However, any applications and other papers shall be clearly legible. An original and six copies of any application and other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.
B. Each application or other paper which is filed in proceedings hereunder shall be signed by the person filing the same or by his attorney or other authorized representative and where required by these regulations shall be verified by the applicant.

R20-5-655. Variances
A. Application for variance. Any employer, or class of employers, desiring a variance from a standard or regulation or any portion thereof, authorized by A.R.S. § 23-411 of the Act may file a written application containing the information specified in subsection (B) of this Section with the Industrial Commission of Arizona, 1601 West Jefferson, Phoenix, Arizona 85005.
B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-411(B) and (C) of the Act.
C. Interim order.
1. Application. In accordance with A.R.S. § 23-411(B)(3) of the Act, an application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of

the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.

R20-5-656. Variances under A.R.S. § 23-412

A. Application for variance. Any employer, or class of employers, desiring a variance authorized by A.R.S. § 23-412 of the Act may file a written application containing the information specified in subsection (B) of this Section, with the Industrial Commission of Arizona, 1601 W. Jefferson, Phoenix, Arizona 85005.

B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-412 of the Act.

C. Interim order

1. Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances

A. Renewal or rules or orders. Any final rule or order issued under A.R.S. § 23-411 of the Act may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.

B. Multi-state variances. Where a federal variance has been granted with multi-state applicability, including applicability in this state operating under a state plan approved under Section 18 of the Act, from a standard or portion thereof identical to this state's standard or regulation or portion thereof such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard or portion thereof provided no objections of substance are found to be interposed by the Commission.

R20-5-658. Action on Applications

A. Defective applications

1. If an application filed pursuant to rule R20-5-655, R20-5-656, R20-5-657 and R20-5-658 does not conform to the applicable Section, the Commission may deny the application.
2. Prompt notice of the denial of an application shall be given to the applicant.
3. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.

4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.

B. Adequate applications

1. If an application has not been denied pursuant to subsection (A) of this Section, the Commission shall cause to be published in statewide newspapers a notice of the filing of the application.
2. A notice of the filing of an application shall include:
    a. The terms, or an accurate summary, of the application;
    b. A reference to the Section of the Act under which the application has been filed;
    c. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
    d. Information to affected employers, employees, of any right to request a hearing on the application.

R20-5-659. Request for Hearings on Petition

A. Request for hearing. Any employer, employee, authorized employee representative, representative, or other person interested in or affected by an order of the Commission may petition for a hearing on the reasonableness and lawfulness of an order issued under A.R.S. §§ 23-411 or 23-412, by a verified petition filed with the Commission.

B. Contents of a petition. A request for a hearing filed pursuant to subsection (A) of this Section shall include:

1. The name and address of the applicant;
2. A concise statement of facts showing how the employer, employee, authorized employee representative, representative, or other person would be affected by the relief applied for;
3. A petition shall set forth specifically and in detail the order upon which a hearing is desired;
4. The reasons why the order is unreasonable or unlawful;
5. The issue to be considered by the Commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.
6. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
    a. Giving a copy thereof to their authorized representative;
    b. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the petition specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting the application itself); and
    c. Other appropriate means.
7. If the applicant is an affected employee, a certification that a copy of the petition has been furnished to the employer.

C. The Commission may on its own motion proceed to modify or revoke a rule or order issued under A.R.S. §§ 23-411 or 23-412 of the Act. In such event, the Commission shall cause to be published in statewide newspapers a notice of its intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing and shall take such

other action as may be appropriate to give actual notice to the affected employees. Any request for a hearing shall include a short and plain statement of:

1. How the proposed modification or revocation would affect the requesting party; and
2. What the requesting party would seek to show on the subjects or issues involved.

R20-5-660. Consolidation of Proceedings

The Commission on its own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

R20-5-661. Notice of Hearing

A. Service. Upon request for a hearing as provided in this Section, or upon its own initiative, the Commission shall serve, or cause to be served, a reasonable notice of hearing.

B. Contents. A notice of hearing served under subsection (A) of this Section shall include:

1. The time, place, and nature of the hearing;
2. The legal authority under which the hearing is to be held;
3. A specification of issues of fact and law.

R20-5-662. Manner of Service

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

R20-5-663. Industrial Commission; Powers and Duties

A. Powers. The Commissioners shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

1. To administer oaths and affirmations;
2. To rule upon offers of proof and receive relevant evidence;
3. To provide for discovery and to determine its scope;
4. To regulate the course of the hearing and the conduct of the parties and their counsel therein;
5. To consider and rule upon procedural requests;
6. To hold conferences for the settlement or simplification of the issues by consent of the parties;
7. To make, or to cause to be made, an inspection of the employment or place of employment involved;
8. To make decisions in accordance with A.R.S. §§ 23-405.5, 23-411, 23-412, and 23-945; and
9. To take any other appropriate action authorized by the Act, this Section, or A.R.S. § 23-945.

B. Contumacious conduct; failure or refusal to appear or obey the rulings of the Commission.

1. Contumacious conduct at any hearing before the Commission shall be grounds for exclusion from the hearing.
2. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order

denying an application of an applicant or regulating the contents of the record of the hearing.

C. Referral to Rules of Procedure for Occupational Safety and Health hearings. On any procedural question not regulated by this Section, the Act, or A.R.S. § 23-945, Commission shall be guided to the extent practicable by any pertinent provisions of the Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona.

R20-5-664. Prehearing Conferences

A. Convening a conference. Upon its own motion or the motion of a party, the Commission may direct the parties or their counsel to meet with them for a conference to consider:

1. Simplification of the issues;
2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
3. Stipulations, admissions of fact, and of contents and authenticity of documents;
4. Limitation of the number of parties and of expert witnesses; and
5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.

B. Record of conference. The Commission shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearings to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

R20-5-665. Consent Findings and Rules or Orders

A. General. At any time before the reception of evidence in any hearing, or during any hearing, a reasonable opportunity may be afforded to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Commission. After consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

B. Contents. Any agreement containing consent findings in rule or other disposing of a proceeding shall also provide:

1. That the rule or order shall have the same force and effect as if made after a full hearing;
2. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
3. A waiver of any further procedural steps before the Commission; and
4. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

C. Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

1. Submit the proposed agreement to the Commission for its consideration; or
2. Inform the Commission that agreement cannot be reached.

D. In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Commission may accept such agreement by issuing its decision based upon the agreed findings.

R20-5-666. Discovery

A. Depositions

1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the Commission and having power to administer oaths.
2. Application. Any party desiring to take the deposition of a witness may make application in writing to the Commission, setting forth:
    a. The reasons why such deposition should be taken;
    b. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
    c. The name and address of each witness; and
    d. The subject matter concerning which each witness is expected to testify.
3. Notice. Such notice as the Commission may order shall be given by the party taking the deposition to every other party.
4. Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of the hearing.

B. Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the Commission may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

R20-5-667. Hearings

A. Order of proceeding. Except as may be ordered otherwise by the Commission, the party applicant for relief shall proceed first at a hearing.

B. Burden of proof. The party applicant shall have the burden of proof.

C. Evidence

1. Admissibility. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or

documentary evidence may be received, but the Commission shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

2. Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the Commission.

D. Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: provided that the parties shall be given adequate notice, at the hearing or by reference in the Commission's decision, of the matters so noticed and shall be given adequate opportunity to show the contrary.

E. Record. Minutes shall be taken of the Commission hearings. Copies of the minutes may be obtained by the parties upon written application filed with the secretary of the Commission and upon the payment of fees at the rate provided in the agreement with the Commission.

R20-5-668. Decisions of the Commission

A. Proposed findings of fact, conclusions, and rules or orders. Within 10 days after completion of the hearing or such additional time as the Commission may allow, each party may file with the Commission proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

B. Decisions of the Commission. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the Commission shall make and serve upon each party its decision, which shall become final upon the 30th day after service thereof, unless exceptions are filed thereto, as provided in rule R20-5-669. The decision of the Commission shall include:

1. A statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record, and
2. The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially notice and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

R20-5-669. Judicial Review

Any employer, employee, authorized employee representative, representative, or any person in interest is dissatisfied with an order of the Commission may appeal in accordance with A.R.S. § 23-413 of the Act.

R20-5-670. Field Sanitation

A. This Section applies to any agricultural establishment where a crew of five or more employees are engaged on any given day in hand-labor operations in one location.

B. As used in this Section:

1. "Agricultural establishment" means a business operation that uses paid employees in the production of food, fiber or other material such as seed, seedlings, plants or parts of plants.
2. "Crew of employees" means a group of persons who are employed to perform hand-labor operations as a unit at an agricultural establishment. "Crew of employees" does not include the employer and the employer's immediate family members.

3. "Hand-labor operations" means agricultural activities or operations performed in the field by hand or with hand tools. Hand-labor operations include the hand-harvest of vegetables, nuts and fruits, hand-weeding of crops and hand-planting of seedlings. Hand-labor operations do not include such activities as logging operations, irrigation operations, the care or feeding of livestock or hand-labor operations in permanent structure, such as canning facilities or packing houses. Hand-labor operations do not include activities in which persons are acting as equipment operators.
4. "Handwashing facility" means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single-use towels.
5. "Potable water" means water that meets the standards for drinking purposes prescribed by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141 (July 1983), incorporated by reference and on file in the Office of the Secretary of State.
6. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets or sanitary privies, which is supplied with toilet paper adequate for employee needs. Toilet facilities may be either fixed or portable.

C. Employers shall provide the following for employees engaged in hand-labor operations at an agricultural establishment without cost to the employee:

1. Potable drinking water as follows:
    a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.
    b. The water shall be suitably cool, no more than 80F, and in sufficient amounts, a minimum of two gallons per employee, taking into account the air temperature, humidity and the nature of the work performed, to meet employees' need.
    c. The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.
2. Toilet and handwashing facilities as follows:
    a. One toilet facility and one handwashing facility shall be provided for each 40 employees or fraction thereof, except as provided in subsection (D) of this Section.
    b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to ensure privacy.
    c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other and within 1/4 mile of each employee's place of work in the field. If it is not feasible to locate facilities accessibly and within the required distance due to the terrain, facilities shall be located at the point of closest vehicular access.

D. Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.

E. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including all of the following:

1. Drinking water containers shall be covered, cleaned and refilled daily.

2. Toilet facilities shall be operational and maintained in clean and sanitary condition and shall be supplied with toilet paper adequate for employee needs.
3. Handwashing facilities shall be maintained in clean and sanitary condition.
4. Disposal of wastes from facilities shall not cause unsanitary conditions.

F. Employees shall be allowed reasonable opportunities during the workday to use the facilities.

R20-5-671. Reserved

R20-5-672. Reserved

R20-5-673. Reserved

R20-5-674. Emergency expired

R20-5-675. Reserved

R20-5-676. Reserved

R20-5-677. Reserved

R20-5-678. Reserved

R20-5-679. Reserved

R20-5-680. Protected Activity

A. All complaints pursuant to A.R.S. § 23-425 shall relate to conditions at the workplace. The filing of complaints need not be in writing for purposes of this subsection except that those complaints filed pursuant to R20-5-682 shall comply with R20-5-682. The term "filed any complaint" as used in A.R.S. § 23-425(A) includes:
1. Employee requests for inspection pursuant to A.R.S. § 23-408(F);
2. Complaints registered with other state, local or federal governmental agencies which have the authority to regulate or investigate occupational safety and health conditions;
3. Complaints lodged with employers; or
4. Complaints filed as specified in R20-5-682.

B. The term "instituted or caused to be instituted any proceeding" as used in A.R.S. § 23-425(A) includes:
1. Inspections of worksites under A.R.S. § 23-408(A);
2. Employee contest of abatement date under A.R.S. § 23-417(D);
3. Employee initiation of proceedings for promulgation of an occupational safety and health standard under A.R.S. § 23-410(A);
4. Employee application for modification or revocation of a variance under A.R.S. § 23-413;
5. Employee judicial challenge to a standard under A.R.S. § 23-410(E);
6. Employee appeal of an Administrative Law Judge Division order under A.R.S. § 23-421(C);
7. Exercise of rights by any employee pursuant to A.R.S. § 23-418.01;

8. Any other employee action authorized by the Arizona Occupational Safety and Health Act of 1972; or
9. Setting into motion the activities of others which result in the proceedings specified in subsections (B)(1) through (8).

C. The term "testified or is about to testify in any such proceeding" as used in A.R.S. § 23-425(A) includes:
1. Testimony in proceedings instituted or caused to be instituted by the employee; or
2. Any statements given in the course of judicial, quasi-judicial or administrative proceedings. For this purpose, administrative proceedings include inspections, investigations and administrative rulemaking or adjudicative functions.

D. The term "the exercise by such employee on behalf of himself or others of any right afforded by this Article" as used in A.R.S. § 23-425(A) includes:
1. The right to participate as a party in enforcement proceedings pursuant to A.R.S. § 23-408(D);
2. The right to request information from the Industrial Commission; or
3. To cooperate with inspections or investigations by the Industrial Commission.

E. If the employee, with no reasonable alternative, refuses in good faith to expose himself to a dangerous condition, the employee is engaged in protected activity. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the dangers through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer and been unable to obtain a correction of the dangerous condition.

F. Employees who refuse to comply with valid occupational safety and health standards or valid safety rules implemented by the employer are not protected by A.R.S. § 23-425.

R20-5-681. Elements of a Violation of A.R.S. § 23-425

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:
1. The employee was engaged in protected activities as defined in R20-5-680.
2. The employer had knowledge of the employee's protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. The protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity.

R20-5-682. Procedure

A. A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408(F) to do so on the employee's behalf. The complaint shall be written and shall be signed by the person filing the complaint.

B. The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division.

C. The Division may accept or deny an employee's withdrawal of a complaint. The Industrial Commission's investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.

D. The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.

E. The Industrial Commission's jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:

1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23-425;
2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
3. The proceedings were fair and regular; and
4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.

F. A determination pursuant to A.R.S. § 23-425(C) includes:

1. A decision to not proceed with the case;
2. To defer the case to another forum; or
3. To proceed to litigation in Superior Court

A.A.C. R20-5-627, App. A

Appendix A. Sample Abatement-Certification Letter (Nonmandatory)

[Name], Director

The Industrial Commission of Arizona

Division of Occupational Safety and Health

P. O. Box 19070

Phoenix, Arizona 85005

[Company's Name]

[Company's Address]

The hazard referenced in Inspection Number [Insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

_____.

I attest that the information contained in this document is accurate.

_____

Signature

_____

Typed or Printed Name

Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)

Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory).

(Name), Director

The Industrial Commission of Arizona

Division of Occupational Safety and Health

P. O. Box 19070

Phoenix, Arizona 85005

[Company's Name]

[Company's Address]

Check one:

Abatement Plan [ ]

Progress Report [ ]

Inspection Number _____

Page _____ of _____

Citation Number(s)* _____

Item Number(s)* _____

Proposed Completion

Completion Date (for

Date (for progress

abatement reports

Action plans only) only)

1. _____ _____ _____

_____

_____

2. _____ _____ _____

_____

_____

3. _____ _____ _____

_____

_____

4. _____ _____ _____

_____

_____

5. _____ _____ _____

_____

_____

Date required for final abatement: _____

I attest that the information contained in this document is accurate.

_____

Signature

_____

Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone number: _____

* Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

A.A.C. R20-5-627, App. C

Appendix C. Sample Warning Tag (Nonmandatory)

O

WARNING

EQUIPMENT HAZARD

BY ADOSH

EQUIPMENT CITED:

_____

_____

_____

HAZARD CITED:

_____

_____

_____

FOR DETAILED INFORMATION:

SEE ADOSH CITATION POSTED AT:

_____

_____

BACKGROUND COLOR -- ORANGE

MESSAGE COLOR -- BLACK

GENERAL AND SPECIFIC STATUTES

A.R.S. § 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to § 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. § 23-405. Duties and powers of the industrial commission relative to occupational safety and health

The commission shall:

1. Administer the provisions of this article through the division of occupational safety and health.

2. Appoint the director of the division of occupational safety and health.

3. Cooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.

4. Promulgate standards and regulations as required, pursuant to § 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division.

5. Have the authority to issue reasonable temporary, experimental and permanent variances pursuant to §§ 23-411 and 23-412.

6. Exercise such other powers as are necessary to carry out the duties and requirements of this article.

A.R.S. § 23-408. Inspection of places and practices of employment; closing conference; prohibitions; employee initiation of investigation; violation; classification; injunction

A. Except as prescribed in § 23-432, subsection E, the director of the division of occupational safety and health, or the director's authorized representative, on presentation of credentials, shall be permitted to inspect places of employment, question employees and investigate conditions, practices or matters in connection with employment subject to this article at reasonable times, as the director or the director's authorized representative may deem appropriate to determine whether any person has violated any provision of this article or any rule or regulation issued pursuant to this article or that may aid in the enforcement of this article. An employer or other person shall not refuse to admit the director or the director's authorized representatives to any place or refuse to permit the inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. In making inspections and investigations, the director or the director's authorized representative may require the attendance and testimony of witnesses and the production of

evidence under oath. Witnesses shall be paid the same fees and mileage paid to witnesses in the courts of this state. If any person fails or refuses to obey such an order, the director or the director's authorized representative may apply to any superior court in any county where the person is found, resides or transacts business for an order requiring the person to produce evidence and to give testimony as ordered. Failure to obey such an order is contempt of court.

C. The director or the director's authorized representative shall inspect at least every six months any operation that mixes rock, sand, gravel or similar materials with water and cement or with asphalt and that is not included in the definition of mine in § 27-301. The director or the director's authorized representative shall monitor and work with the mine inspector only to the extent necessary to ensure this state's compliance with federal occupational safety and health act standards, (P.L. 91-596).

D. Notice of an intended inspection shall not be given to an employer before the time of actual entry on the workplace, except by specific authorization by the director.

E. A representative of the employer and a representative authorized by the employer's employees shall be given an opportunity to accompany the director or the director's authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the director or the director's authorized representative shall consult a reasonable number of employees concerning matters of safety and health in the workplace.

F. Except as provided in § 23-426, information and facts developed by the commission, the director or any employee of the commission or division in the course of any inspection or investigation are public records subject to inspection pursuant to title 39, chapter 1, article 2,2 if, pursuant to § 23-415, subsection D, the inspection or investigation has been closed or a citation has been issued. Such information and facts shall not be admissible in any court or before any administrative body except pursuant to this article. Notwithstanding this subsection, the director or any commission employee is not required to appear at any deposition, trial or hearing concerning a division inspection or investigation unless the appearance is related to a hearing held pursuant to this article. Hearings held pursuant to this article are open to the public.

G. During the inspection or investigation and in deciding whether to recommend and issue a citation, the director or the director's authorized representative and the commission may consider whether an employee has committed misconduct by violating the employer's policies, if any, regarding substance abuse while working, as evidenced by the results of testing for substance abuse or other evidence of impairment while working.

H. An employee of the division or the commission may not:

1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney.

2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the commission shall inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time.

3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.

I. An employee or a representative of employees who believes that a violation of a safety or health standard or regulation exists that threatens physical harm or that an imminent danger exists may request an investigation by giving notice to the director or the director's authorized representative of the violation or danger. Any notice shall be in writing, set forth with reasonable particularity the grounds for the notice and be signed by the employees or representative of the employees. On the request of the employee giving the notice, the employee's name and the names of other employees referred to in the notice shall not appear on any copy of the notice or any record published, released or made available. If on receipt of the notice the director determines that there are reasonable grounds to believe that the violation or danger exists, the director shall make an investigation in accordance with this article as soon as practicable to determine if the violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, the director shall notify the employees or representative of the employees in writing of the determination.

J. Any person who violates any provision of this section is guilty of a class 2 misdemeanor.

K. The commission, or the commission's authorized representative, in addition to initiating an action under subsection I of this section, may file in the superior court in the county where the inspection was refused a verified complaint against an employer who violates subsection A of this section and request an injunction against continued refusal to permit an inspection.

A.R.S. § 23-410. Development of standards and rules

A. Safety and health standards and rules shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such rules as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with the occupational safety and health advisory committee and other persons knowledgeable in the business for which the standards or rules are being formulated.

2. Proposed standards or rules, or both, shall be submitted to the commission for its approval. If the commission approves the proposed standards or rules, or both, it shall promulgate them in accordance with the procedures established in title 41, chapter 6.1

B. The division shall not propose standards or rules for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or rules promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate such 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 for the protection of employees. In addition, where 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 promulgated 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 shall take precedence.

E. Any person who may be adversely affected by a standard or rule issued under this article may at any time prior to the sixtieth day after such standard or rule is promulgated file a complaint challenging the validity of such 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 such standard or rule. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or rule. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

A.R.S. § 23-411. Temporary and experimental variances

A. Any employer may apply to the commission for a temporary order granting a variance from a standard or regulation or any provision thereof promulgated under this article.

B. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection C of this section and establishes all of the following:

1. He is unable to comply with a standard or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date.

2. He is taking all available steps to safeguard his employees against the hazards covered by the standard or regulation.

3. He has an effective program for coming into compliance with the standard or regulation as quickly as practicable. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use

while the order is in effect and state in detail his program for coming into compliance with the standard or regulation. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing before the commission. A hearing must be requested within twenty days of such notice to employees. The commission may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or regulation or six months, whichever is shorter, except that such an order may be renewed not more than once so long as the requirements of this section are met and if an application for renewal is filed at least sixty days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred eighty days.

C. An application for a temporary order under this section shall contain all of the following:

1. A specification of the standard or regulation or portion thereof from which the employer seeks a variance.

2. A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or regulation or portion thereof and a detailed statement of the reasons therefor.

3. A statement of the steps he has taken and will take with specific dates to protect employees against the hazard covered by the standard or regulation.

4. A statement of when he expects to be able to comply with the standard or regulation and what steps he has taken and what steps he will take with dates specified to come into compliance with the standard or regulation.

5. A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commission for a hearing.

D. The commission is authorized to grant an experimental variance from any standard or regulation or portion thereof whenever it determines that such variance is necessary to permit an employer to participate in an experiment approved by the commission and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of workers. An employer applying for an experimental variance must comply with the requirements of subsection C, paragraphs 1, 3 and 5 of this section.

A.R.S. § 23-412. Permanent variances

Any affected employer may apply to the commission for a rule or order for a variance from a standard or regulation promulgated under this article. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commission shall

issue such rule or order if it determines on the record, after opportunity for an inspection where appropriate and a hearing before the commission that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard or regulation. The rule or order so issued shall prescribe the conditions the employer must maintain, the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard or regulation in question. Such a rule or order may be modified or revoked upon application by an employer, employees or by the commission on its own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

A.R.S. § 23-417. Enforcement procedure

A. If the director, following an inspection or investigation, issues a citation pursuant to § 23-415 the director, within a reasonable time after termination of the inspection or investigation, shall notify the employer by mail of any penalty proposed to be assessed pursuant to § 23-418 and that the employer has fifteen working days within which to notify the director in writing if the employer wishes to contest the citation or proposed assessment of penalty. If the employer fails to notify the director in writing within fifteen working days of receipt of the notice that the employer intends to contest the citation or penalty and a notice is not filed by any employee or representative of employees pursuant to subsection D of this section within such time, the citation and the assessment, as proposed, shall be a final order of the commission and not subject to review by any court or agency, except that the director may excuse any late notification to contest a citation only if the employer to whom the notice was sent shows by clear and convincing evidence that the notice was not received.

B. The period allowed for correction of a violation shall not begin to run until the entry of a final order in the case of any review proceedings pursuant to this section initiated by the employer in good faith and not solely for delay or avoidance of penalties. If the division has reason to believe an employer has failed to correct a violation for which a citation has been issued within the period allowed, the director shall notify the employer by mail of such failure, of the penalty proposed to be assessed pursuant to § 23-418 and that the employer has fifteen working days within which to notify the director in writing if the employer wishes to contest the notification or proposed assessment of penalty. If the employer fails to notify the director in writing within fifteen working days of receipt of the notice that the employer intends to contest the notice or penalty, the notice and assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

C. Any employer who corrects the violations for which a citation was issued within the period allowed shall so notify the director in writing.

D. Any affected employee or employee representative may request a hearing to appeal the period allowed an employer to abate a particular violation pursuant to § 23-420 if the affected employee or employee representative files the appeal with the director within the abatement period allowed in the citation or within fifteen days after the date of receipt of the citation, whichever is shorter.

E. On a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond the reasonable control of the employer, the commission or its authorized designee, after an opportunity for a hearing as provided in § 23-420, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

A.R.S. § 23-418. Penalties; violation; classification

A. Any employer who wilfully or repeatedly violates the requirements of § 23-403 or any standard or regulation adopted pursuant to § 23-410 or 23-414 or this article may be assessed a civil penalty for each wilful violation of not more than the maximum civil penalty, but not less than the minimum civil penalty, for wilful or repeated violations adopted by the United States occupational safety and health administration pursuant to the federal civil penalties inflation adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

B. Any employer who has received a citation for a serious violation of this article shall be assessed a civil penalty for each such violation of not more than the maximum civil penalty for serious violations adopted by the United States occupational safety and health administration pursuant to the federal civil penalties inflation adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

C. Any employer that has received a citation for a nonserious violation of this article may be assessed a civil penalty for each such violation of not more than the maximum civil penalty for nonserious violations adopted by the United States occupational safety and health administration pursuant to the federal civil penalties inflation adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

D. Any employer that fails to correct a violation for which a citation has been issued within the abatement period allowed for its correction, which shall be suspended in case of a review proceeding before an administrative law judge or the review board initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than the maximum civil penalty for abatement violations adopted by the United States occupational safety and health administration pursuant to the federal civil penalties inflation adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599) for each day during which such failure or violation continues after the abatement date.

E. Any employer that knowingly violates the requirements of § 23-403 or any standard or regulation adopted pursuant to § 23-410 or 23-414 or this article and that violation causes death to an employee is guilty of a class 6 felony, except that if the conviction is for a second or subsequent violation the employer is guilty of a class 5 felony.

F. Any person who knowingly gives advance notice of any inspection to be conducted under this article without authority from the director is guilty of a class 2 misdemeanor.

G. A person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article is guilty of a class 2 misdemeanor.

H. Any employer that violates any of the posting requirements of this article shall be assessed a civil penalty for each violation of not more than the maximum civil penalty for posting violations adopted by the United States occupational safety and health administration pursuant to the federal civil penalties inflation adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

I. The commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, the number of employees employed by the employer, the good faith of the employer and the history of previous violations under this article.

J. Civil penalties owed under this article shall be paid to the commission for deposit in the state general fund. After an order or decision on a civil penalty becomes final pursuant to § 23-417, 23-421 or 23-423, the civil penalty shall act as a judgment against the employer. The commission shall file the civil penalty in the office of the clerk of the superior court in any county in this state and the clerk shall enter the civil penalty in the civil order book and judgment docket. When the civil penalty is filed and entered it is a lien for eight years after the date of the final order or decision on the property of the employer located in the county. Execution may issue on the civil penalty within eight years in the same manner and with like effect as a judgment of the superior court. The civil penalty judgment shall accrue interest pursuant to § 44-1201. The commission may recover reasonable attorney fees incurred pursuant to this section.

A.R.S. § 23-425. Employee discharge or discrimination

A. No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this article or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this article.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may within thirty days after such violation occurs, file a complaint with the commission alleging such discrimination. Upon receipt of such complaint, the commission shall cause such investigation to be made as it deems appropriate. If upon such investigation, the commission determines that the provisions of this section have been violated, it shall bring an action in any appropriate superior court against such person. In any such action the superior court shall have jurisdiction for cause shown to restrain violations of subsection A and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

C. Within ninety days of the receipt of a complaint filed under this section the commission shall notify the complainant of its determination under subsection B.

A.R.S. § 41-1037. General permits; issuance of traditional permit

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

1. A general permit is prohibited by federal law.

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

3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.

5. The permit, license or authorization is issued pursuant to § 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.

6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

A.R.S. § 41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with § 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

3. Authorization of the rule by existing statutes.

4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.

5. The clarity, conciseness and understandability of the rule.

6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.

7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

8. If applicable, that the agency completed the previous five-year review process.

9. 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 objective.

10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with § 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to § 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.

2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.

3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.

4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.

5. Is not clear, concise and understandable.

6. Does not use general permits if required under § 41-1037.

7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.

8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in § 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.

2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.

2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

A.R.S. § 41-1057. Exemptions

A. In addition to the exemptions stated in § 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.

2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.

3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.

4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. An agency exempt under subsection A of this section may elect to follow the requirements of this article instead of § 41-1044 for a particular rule making. The agency shall include with a final rule making filed with council a statement that the agency has elected to follow the requirements of this article.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 4, Chapter 46, Articles 1-6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: January 16, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 4, Chapter 46, Articles 1-6

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to sixty-one (61) rules in Title 4, Chapter 46, Articles 1 through 6 regarding Real Estate Appraisal. Specifically, the rules cover the following Articles:

- Article 1. General Provisions
- Article 2. Registration, Licensure, and Certification as an Appraiser
- Article 3. Complaint Investigations
- Article 4. Appraisal Management Companies
- Article 5. Course Approval
- Article 6. Property Tax Agents

These rules were previously under the authority of the Real Estate Appraisal Board (Board). However, in 2015, the Legislature dissolved the Board and placed Real Estate Appraisal within the Department of Financial Institutions (Laws 2015, Chapter 19). Thereafter, in 2020, the Department of Insurance and Department of Financial Institutions were combined into a single agency (Laws 2019, Chapter 252). The prior 5YRR for Articles 1, 3, and 6 was submitted by the Board in 2013 prior to its dissolution. This report is the first 5YRR for the rules in Articles 2, 4, and 5.

In the prior 5YRR covering rules in Articles 1, 3, and 6, the Board indicated it would amend all the rules in Articles 1 and 3 through 6 to address the issues identified in the report and submit the rulemaking package to Council no later than December 31, 2014. The Department indicates the Board engaged in a rulemaking in 2015 to pursue the proposed course of action in its 2013 report which became effective on October 6, 2015.

Proposed Action

In the current report, the Department proposes to repeal R4-46-107 because it is redundant and therefore unnecessary. The Department indicates it hopes to move forward with an effective date before December 2023. Additionally, the Department proposes to amend R4-46-201.01(C)(5)(b) to make the awarding of experience credit for hours logged within the discretion of the Director if a registered trainee or designated supervisory appraiser fails to comply with the requirements of the Section. The Department indicates this amendment will be included in the Department's 2024 Regulatory Agenda and will be targeted for an effective date by March 31, 2024. Finally, by December, 2023, the Department indicates it plans to run a rulemaking and enact the suggested changes made by the ASC to R4-46-403 and R4-46-406. Specifically, during a recent preliminary compliance review of Article 4 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), the ASC found that Sections R4-46-403 and R4-46-406 incorrectly limited the restrictions of those Sections to owners of 10% or more. These rules are inconsistent with 12 CFR 34.214(a)(1) which does not limit the restrictions to owners of 10% or more.

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's review of the economic impacts of the articles reviewed under Chapter 46 is as follows:

- Articles 1, 2, 3, 4, 5 and 6—In 2022, the Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020. The Department is not aware of any changes to the economic impact included in that filing.
- Article 3.1—The Department repealed this Article and incorporated real estate appraisal into the rules of practice and procedure before the Director for the Department. The Department is not aware of any changes to the economic impact included in that filing.

Stakeholders include the Department and individuals who want to be classified as licensed residential and certified residential appraisers.

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

The Department believes the rules' benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives.

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 generally consistent with other rules and statutes. However, during a recent preliminary compliance review of Article 4 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), the ASC found that rules R4-46-403 and R4-46-406 incorrectly limited the restrictions of those Sections to owners of 10% or more. These rules are inconsistent with 12 CFR 34.214(a)(1) which does not limit the restrictions to owners of 10% or more.

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. However, the Department indicates R4-46-201.01(C)(5)(b) requires that a registered trainee appraiser shall not receive experience credit for hours logged during the period that the designated supervisory appraiser failed to comply with the applicable requirements of the Section. In the event that a designated supervisory appraiser fails to provide to the Department the name and address of each registered trainee appraiser as required under subsection R4-46-201.01(C)(4), the registered trainee appraiser does not receive the experience credit for hours logged. In that case, the Department exercises some discretion to allow the registered trainee appraiser to receive the credit. The Department indicates the rule needs to be amended to allow the Director discretion to award credit even if the designated supervisory appraiser fails to comply with subsection (C)(4).

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

As outlined above, the Department indicates R4-46-403 and R4-46-406 limit the restrictions of those Sections to owners of 10% or more which is more stringent than the federal regulation. 12 CFR 34.214(a)(1). The Department is proposing to amend these rules to make them consistent with 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 has identified several rules adopted after July 29, 2010 that require a permit, license, or agency authorization. First, the Department indicates the requirements of A.R.S. § 41-1037 are not applicable to R4-46-201.01 because the applicants for designation as a Supervisory Appraiser already hold a certificate from the Department. Second, the Department indicates the requirements of A.R.S. § 41-1037 are not applicable to R4-46-201.02 because the license obtained is reciprocal to an existing license in another state. Finally, the Department indicates no general permit is required for an Appraisal Management Company ("AMC") as the registration required for an AMC is pursuant to both state law (A.R.S. § 32-3663) and federal law (12 U.S.C. 3353).

11. Conclusion

This 5YRR from the Department relates to sixty-one (61) rules in Title 4, Chapter 46, Articles 1 through 6 regarding Real Estate Appraisal. The Department indicates the rules are clear, concise, understandable, and effective. However, the Department is proposing to amend rules to make them more consistent with other rules and statutes and enforced as written.

The Department proposes to repeal R4-46-107 because it is redundant and therefore unnecessary. The Department indicates it hopes to move forward with an effective date before December 2023. Additionally, the Department proposes to amend R4-46-201.01(C)(5)(b) to make the awarding of experience credit for hours logged within the discretion of the Director if a registered trainee or designated supervisory appraiser fails to comply with the requirements of the Section. The Department indicates this amendment will be included in the Department's 2024 Regulatory Agenda and will be targeted for an effective date by March 31, 2024. Finally, by December, 2023, the Department indicates it plans to run a rulemaking and enact the suggested changes made by the ASC to R4-46-403 and R4-46-406. Specifically, during a recent preliminary compliance review of Article 4 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), the ASC found that Sections R4-46-403 and R4-46-406 incorrectly limited the restrictions of those Sections to owners of 10% or more. These rules are inconsistent with 12 CFR 34.214(a)(1) which does not limit the restrictions to owners of 10% or more.

Council staff recommends approval of this report.

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie M. Hobbs, Governor
Barbara D. Richardson, Director

September 13, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Five-Year Review Report
Arizona Department of Insurance and Financial Institutions – Financial Institutions Division
Title 4. Professions and Occupations
Chapter 46. Department of Insurance and Financial Institutions – Financial Institutions Division – Real Estate Appraisal

Dear Chairperson Sornsin:

Please find enclosed the Five-Year Review Report of the Arizona Department of Insurance and Financial Institutions, Financial Institutions Division ("Department") which is due by September 30, 2023 for the following Articles in Title 4, Chapter 46:

- Article 1. General Provisions
- Article 2. Registration, Licensure, and Certification as an Appraiser
- Article 3. Complaint Investigations
- Article 3.1. Repealed (January 1, 2023)
- Article 4. Appraisal Management Companies
- Article 5. Course Approval
- Article 6. Property Tax Agents

Because of the dissolution of the Real Estate Appraisal Board in 2015, the 2013 Five-Year Review Report is the most recent report for Articles 1, 3, and 6. For the remaining articles, Articles 2, 4, and 5, this report is the initial report. This history is outlined in the Preface to the Report.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director
Arizona Department of Insurance and Financial Institutions

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 1. General Provisions

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3605(B), 32-3607, 32-3619, 32-3652, 32-3667

2. The objective of each rule:

Rule	Objective
R4-46-101	**Definitions.** The objective of this rule is to establish definitions for the Chapter in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-46-102	**Powers of Director.** The objective of the rule is to inform the public that the Director may seek recommendations from an advisory committee and may designate, train, and supervise volunteer licensees to conduct compliance audits of approved courses.
R4-46-106	**Fees.** The objective of the rule is to specify the fees that the Director charges for the licensing activities of the Department.
R4-46-107	**Procedures for Processing Applications.** The objective of this rule is to establish licensing timeframes in compliance with A.R.S. Title 41, Chapter 6, Article 7.1.

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 ___**

The 2013 Five-Year Review Report (the last report available) stated that R4-46-101 referenced probation as a form of discipline the Board could impose but that the statutes did not provide the specific authority to impose probation on a licensee. In 2014, the Board amended A.R.S. § 32-3605(B)(12) to allow probation as a form of discipline the Board could impose. (Laws 2014, Ch. 135, § 1). Section R4-46-101 is now consistent with the statutes.

The 2013 Five-Year Review Report also stated that the provision in R4-46-106 allowing the Board to charge a fee for renewal of an approved course to change an approved instructor was not authorized. In 2015, the following rulemaking eliminated those fees:

Docket Opening: 20 A.A.R. 1334, June 13, 2014 (filed by the Board)

Notice of Proposed Rulemaking: 20 A.A.R. 1309, June 13, 2014 (filed by the Board)

Notice of Final Rulemaking: 21 A.A.R. 1675, August 28, 2015 (filed by the Department of Financial Institutions)

Effective date: October 6, 2015

Section R4-46-106 is now consistent with the statutes.

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:

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules. At that time it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

The Board intends to amend all the rules in Articles 1 and 3 through 6 to address the issues identified in this report and will submit the rulemaking package to Council no later than December 31, 2014.

Response to Item 10:

The Board engaged in a rulemaking in 2015 to pursue the proposed course of action in its 2013 report.

Notice of Rulemaking Docket Opening: 20 A.A.R. 1334, June 13, 2014 (submitted by the Appraisal Board)

Notice of Proposed Rulemaking: 20 A.A.R. 1309, June 13, 2014 (submitted by the Appraisal Board)

Notice of Final Rulemaking: 21 A.A.R. 1675, August 28, 2015 (submitted by the Department of Financial Institutions)

The effective date of the amendments is October 6, 2015.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. The Department recently engaged in a rulemaking which included every Section of this Article and it did not receive any comments from the licensed community. (28 A.A.R. 893, May 6, 2022)

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. The Department adopted all the rules in this Article except Section R4-46-107 in 1995. Section R4-46-107 (Procedures for Processing Application) is mandated by the Licensing Time-frames law (A.R.S. 41-1072 through 41-1079) and addresses the Department's procedure for processing an application not the requirements for obtaining a license or certificate.

14. Proposed course of action

The Department proposes to repeal Section R4-46-107 because it is redundant and therefore unnecessary. The Department is currently preparing a Notice of Proposed Rulemaking for Title 6, Chapter 4, Article 1 which proposes to include Real Estate Appraisal in the Licensing Time-frames table (Table A) for the Financial Institutions Division and eliminates Section R4-46-107. Once the Department receives permission from the Governor's Office, it will publish the Notice. The Department hopes to move forward with an effective date before December 2023.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 2. Registration, Licensure, and Certification as an Appraiser

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3605(B), and 32-3625

2. The objective of each rule:

Rule	Objective
R4-46-201	**Appraiser Qualification Criteria.** The objective of this rule is to require that an applicant must meet the classification specific criteria established by the Appraisal Qualifications Board (AQB); to establish the scope of practice for the classifications of licensed residential and certified residential appraisers regardless of whether the transaction is federally related; and to require issuance of a registration, licensure or certification if the applicant meets the required criteria.
R4-46-201.01	**Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser.** This rule notifies an individual who wishes to act as a supervisory appraiser of the requirements to obtain that designation; and the requirements for supervision of a registered trainee appraiser.
R4-46-202.01	**Application for Licensure or Certification by Reciprocity.** This rule notifies an individual how to obtain a license or certificate by reciprocity in the same classification; and requires the Department to verify certain information.
R4-46-203	**Application for Non-resident Temporary Licensure or Certification.** This rule notifies an individual about the eligibility for a non-resident temporary license or certification; how to apply for the license or certification; the conditions under which the Director may grant and extension of the certificate or license; how to apply for multiple licenses or certification; and the limit of licenses or certifications that the Director may issue to any one individual.
R4-46-204	**Licensure and Certification Examinations.** This rule notifies an applicant that they have 90 days to successfully complete the AQB-approved examination for the classification for which the application is made unless extended by mutual agreement.

R4-46-209	**Registration, License, or Certificate; Name Change; Conviction and Judgment Disclosure.** This rule notifies a licensee that they must submit a written notice of a name change; an appraiser or property tax agent must report a criminal conviction to the Department within 30 days after the filing date; and an appraiser or property tax agent must report any civil judgment based on fraud, misrepresentation, or deceit in the making of an appraisal within 30 days of the final disposition of the matter.

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 ___**

The 2013 Five-Year Review Report (the last report available) did not review Article 2. However, it stated:

> "In response to the housing crisis and resulting economic disruption that occurred in 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010. The Act amends Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding federally related transactions.
>
> The Act mandates that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the standards made by the Appraisal Standards Board of the Appraisal Foundation. In Laws 2013, Chapter 184, the legislature significantly amended the organic statutes of the Board of Appraisal to conform to the Act. This includes a provision that the uniform standards of professional appraisal practice as published by the Appraisal Standards Board are the standards for this state (See A.R.S. § 32-3610).
>
> As a result of these legislative actions, some of the Board's rules were inconsistent with state and federal law. Most of these inconsistencies were addressed in the exempt rulemaking of Article 2, which was completed in November 2013."

The inconsistencies cited in the 2013 Five-Year Review Report did not include Article 2.

5. Are the rules enforced as written? **Yes ___ No _X_**

Section R4-46-201.01(C)(5)(b) requires that a registered trainee appraiser shall not receive experience credit for hours logged during the period that the designated supervisory appraiser failed to comply with the applicable requirements of the Section. In the event that a designated supervisory appraiser fails to provide to the Department the name and address of each registered trainee appraiser as required under subsection R4-46-201.01(C)(4), the registered trainee appraiser does not receive the experience credit for hours logged. In that case, the Department exercises some discretion to allow the registered trainee appraiser to receive the credit. The rule

needs to be amended to allow the Director discretion to award credit even if the designated supervisory appraiser fails to comply with subsection (C)(4).

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:

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules. At that time it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

Unknown. The Board did not review Article 2 in the 5-Year Review Report it submitted in 2013.

Response to Item 10:

In November 2013, the Appraisal Board completed an exempt rulemaking on the existing Sections in Article 2. (19 A.A.R. 4023, December 13, 2013)

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. During the Department's recent rulemaking in 2022, it received no comments from the industry on its proposed changes.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X_**

In November 2013, the Appraisal Board completed an exempt rulemaking on the existing Sections in Article 2. (19 A.A.R. 4023, December 13, 2013) In that rulemaking, the Board stated: "The Board's organic statutes were substantially revised during the 2013 legislative session (See Laws 2013, Chap. 184). In this rulemaking, the

Board is making changes necessary to comply with the licensing provisions of the revised statutes. It is also repealing Article 7, which consists of only one Section, so that fees for registration of appraisal management companies appear in only R4-46-106. The Board is making other required changes in a related rulemaking that it expects to complete in 2014. Many of the revisions to the Board's organic statutes and these rules result from changes to federal law."

In 2014, the Board began a rulemaking which the Department of Financial Institutions completed:

Docket Opening: 20 A.A.R. 1334, June 13, 2014 (filed by the Board)

Notice of Proposed Rulemaking: 20 A.A.R. 1309, June 13, 2014 (filed by the Board)

Notice of Final Rulemaking: 21 A.A.R. 1675, August 28, 2015 (filed by the Department of Financial Institutions)

Effective date: October 6, 2015

In the Notice of Final Rulemaking, the Department of Financial Institutions stated: "The Department believes this rulemaking is consistent with the provision in subsection (A)(1) of A.R.S. § 41-1038 because the rulemaking is a comprehensive effort to avoid the regulatory burden associated with inconsistent federal and state laws and the provision in subsection (A)(2) because the rulemaking is necessary to implement recent statutory changes (See Laws 2013, Chapter 184; Laws 2014, Chapter 135; Laws 2015, Chapter 19)."

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 as to Sections R4-46-201, R4-46-203, R4-46-204, and R4-46-209 because the Appraisal Board adopted these Sections prior to July 29, 2010.

The following Sections were adopted after July 29, 2010: R4-46-201.01 (Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser) and R4-46-201.02 (Application for Licensure or Certification by Reciprocity).

This requirement is not applicable to Section R4-46-201.01 because the applicants for designation as a Supervisory Appraiser already hold a certificate from the Department.

This requirement is not applicable to Section R4-46-201.02 because the license obtained is reciprocal to an existing license in another state.

14. Proposed course of action

In 2022, the Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules.

The Department proposes to amend Section R4-46-201.01(C)(5)(b) to make the awarding of experience credit for hours logged within the discretion of the Director if a registered trainee or designated supervisory appraiser fails to comply with the requirements of the Section. This amendment will be included in the Department's 2024 Regulatory Agenda and will be targeted for an effective date by March 31, 2024.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 3. Complaint Investigations

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3605(B)(10) through (B)(12), and 32-3631

2. The objective of each rule:

Rule	Objective
R4-46-301	**Complaints and Investigations; Complaint Resolution.** The purpose and objective of this rule is to specify the Department's procedure for handling a complaint against a licensee and and methods of resolving complaints.

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:

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules. At that time it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

In its 2013 report, the Board stated: "The Board's previous 5YRR was approved by Council on April 7, 2009. In the report, the Board indicated it intended to amend the following rules: . . . R4-46-301, R4-46-303, ... The Board did not complete the other rulemaking actions. . . . The Board is currently working on a rulemaking that amends all rules in Articles 1 and 3 through 6. That rulemaking will be completed by the end of 2014.

Response to Item 10:

The Board engaged in a rulemaking in 2015 to pursue the proposed course of action in its 2013 report.
Notice of Rulemaking Docket Opening: 20 A.A.R. 1334, June 13, 2014 (submitted by the Appraisal Board)
Notice of Proposed Rulemaking: 20 A.A.R. 1309, June 13, 2014 (submitted by the Appraisal Board)
Notice of Final Rulemaking: 21 A.A.R. 1675, August 28, 2015 (submitted by the Department of Financial Institutions)
The effective date of the amendments is October 6, 2015.
That rulemaking amended Section R4-46-301 and repealed the remaining Sections in Article 3.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the remaining rule notifies the regulated community about complaints and investigations and about complaint resolution.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No __

Not applicable.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. Although the Appraisal Board adopted Section R4-46-301 prior to July 29, 2010, it does not deal with issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 4. Appraisal Management Companies

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3680

2. The objective of each rule:

Rule	Objective
R4-46-401	**Application for Initial Registration.** The objective of this Section is to inform persons who wish to engage in the business of an Appraisal Management Company ("AMC") about how to register with the Department.
R4-46-402	**Bond Required.** The objective of this Section is to inform persons who wish to register as an AMC about the specifics of the bonding requirement, the procedure in the event a surety company cancels a bond, and the rights of injured persons to make a claim against the bond.
R4-46-403	**Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action.** The objective of this Section is to instruct the controlling person of the AMC about how to report various changes to the Department.
R4-46-404	**Application for Renewal Registration.** The objective of this Section is to inform an AMC of the term lengths of the initial and renewal registrations, to provide instructions for renewing the AMC registration, and to notify the AMC that expiration of the registration prohibits the AMC from providing appraisal management services until the registration is renewed. This Section also instructs the Department to accept a late registration within 90 days of the expiration of the registration and that it may assess a delinquent renewal fee in addition to the renewal fee.
R4-46-405	**Certifications; National Registry Reporting.** The objective of this Section is to inform the controlling person of the AMC about the certifications required to be made to the Department upon renewal of the AMC's registration, the requirement to annually submit the AMC National Registry Report to the Department at least 15 days prior to March 1st

	of each year, the National Registry fee to be remitted, and the consequences for failing to submit the report and the fee to the Department.
R4-46-406	**Appeal for Waiver.** The objective of this Section is to give instructions for seeking a waiver for an owner, controlling person, officer, or other individual who has ever had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered in any state when applying for registration as an AMC. This Section also authorizes the Director to exercise discretion when granting a waiver and provides the factors the Director must consider.
R4-46-407	**Training Required.** The objective of this Section is to instruct the controlling person of the AMC about the training required for employees and other individuals who work on behalf of the AMC, and that a record of the training and materials used to provide the training must be maintained and be available to the Department.
R4-46-408	**Voluntarily Relinquishing Registration.** The objective of this Section is to provide instructions to the controlling person of the AMC about voluntarily relinquishing an AMC's registration and, when ceasing the engagement of business as an AMC, the requirement to enter an agreement with the Director to maintain the surety bond.

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes ___ No _X_**

During a recent preliminary compliance review of this Article by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), the ASC found that Sections R4-46-403 and R4-46-406 incorrectly limited the restrictions of those Sections to owners of 10% or more. These rules are inconsistent with 12 CFR 34.214(a)(1) which does not limit the restrictions to owners of 10% or more.

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:**

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May

6, 2022). It also made other substantive changes to update the rules. At that time, it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

"In response to the housing crisis and resulting economic disruption that occurred in 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010. The Act amends Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 regarding federally related transactions.

The Act mandates that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the standards made by the Appraisal Standards Board of the Appraisal Foundation. In Laws 2013, Chapter 184, the legislature significantly amended the organic statutes of the Board of Appraisal to conform to the Act. This includes a provision that the uniform standards of professional appraisal practice as published by the Appraisal Standards Board are the standards for this state (See A.R.S. § 32-3610).

As a result of these legislative actions, some of the Board's rules were inconsistent with state and federal law. Most of these inconsistencies were addressed in the exempt rulemaking of Article 2, which was completed in November 2013.

The following inconsistencies remain:

- R4-46-401, which incorporates by reference The Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation, is no longer needed because the state legislature enacted A.R.S. § 32-3610, which makes the standards the law in Arizona.
- The Board has not made the rules regarding appraisal management companies that are required under A.R.S. § 32-3680. AMCs are entities created after 2008 to ensure the integrity of appraisals by providing a buffer between the person requesting an appraisal and the appraiser performing the appraisal."

Response to Item 10:

In 2015, the Department of Financial Institutions repealed Article 4 and replaced it with a new Article titled "Appraisal Management Companies" (21 A.A.R. 1675, August 28, 2015). The Department has never reviewed this new Article because it never submitted the Five-Year Review Report that it originally had due in 2018 (which was extended to be due in 2019). In 2022, the Department of Insurance and Financial Institutions – Financial Institutions Division completed a rulemaking for this Article (28 A.A.R. 893, May 6, 2022). This is the first review of this Article.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. In 2015, when this Article was rewritten (21 A.A.R. 1675, August 28, 2015), the Department did not receive any comments stating that the rulemaking was burdensome or costly. In addition, the Article was recently exposed in a rulemaking (28 A.A.R. 893, May 6, 2022) and the industry did not submit any comments stating that the Article was burdensome or costly.

12. Are the rules more stringent than corresponding federal laws? Yes _X_ No __

Sections R4-46-403 and R4-46-406 limit the restrictions of those Sections to owners of 10% or more which is more stringent than the federal regulation. 12 CFR 34.214(a)(1).

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. The registration required for an AMC is pursuant to both state law (A.R.S. § 32-3663) and federal law (12 U.S.C. 3353). No general permit is required.

14. Proposed course of action

By December, 2023, the Department plans to run a rulemaking and enact the suggested changes made by the ASC to Sections R4-46-403 and R4-46-406. Achievement of this date depends upon the granting of permission from the Governor's Office pursuant to A.R.S. § 41-1039(A) and (B).

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 5. Course Approval

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3625(D)

2. The objective of each rule:

Rule	Objective
R4-46-501	**Course Approval Required; Definitions.** The objective of this Section is to specify the requirements and procedures for obtaining the Department's approval of a qualifying or continuing education course, and to establish definitions for the Article.
R4-46-502	**Approval of Distance-education Delivery Mechanism.** The objective of this Section is to provide to a course owner the sources from which approval can be obtained for the course-delivery mechanism for a course to be delivered by distance education.
R4-46-503	**Course Owners.** The objective of this Section is to inform a course owner that the approval of a course delivered by distance education does not extend to a secondary provider, the requirements to be met before allowing a course to be provided by a secondary provider, and that the course owner will be held responsible for any violation of the Section.
R4-46-504	**Application for Course Approval.** The objective of this Section is to notify a course owner about how to apply for course approval with the Department.
R4-46-505	**Course Approval without Application.** The objective of this Section is to authorize the Director to approve certain types of courses without an application by a course owner.
R4-46-506	**Minimum Standards for Course Approval.** The objective of this Section is to inform the Director of the materials and documents that must be submitted by a course owner to obtain course approval, and to establish the minimum standards that the course, including a course presented by distance education, must meet.
R4-46-507	**Secondary Providers.** The objective of this Section is to require that the Director hold a course owner responsible for the activities of a secondary provider, and to require a course

	owner to have a written agreement with a secondary provider that contains specific requirements.
R4-46-508	**Compliance Audit of Approved Courses.** The objective of this Section is to provide guidance to the Department and a course owner on the auditing of approved courses.
R4-46-509	**Changes to an Approved Course.** The objective of this Section is to notify a course owner that if the scope of an approved course is changed substantially, the course owner is required to submit a new application for approval of the course.
R4-46-510	**Renewal of Course Approval.** The objective of this Section is to notify a course owner that course approval expires two years after approval is granted, that approval for a distance education course may expire in less than two years, that the course owner may apply for renewal of the course within 90 days of the course expiration, and that the Director may approve a course that has not changed substantially.
R4-46-511	**Transfer of an Approved Course.** The objective of this Section is to inform a course owner to which the proprietary rights of an approved course has been transferred that the transferring course owner must notify the Department, that the new course owner must attach a certification available from the Department on its website, and that the expiration of the course approval does not change.

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:**

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules. At that time, it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

The Board intends to amend all the rules in Articles 1 and 3 through 6 to address the issues identified in this report and will submit the rulemaking package to Council no later than December 31, 2014.

Regarding Article 5: In April 2012, the Appraisal Subcommittee issued a compliance review report and cited R4-46-501(I)(7)(h), regarding qualifications of instructors of the national USPAP course, as inconsistent with the requirements of the Appraiser Qualifications Board. The rule fails to reference the requirement that at least one instructor of the national USPAP course be a state certified appraiser. The Board enforces this requirement and is putting the requirement into the rulemaking that the Board intends to complete by the end of 2014.

Response to Item 10:

In 2015, the Department of Financial Institutions made significant changes to Article 5 which included amending Section R4-46-501, repealing Section R4-46-503 and rewriting it as a new Section, and adding new Sections R4-46-502 through R4-46-511 (21 A.A.R. 1675, August 28, 2015). The Department has never reviewed these revisions because it never submitted the Five-Year Review Report that it originally had due in 2018 (which was extended to 2019). In 2022, the Department of Insurance and Financial Institutions – Financial Institutions Division submitted a rulemaking for this Article (28 A.A.R. 893, May 6, 2022).

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. In 2015, when this Article was significantly changed (21 A.A.R. 1675, August 28, 2015), the Department did not receive any comments stating that the rulemaking was burdensome or costly. In addition, the Article was recently exposed in a rulemaking (28 A.A.R. 893, May 6, 2022) and the industry did not submit any comments stating that the Article was burdensome or costly.

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. This Article governs course approval.

14. Proposed course of action

The Department proposes no action on this Article at this time.

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 4. Professions and Occupations

Chapter 46. Department of Insurance and Financial Institutions –

Financial Institutions Division – Real Estate Appraisal

Article 6. Property Tax Agents

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-3605(A)

Specific Statutory Authority: A.R.S. §§ 32-3605(A), 32-3654

2. The objective of each rule:

Rule	Objective
R4-46-601	**Standards of Practice.** The objective of this Section, which augments A.R.S. § 32-3654, is to notify a property tax agent about the allowable grounds that the Director may use to revoke or suspend a property tax agent's registration.

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:

In 2022, The Department engaged in a major rewrite of the Chapter to remove the title of "Superintendent" when the Department of Financial Institutions merged with the Department of Insurance in 2020 (28 A.A.R. 893, May 6, 2022). It also made other substantive changes to update the rules. At that time, it filed an Economic Impact Statement. The Department is not aware of any changes necessary to report that differ from that 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?

Previous Course of Action (2013):

The Board's previous 5YRR was approved by Council on April 7, 2009. In the report, the Board indicated it intended to amend the following rules: . . . , and R4-46-602. . . . The Board is currently working on a rulemaking that amends all rules in Articles 1 and 3 through 6. That rulemaking will be completed by the end of 2014.

Response to Item 10:

The Board engaged in a rulemaking in 2015 to pursue the proposed course of action in its 2013 report.
Notice of Rulemaking Docket Opening: 20 A.A.R. 1334, June 13, 2014 (submitted by the Appraisal Board)
Notice of Proposed Rulemaking: 20 A.A.R. 1309, June 13, 2014 (submitted by the Appraisal Board)
Notice of Final Rulemaking: 21 A.A.R. 1675, August 28, 2015 (submitted by the Department of Financial Institutions)
The effective date of the amendments is October 6, 2015.
That rulemaking amended Section R4-46-601 and repealed Section R4-46-602.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rule's benefits outweigh, within this State, the costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No ___

Not applicable.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. This Article does not address the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department proposes no action on this Article at this time.

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ADMINISTRATIVE RULES DIVISION

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS DIVISION - REAL ESTATE APPRAISAL

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
October 1, 2022 through December 31, 2022

Article 3.1, consisting of Sections R4-46-301.01 through R4-46-307.01, repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

Questions about these rules? Contact:

Department:	Department of Insurance and Financial Institutions
Address:	100 N. 15th Ave., Suite 261 Phoenix, AZ 85007-2630
Website:	https://difi.az.gov
Name:	Mary E. Kosinski
Telephone:	(602) 364-3476
Email:	mary.kosinski@difi.az.gov

The release of this Chapter in Supp. 22-4 replaces Supp. 22-1, 1-16 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.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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Administrative Rules Division
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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS DIVISION - REAL ESTATE APPRAISAL

Authority: A.R.S. § 32-3605(A) and A.R.S. § 20-124

Supp. 22-4

Under Laws 2019, Ch. 252, the name of the Department of Financial Institutions changed to the Department of Insurance and Financial Institutions. The Title of 4 A.A.C. 46 was amended at the request of the Department (Supp. 22-2).

Pursuant to Laws 2015, Ch. 19, § 5(C), the Title of 4 A.A.C. 46 was amended from the State Board of Appraisal to Real Estate Appraisal Division (Supp. 15-3).

Title 4, Chapter 46, consisting of Article 1, Sections R4-46-101 through R4-46-105; Article 2, Sections R4-46-201 through R4-46-208; Article 3, Sections R4-46-301 through R4-46-306; Article 4, Section R4-46-401; Article 5, Sections R4-46-501 through R4-46-503; and Article 6, Section R4-46-601, adopted effective December 29, 1995 (Supp. 95-4).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

ARTICLE 3. COMPLAINT INVESTIGATIONS

ARTICLE 3.1. REPEALED

Article 3.1, consisting of Sections R4-46-301.01 through R4-46-307.01, repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

ARTICLE 5. COURSE APPROVAL

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS DIVISION - REAL ESTATE APPRAISAL

ARTICLE 6. PROPERTY TAX AGENTS

Article 6, consisting of Section R4-46-601 and R4-46-602, adopted effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3).

Article 6, consisting of Section R4-46-601, repealed effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3).

Section

ARTICLE 7. REPEALED

Article 7, consisting of Sections R4-46-701 through R4-46-704, repealed by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4).

Article 7, consisting of Section R4-46-704, made by final rulemaking at 17 A.A.R. 566, effective April 5, 2011 (Supp. 11-2).

Section

ARTICLE 1. GENERAL PROVISIONS

R4-46-101. Definitions

The definitions in A.R.S. §§ 32-3601, 32-3651, and 32-3661 apply to this Chapter. Additionally, unless the context otherwise requires, in this Chapter:

"Accredited" means approved by an accrediting agency recognized by the Council for Higher Education Accreditation or the U.S. Secretary of Education.

"Administrative law judge" has the meaning stated at A.R.S. § 41-1092(1).

"AMC" means appraisal management company as defined at A.R.S. § 32-3661.

"Appealable agency action" has the meaning stated at A.R.S. § 41-1092(3).

"Appraisal practice" means valuation services performed by an individual acting as an appraiser, including but not limited to an appraisal or appraisal review.

"Appraiser" means an individual, other than a property tax agent as defined at A.R.S. § 32-3651, registered, licensed, or certified by the Department to complete valuation assignments regarding real estate competently in a manner that is independent, impartial, and objective.

"AQB" means the Appraisal Qualifications Board as defined at A.R.S. § 32-3601.

"Assignment" means the valuation service that an appraiser provides as a consequence of an agreement between the appraiser and a client.

"Classroom education" means appraisal education delivered in a setting where there is no geographical separation between the instructor and student.

"Complaint" means a written allegation against a party.

"Conditional dismissal" means an agreement which allows the Director to dismiss the complaint upon the respondent's completion of a Department specified continuing education course.

"Contested case" has the meaning stated at A.R.S. § 41-1001(6).

"Conviction" means a judgment by any state or federal court of competent jurisdiction in a criminal case, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.

"Course owner" means a person or a combination of persons that own the proprietary rights to a course. A course owner may have developed the course or may have purchased the proprietary rights to the course.

"Department" has the meaning stated at A.R.S. § 6-101(5).

"Director" has the meaning stated at A.R.S. § 6-101(7).

"Disciplinary action" means any regulatory sanction imposed by the Director, other than remedial action imposed through a letter of remedial action, and may include corrective education, a civil money penalty, restriction on the nature and scope of the respondent's practice, monitoring, probation, mentorship, suspension, revocation, or an acceptance of surrender of a license or certificate or a combination of the above.

"Distance education" means appraisal education delivered in a setting in which the learner and instructor are geographically separated.

"Federally Regulated Appraisal Management Company" has the meaning stated at A.R.S. § 32-3661(9).

"Investigation" means a fact-finding process and review that is initiated when the Department receives a complaint.

"Investigator" means an individual who is a Department employee or operates under a contract with the Department to carry out investigations of alleged violations.

"Jurisdictional criteria" means the statutory standards of A.R.S. §§ 6-123, 6-124, and A.R.S. Title 32, Chapter 36, used by the Department to determine whether a complaint falls within its jurisdiction.

"Letter of concern" means a non-disciplinary advisory letter to notify a respondent that the finding of the Director does not warrant disciplinary action, but is nonetheless cause for concern and that its continuation may result in disciplinary action.

"Letter of remedial action" means a non-disciplinary letter that requires a respondent to take remedial action when any minor violation of A.R.S. Title 32, Chapter 36 or this Chapter is found.

"Mentor" means a certified appraiser authorized by the Department to supervise the work product of an appraiser who is subject to disciplinary action by the Director.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled to participate in any proceeding.

"Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.

"Probation" means a term of oversight by the Department, imposed upon a respondent as part of a disciplinary action, which may include submission of logs, working under the supervision of a mentor, or other conditions intended to protect the public and educate the respondent.

"Property Tax Agent" has the meaning stated at A.R.S. § 32-3651(3).

"Remedial action" means any corrective remedy that is designed to assist the respondent in improving the respondent's professional practice.

"Respondent" means an appraiser, course owner, property tax agent, or appraisal management company against whom a complaint has been filed or any other party responding to an investigation, an action, a motion or a proceeding before the Director.

"Secondary provider" means a person that purchases or otherwise lawfully acquires the right to provide a course independently of the course owner that retains proprietary rights to the course.

"USPAP" means the Uniform Standards of Professional Appraisal Practice, issued and updated by The Appraisal Foundation and made state law under A.R.S. § 32-3610.

"Work file" means the documentation necessary to support the analysis, opinions, and conclusions of an appraisal assignment or tax appeal.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 2018, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 14 A.A.R. 1434, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-102. Powers of Director

A. The Director may appoint advisory committees the Director deems appropriate. The committees shall make advisory recommendations which may be accepted, rejected, or modified at the Director's discretion.

B. Under the authority provided by A.R.S. § 32-3605(B), the Director may designate, train, and supervise volunteer licensees to conduct compliance audits of approved courses under R4-46-508.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-103. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-104. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Section repealed by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2).

R4-46-105. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Section repealed by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2).

R4-46-106. Fees

A. Under the specific authority provided by A.R.S. §§ 32-3607, 32-3619, and 32-3667, the Director establishes and shall collect the following fees:

1. Application for original license or certificate: $400.
2. Application for registration as a trainee appraiser: $300.
3. Examination: The amount established by the AQB-approved examination provider.
4. Biennial renewal of a license or certificate: $425.
5. Renewal of registration as a trainee appraiser: $300.
6. Delinquent renewal (in addition to the renewal fee): $25.
7. National Registry: The amount established by the Appraisal Subcommittee.
8. Application for license or certificate by reciprocity: $400.
9. Application for non-resident temporary license or certificate: $150.
10. Course approval:
    a. Core-curriculum qualifying education
        i. Initial course approval: $200.
        ii. Renewal of course approval: $200.
    b. Continuing education
        i. Initial course approval: $200.
        ii. Renewal of course approval: $200.
11. Application for initial registration as an appraisal management company: $2,500.
12. Biennial renewal of registration as an appraisal management company: $2,500.

B. The fees established in subsection (A) and those specified in A.R.S. § 32-3652 are not refundable unless the provisions of A.R.S. § 41-1077 apply.

C. A person shall pay fees by cash or credit or debit card, or by certified or cashier's check, or money order payable to the Department of Insurance and Financial Institutions.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 14 A.A.R. 225, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 17 A.A.R. 2605, effective December 6, 2011 (Supp. 11-4). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-107. Procedures for Processing Applications

A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, the following time-frames are established for processing applications for registration, licensure, certification, and designation, including renewal applications, and applications for course approval:

1. The Department shall notify the applicant within 60 days after receipt of the application that it is either administratively complete or incomplete. If the application is incomplete, the Department shall specify in the notice what information is missing.
2. A final decision shall be rendered not later than 60 days after the applicant successfully completes all requirements in statute or this Chapter.
3. The overall time-frame for action is 120 days, 60 days for administrative completeness review and 60 days for substantive review.

B. An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice unless the time-frame is extended by mutual agreement. The administrative completeness review time-frame stops running on the date of the Department's written notice of an incomplete application and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department may reject the application and close the file. An applicant may reapply.

C. If the Director denies registration, licensure, certification, designation, or course approval to an applicant, the Department shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules,
2. The applicant's right to seek a hearing to appeal the denial, and
3. The time for appealing the denial.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

R4-46-201. Appraiser Qualification Criteria

A. Classifications. As specified in A.R.S. § 32-3612, Arizona recognizes five classifications of appraisers. These classifications are:

1. Registered trainee appraiser,
2. State licensed real estate appraiser,
3. State certified residential real estate appraiser,
4. State certified general real estate appraiser, and
5. Designated supervisory appraiser.

B. Qualification criteria. Except as provided elsewhere in this Article, an applicant for an original or renewal of a registration, licensure, certification, or designation shall meet the classification-specific qualification criteria established and updated January 1, 2022, by the AQB, which is incorporated by reference. A copy of the incorporated materials is on file with the Department and may be obtained from the Department or the Appraisal Foundation. This rule does not incorporate any later date or edition of this material.

C. Regardless of whether a transaction is federally related:

1. A state licensed residential appraiser is limited to the scope of practice in A.R.S. § 32-3612(3), and
2. A state certified residential appraiser is limited to the scope of practice in A.R.S. § 32-3612(2).

D. If an applicant for registration, licensure, or certification meets the qualification criteria prescribed in A.R.S. Title 32, Chapter 36 and this Article, including evidence that the applicant has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B) and has submitted the application and the biennial National Registry fees specified in Section R4-46-106, the registration, license, or certificate that entitles the applicant to practice within the appropriate scope specified in A.R.S. § 32-3612 for the term specified in A.R.S. § 32-3616 shall be issued.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007; subsections (D)(2)(f) and (D)(4) effective January 1, 2008 (Supp. 07-2). Amended by final rulemaking at 14 A.A.R. 1434, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-201.01. Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser

A. An individual who wishes to act as a supervisory appraiser for a registered trainee appraiser shall:

1. Apply for and obtain designation as a supervisory appraiser before providing supervision to a registered trainee appraiser,
2. Have been state certified for at least three years, and
3. Apply for designation under A.R.S. § 32-3614.02.

B. To apply for designation as a supervisory appraiser, a certified appraiser shall submit to the Department:

1. An application for designation;
2. A statement whether the applicant for designation has been disciplined in any jurisdiction in the last three years in a manner that affects the applicant's eligibility to engage in appraisal practice and if so, the name of the jurisdiction, date of the discipline, circumstances leading to the discipline, and date when the discipline was completed;
3. Evidence that the applicant for designation completed a training course that complies with the course content established by the AQB and that is specifically oriented to the requirements and responsibilities of supervisory and trainee appraisers;
4. A signed affirmation that the applicant for designation will comply with the USPAP Competency Rule for the property type and geographic location in which the supervision will be provided; and
5. Any other information and documentation that is necessary to meet the qualification criteria established and updated by the AQB.

C. Supervision requirements:

1. A registered trainee appraiser may have more than one designated supervisory appraiser.
2. A designated supervisory appraiser shall not supervise more than three registered trainee appraisers at any one time.
3. A registered trainee appraiser shall maintain a separate appraisal log for each designated supervisory appraiser and, at a minimum, include the following in each log for each appraisal:
   a. Type of property,
   b. Date of report,
   c. Address of appraised property,
   d. Description of work performed by the registered trainee appraiser,
   e. Scope of review and supervision provided by the designated supervisory appraiser,
   f. Number of actual work hours worked by the registered trainee appraiser on the assignment, and

g. Signature and state certificate number of the designated supervisory appraiser.

4. A designated supervisory appraiser shall provide to the Department in writing the name and address of each registered trainee appraiser within 10 days of engagement and notify the Department in writing within 10 days when the engagement ends.
5. If a registered trainee appraiser or designated supervisory appraiser fails to comply with the applicable requirements of this Section:
   a. The registered trainee appraiser or the designated supervisory appraiser may be subject to disciplinary action under A.R.S. § 32-3631(A)(8), and
   b. The registered trainee appraiser shall not receive experience credit for hours logged during the period that the registered trainee appraiser or designated supervisory appraiser failed to comply with the applicable requirements of this Section.

Historical Note

Section R4-46-201.01 made by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-202. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 768, effective February 3, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-202.01. Application for Licensure or Certification by Reciprocity

A. To be eligible to obtain a license or certificate by reciprocity in the same classification, as specified in R4-46-201(A), in which an individual is currently licensed or certified, the individual shall submit:
1. Evidence that the applicant is licensed or certified in a state that meets the standards established at A.R.S. § 32-3618;
2. A completed application form;
3. Disclosure of the state or states in which the individual is currently licensed or certified;
4. Evidence that the individual has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and
5. The application and biennial National Registry fees specified under R4-46-106.

B. The Department shall verify the following information:
1. License or certification number;
2. Classification, as specified in R4-46-201(A), in which the individual is currently licensed or certified; and
3. Whether the license or certificate is in good standing.

Historical Note

Section R4-46-202.01 made by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-203. Application for Non-resident Temporary Licensure or Certification

A. To be eligible to obtain a non-resident temporary license or certificate, an individual shall:
1. Be licensed or certified as an appraiser in a state other than Arizona;
2. Not be licensed or certified as an appraiser in Arizona; and
3. Have a dated and signed letter from a client that names the individual and indicates the client has engaged the individual to conduct an appraisal in Arizona, identifies the property or properties to be appraised, and specifies a date certain for completion of the assignment that is no more than one year from the date on which the Director issues a non-resident temporary license or certificate.

B. To apply for a non-resident temporary license or certificate, an individual who meets the pre-requisites in subsection (A) shall submit:
1. A completed application form;
2. An irrevocable consent to service of process;
3. Evidence that the applicant has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and
4. The application fee specified under Section R4-46-106.

C. The Director shall grant an extension of no more than 120 days to an individual to whom a non-resident temporary license or certificate has been issued if the individual provides written notice before the date specified in subsection (A)(3) that more time is needed to complete the assignment described in subsection (A)(3).

D. An appraiser to whom a non-resident temporary license or certificate has previously been issued may, if qualified under subsection (A), apply for another non-resident temporary license or certificate by complying with subsection (B), except the applicant is not required to comply again with subsection (B)(3) unless the card has expired, or is suspended or cancelled.

E. The Director shall issue no more than 10 non-resident temporary licenses or certificates to an individual in any 12-month period.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Section R4-46-203 renumbered to R4-46-204; new Section R4-46-203 adopted effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-204. Licensure and Certification Examinations

An applicant for licensure or certification may schedule an examination after the Department provides written notice to the applicant, to the extent written notice is required by the AQB. In such case, an applicant shall have 90 days from the written notice to suc-

cessfully complete the AQB-approved examination for the classification for which application is made unless the time-frame is extended by mutual agreement.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Former Section R4-46-204 renumbered to R4-46-205; new Section R4-46-204 renumbered from R4-46-203 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-205. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-205 renumbered to R4-46-206; new Section R4-46-205 renumbered from R4-46-204 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-206. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-206 renumbered to R4-46-207; new Section R4-46-206 renumbered from R4-46-205 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Repealed by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4).

R4-46-207. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-207 renumbered to R4-46-209; new Section R4-46-207 renumbered from R4-46-206 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-208. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-208 renumbered to R4-46-210; new Section R4-46-208 adopted effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 1880, effective May 3, 2005 (Supp. 05-2). Section repealed by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2).

R4-46-209. Registration, License, or Certificate; Name Change; Conviction and Judgment Disclosure

A. If the name of an appraiser is legally changed, the appraiser shall submit written notice of the change to the Department and provide documentation showing the circumstances under which the name change occurred. A new registration, license, or certificate with the correct name shall be issued.

B. Within 30 days after the filing date of a criminal conviction in any jurisdiction, an appraiser or property tax agent who has been convicted shall report the conviction to the Department. The report shall include a copy of the initial indictment, information or complaint filed, the final judgment entered by the court, and all other relevant legal documents.

C. Within 30 days after the final disposition of a matter, an appraiser or property tax agent shall report to the Department any civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal entered against the appraiser or property tax agent.

Historical Note

R4-46-209 renumbered from R4-46-207 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-210. Repealed

Historical Note

R4-46-210 renumbered from R4-46-208 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Section repealed by final rulemaking at 13 A.A.R. 1381, effective June 2, 2007 (Supp. 07-2).

ARTICLE 3. COMPLAINT INVESTIGATIONS

R4-46-301. Complaints and Investigations; Complaint Resolution

A. Complaints and Investigations

1. The Department shall investigate a complaint, if the complaint meets the minimum jurisdictional criteria.
2. The Department may notify the respondent of a complaint.
3. The Department may require that the respondent file a written response to the complaint and provide any one or more of the following:
   a. Appraisal report,
   b. Appraisal review,
   c. Consulting assignment,
   d. Property tax appeal at issue,
   e. Work file, and
   f. Any other relevant records.

4. The Department may assign or contract with an investigator.
5. Under A.R.S. §§ 6-123(3), 6-124, 12-2212, and 32-3631(C), the Director may compel testimony or document production, regardless of whether an investigation is in process.

B. Complaint Resolution

1. Without limiting any other remedy allowed by statute, if the Director finds a violation of A.R.S. Title 32, Chapter 36, or this Chapter, the Director may:
   a. Dismiss the matter based upon mitigating factors;
   b. Issue a letter of concern;
   c. Issue an order, which may include disciplinary action and/or remedial action; or
   d. Resolve the matter by settlement.
2. Any time after a complaint has been filed against a respondent, the matter may be resolved by a settlement in which the respondent agrees to accept disciplinary action and/or remedial action by consent. If the Director determines that the proposed settlement will adequately protect the public, the Director may issue a letter of remedial action, or enter into another form of stipulation, agreed settlement, or consent with the respondent. The Director may also allow for a conditional dismissal.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 2018, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-302. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-302 repealed; new Section R4-46-302 renumbered from R4-46-303 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 2018, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-303. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-303 renumbered to R4-46-302; new Section R4-46-303 renumbered from R4-46-304 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 2018, effective July 2, 2005 (Supp. 05-2). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-304. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-304 renumbered to R4-46-303; new Section R4-46-304 renumbered from R4-46-305 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-305. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-305 repealed; new Section R4-46-305 renumbered from R4-46-306 and amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-306. Repealed

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-306 renumbered to R4-46-305 effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 2018, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Repealed by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

ARTICLE 3.1. REPEALED

R4-46-301.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-302.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-303.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-304.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effec-

tive June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-305.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-306.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R4-46-307.01. Repealed

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2). Repealed by final rulemaking at 28 A.A.R. 3617 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

R4-46-401. Application for Initial Registration

A. Unless exempt under A.R.S. § 32-3663 or 12 USC § 3353(c), a person shall not engage in business as an AMC and shall not provide any appraisal management services unless registered with the Department.

B. To register under subsection (A), a person shall submit:
1. A registration application, which is available from the Department and on its website, and provide the information and certifications required under A.R.S. § 32-3662(B);
2. The name and contact information of the controlling person who will be the main contact for all communication between the Department and the AMC;
3. For the controlling person, each officer, and each individual who owns 10% or more of the AMC:
   a. A copy of a fingerprint clearance card application under A.R.S. § 41-1758.03, and
   b. The certification required under A.R.S. §§ 32-3668(B)(3) or 32-3669(B)(1), as applicable;
4. Proof of the surety bond required under A.R.S. § 32-3667 and R4-46-402; and
5. The application fee specified under R4-46-106.

C. If an AMC operates in Arizona under more than one name, other than a DBA, the controlling person of the AMC shall ensure that a complete application, as described in subsection (B), is submitted in each name under which the AMC will operate. However, if an individual previously submitted a copy of a valid fingerprint clearance card application under subsection (B), the individual is not required to resubmit the fingerprint clearance card unless the card has expired, or is suspended, or cancelled.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). R4-46-401 amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 5 A.A.R. 2734, effective July 21, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 1577, effective April 4, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 1373, effective March 7, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 1951, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 1603, effective May 6, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2677, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 475, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 2186, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 31, effective December 4, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1992, effective September 14, 2010 (Supp. 10-3). Section amended by emergency rulemaking at 18 A.A.R. 1306, effective May 18, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 13-4). Section repealed; new Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-402. Bond Required

A. The surety bond required under A.R.S. § 32-3667 shall be in the amount of $20,000 and shall be issued by a surety company authorized to do business in Arizona.

B. The controlling person of a registered AMC shall ensure that the surety bond required under A.R.S. § 32-3667 requires the issuing surety company to provide written notice to the Department by registered or certified mail at least 30 days before the surety company cancels the bond and within 30 days after the surety company pays a loss under the bond.

C. The surety bond required under A.R.S. § 32-3667 is to be used exclusively to ensure that a registered AMC pays:
1. All amounts owed to persons that perform real estate appraisal services for the AMC, and
2. All amounts adjudged against the AMC as a result of either negligent or improper real property appraisal services or appraisal management services or of a breach of contract in performing real property appraisal services or appraisal management services.

D. The controlling person of a registered AMC shall ensure that the required surety bond is:
1. Maintained in the amount of $20,000;
2. Funded to $20,000 within seven days after being drawn down; and
3. Maintained for at least one year after the AMC's registration expires, is revoked or surrendered, or otherwise ends.

E. If the Department receives notice from the surety company of intent to cancel the required bond, the Department shall notify the controlling person of the AMC and require that the controlling person submit proof of a replacement bond before the existing bond is cancelled. Under A.R.S. § 32-3678, failure to maintain the required bond is grounds for disciplinary action.

F. If a registered AMC operates in Arizona under more than one name, other than a DBA, the controlling person shall ensure that a separate surety bond in the amount of $20,000 is maintained in each name.

G. If the name of a registered AMC is changed, the controlling person of the registered AMC shall ensure that a surety bond in the amount of $20,000 is:
1. Maintained in the former name for one year after the name is changed, and
2. Obtained in the registered AMC's new name.

H. A person damaged by a registered AMC's failure to pay an obligation listed in subsection (C) has a right of action against the surety bond. The damaged person shall begin the action in a court of competent jurisdiction within one year after the AMC failed to pay the amount owed or the amount adjudged against the AMC.

I. If the surety bond required under A.R.S. § 32-3667 is cancelled, liability of the issuing surety company is not limited or cancelled regarding any claim against the surety bond for actions by the AMC while the surety bond was in force.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-403. Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action

A. If any of the information submitted under R4-46-401(B)(2) changes, the controlling person of the registered AMC shall provide to the Department written notice of the change within 10 business days.

B. If an individual becomes the controlling person of a registered AMC and the information required under R4-46-401(B)(3) was not previously submitted for the individual, the new controlling person shall ensure that the required information is submitted to the Department within 10 business days after the change in controlling person.

C. If a registered AMC is required under A.R.S. § 32-3662(B)(4) to provide the name and contact information for an agent for service of process in this state, the controlling person of the AMC shall provide the Department written notice of any change in the information within 10 business days.

D. If the regulated entity, the responsible person, any controlling person, or any person who owns 10% or more of the firm has ever been, or is currently, the subject of any complaint, investigation, or disciplinary action against a license, certificate, registration, or membership by any state regulatory agency, or any professional or occupational credentialing authority that resulted in an adverse judgment against them, including any denial, or voluntary surrender, withdrawal, or resignation of a credential in lieu of disciplinary action, the controlling person of the AMC shall provide the Department with written notice of such action within 10 business days after such action has been finalized.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-404. Application for Renewal Registration

A. Under A.R.S. § 32-3665, an initial registration for an AMC expires one year after the date of issuance. A renewal registration for an AMC expires two years after the date of issuance.

B. To renew registration for an AMC, the controlling person of the registered AMC shall, within 60 days before expiration, submit:
1. A renewal registration application,
2. The certifications required under A.R.S. § 32-3662(B),
3. Proof of the surety bond required under A.R.S. § 32-3667 and R4-46-402,
4. The renewal fee under R4-46-106,
5. Evidence that each person who has at least a 10% ownership interest in the AMC and the controlling person have applied for a valid fingerprint clearance card unless a valid fingerprint clearance card is currently on file with the Department, and
6. Disclose any changes to the percentage of ownership.

C. If the controlling person of a registered AMC fails to comply with subsection (B) and the registration expires, the controlling person shall ensure that the AMC immediately ceases providing all appraisal management services. The Department may accept a renewal application after the expiration date if within 90 days of the date of expiration but shall assess a delinquent renewal fee in addition to the renewal fee.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-405. Certifications; National Registry Reporting

A. Under A.R.S. § 32-3672, the controlling person of a registered AMC is required to make certain certifications to the Department at the time the AMC's registration is renewed.

B. To make the certifications required under A.R.S. § 32-3672, the controlling person of a registered AMC shall use a form that is available from the Department and on its website.

C. The controlling person of a registered AMC shall make available to the Department, upon request, evidence that the certifications are true and that the systems, processes, and records certified are effective in protecting the public.

D. In accordance with the provisions contained in 12 U.S.C. § 3338, each authorized representative or controlling person of an AMC that is either registered with the state or federally regulated and operating in Arizona shall annually submit an AMC National Registry Report to the Department at least 15 days prior to March 1st of each year for the period from January 1 to December 31 of the previous year. The AMC National Registry Report shall include:
1. Identifying information for the AMC;
2. The number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in the state during the previous year, or from the commencement of business for AMCs not in existence for the entire previous year; and
3. A signed affirmation by written declaration.

E. The AMC shall pay, at the time it submits the National Registry Report to the Department, the fee required under 12 U.S.C. § 3338(a)(4).

F. A registered AMC or federally regulated AMC operating in Arizona who fails to timely submit a National Registry Report

to the Department and to remit the AMC National Registry fee shall not appear on the AMC National Registry.

G. Under A.R.S. § 32-3678, failure to comply with this Section is grounds for disciplinary action.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-406. Appeal for Waiver

A. Under A.R.S. §§ 32-3668 and 32-3669, an AMC for which registration is sought under R4-46-401 may not have an owner, controlling person, officer, or other individual with a 10% or greater financial interest in the AMC who has ever had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered in any state.

B. The requirement in subsection (A) may be waived, at the discretion of the Director, when an appeal is made by the individual who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered.

C. To make an appeal for waiver under subsection (B), the individual who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered shall submit an appeal for waiver form, which is available from the Department and on its website.

D. In deciding whether to waive the requirement under subsection (A), the Director shall consider the following factors:

1. Whether the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate was based on a finding of fraud, dishonesty, misrepresentation, or deceit on the part of the appellant;
2. The amount of time that has elapsed since the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate;
3. Whether the act leading to the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate was an isolated occurrence or part of a pattern of conduct;
4. Whether the act leading to the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate appears to have been done for a self-serving purpose;
5. The harm caused to victims, if any;
6. Efforts at rehabilitation, if any, undertaken by the appellant and evidence regarding whether the rehabilitation efforts were successful;
7. Restitution made by the appellant to victims, if any; and
8. Other factors in mitigation or aggravation that the Director determines are relevant.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-407. Training Required

A. The controlling person of a registered AMC shall ensure that all employees and other individuals who work on behalf of the AMC and are responsible for selecting independent appraisers to perform real property appraisal services receive sufficient training to be qualified to comply with federal and state law regarding appraisal management services.

B. The controlling person of a registered AMC shall ensure that the training required under subsection (A) includes at least the following:

1. Overview of USPAP,
2. Federal and state law applicable to real property appraisal services,
3. Appraiser classifications and the scope of work for each classification,
4. Factors that influence the complexity of an appraisal assignment, and
5. Maintaining the independence of an appraiser.

C. The controlling person of a registered AMC shall maintain a record of all training provided to an individual described under subsection (A) for one year beyond the termination of that individual's employment by or work on behalf of the AMC.

D. The controlling person of a registered AMC shall make available to the Department, upon request, a copy of all materials used to provide the training required under this Section and the records maintained under subsection (C).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2).

R4-46-408. Voluntarily Relinquishing Registration

A. The controlling person of a registered AMC may voluntarily relinquish the AMC's registration if:

1. No complaint is currently pending against the AMC,
2. All amounts owed under subsection R4-46-402(C) have been paid, and
3. The AMC is in good standing with the Department.

B. To voluntarily relinquish an AMC's registration, the controlling person of the AMC shall enter into an agreement with the Director that provides the AMC shall:

1. Cease engaging in business as an AMC and cease providing appraisal management services immediately, and
2. Maintain the surety bond required under A.R.S. § 32-3667 for one year after the agreement is entered.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

ARTICLE 5. COURSE APPROVAL

R4-46-501. Course Approval Required; Definitions

A. Under A.R.S. §§ 32-3601(10) and 32-3625, a course must be approved by the Director, including a course presented by distance education, before the course is offered in Arizona. A course shall be approved as either qualifying or continuing education.

B. Prior to the approval of a course as either qualifying or continuing education, the Department shall determine whether the course satisfies the qualification criteria under subsection R4-46-201(B).

C. A course owner shall ensure that the course is not offered as either qualifying or continuing education until the course owner receives notice that the course has been approved unless the course owner includes notice in the offering materials that course approval is pending and no credit may be claimed for participating in the course until approval is received.

D. The Department shall include in the notice of course approval referenced in subsection (C):
1. An index number for the approved course,
2. The maximum number of hours of instruction (including examination time if applicable) that may be claimed for participating in the approved course, and
3. Whether the course is approved as qualifying or continuing education.

E. A course owner shall ensure that the course is not advertised or represented as approved until after receipt of the notice referenced in subsection (D). After receiving notice of course approval, the course owner may represent in any materials that the course is approved.

F. As used in this Article:
"Continuing education" means the basic education requirement for renewal of a license or certification within the meaning of A.R.S. § 32-3625.

"Qualifying education" means the basic education requirement to apply as a state-licensed appraiser under A.R.S. § 32-3613(B) or state-certified real estate appraiser under A.R.S. § 32-3614(C).

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1503, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-502. Approval of Distance-education Delivery Mechanism

If a course is to be delivered by distance education, the course owner shall obtain approval of the course-delivery mechanism from one of the following sources if required:
1. An organization approved by the AQB that provides approval of course design and delivery;
2. An accredited institution of higher education that approves the content of the course and offers and awards academic credit for the distance-education course; or
3. An accredited institution of higher education that approves the content of the course and a distance-education approval organization that approves the course design and delivery, which includes interactivity.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1893, effective January 31, 2004 (Supp. 04-2). New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-503. Course Owners

A. Approval of a course granted to the course owner extends to a secondary provider. However, for a course delivered by distance education:
1. A course owner's approval of the course-delivery mechanism, as required under R4-46-502, does not extend to a secondary provider; and
2. Both the course owner and secondary provider shall apply for and obtain approval of the course-delivery mechanism from a source listed in R4-46-502.

B. If a course owner allows an approved course to be offered by a secondary provider, the course owner shall ensure that the secondary provider:
1. Uses the course owner's materials, including the same textbook and examination, if any;
2. Allows only the number of hours specified by the Department under subsection R4-46-501(D);
3. Uses an instructor who is qualified under the standards specified in subsection R4-46-506(7); and
4. Adheres to the course owner's policies regarding student attendance, course scheduling, and prerequisites, if any.

C. Before allowing an approved course to be offered by a secondary provider using distance education, the course owner shall comply with subsection (B) and:
1. Ensure that the secondary provider has obtained approval of the course-delivery mechanism from a source listed in R4-46-502, and
2. Provide evidence that the secondary provider has obtained approval of the course-delivery mechanism for the approved course.

D. A course owner shall be held responsible if a secondary provider, authorized by the course owner under subsection (B) or (C), violates any provision of this Article.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Amended effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1503, effective June 2, 2007 (Supp. 07-2). Section repealed; new Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-504. Application for Course Approval

Only a course owner may apply for course approval. To apply for course approval, a course owner shall submit to the Department:
1. An application for course approval, which is available from the Department and on its website;
2. Materials and other documents that demonstrate the course meets the minimum standards specified in R4-46-506;
3. If the course will be offered using distance education, evidence of approval of the course-delivery mechanism from a source listed in R4-46-502; and
4. The application fee specified under R4-46-106.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-505. Course Approval without Application

The Director approves without application the following:

1. A course approved through the AQB's voluntary Course Approval Program;
2. The 15-Hour National USPAP Course or its equivalent, approved by the AQB, if the course is taught by at least one instructor who is certified by the AQB as an USPAP instructor; and
3. The 7-Hour National USPAP Update Course or its equivalent, approved by the AQB, if the course is taught by at least one instructor who is certified by the AQB as an USPAP instructor.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-506. Minimum Standards for Course Approval

The Director shall approve a course only if the course owner submits the following materials and documents with the application for approval required under R4-46-504 and demonstrates the course, including a course presented by distance education, meets the following minimum standards:

1. Course description. Clearly describe the subject matter content of the course.
2. Summary outline. Identify major topics and the number of classroom hours devoted to each.
3. Prerequisites. Specify necessary prerequisites for any course other than a course on:
   a. Introductory real estate appraisal principles and practices, and
   b. Appraisal standards and ethics.
4. Learning objectives. Specific learning objectives shall:
   a. State clearly the specific knowledge and skills students are expected to acquire by completing the course;
   b. Be consistent with the course description required under subsection (1);
   c. Be consistent with the instructional materials described in subsection (5);
   d. Be achievable in the number of hours allotted for the course;
   e. If for qualifying education, specify the required core curriculum, module subtopic, and number of course hours; and
   f. If for continuing education, specify the appraisal topic and number of course hours.
5. Instructional materials. Instructional materials used by students shall:
   a. Cover the subject matter in sufficient depth to achieve the learning objectives specified in subsection (4);
   b. Reflect current knowledge and practice in the field of appraisal;
   c. Contain no significant errors;
   d. Use correct grammar and spelling;
   e. Be written in a clear, concise, and understandable manner;
   f. Be in a format that facilitates learning; and
   g. Be bound or packaged and produced in a quality manner.
6. Examinations for qualifying education courses. Qualifying education courses shall include a series of examinations or a comprehensive final examination, or both. A course examination shall:
   a. Contain enough questions to assess adequately whether a student acquired knowledge of the subject matter covered by the course;
   b. Contain questions directed towards assessing whether students achieved the learning objectives specified in subsection (4);
   c. Be allotted sufficient time for students to complete;
   d. Contain questions on information adequately addressed in the instructional material required under subsection (5);
   e. Contain questions that are written in a clear, accurate, and unambiguous manner;
   f. Contain questions for which the intended answer is clearly the best answer choice;
   g. Be proctored and closed-book; and
   h. Have a criterion for passing that is announced before the examination is given.
7. Instructor qualifications policy. The course owner has a written policy that requires use of instructors who meet at least one of the following:
   a. Has a baccalaureate degree in any field and at least three years of experience directly related to the subject matter to be taught,
   b. Has a master's degree in any field and one year of experience directly related to the subject matter to be taught,
   c. Has a master's or higher degree in a field directly related to the subject matter to be taught,
   d. Has at least five years of real estate appraisal teaching experience directly related to the subject matter to be taught, or
   e. Has at least seven years of real estate appraisal experience directly related to the subject matter to be taught.
8. Required policies. The course owner shall have the following written policies:
   a. Attendance policy that ensures student attendance is verified.
      i. Stipulate that to receive credit, a student must be present for the entire course;
      ii. Include the instructor's name on the attendance record; and
      iii. Maintain attendance records for five years;
   b. Scheduling policy.
      i. Provide that a student may participate in a maximum of eight hours of instruction in a day, and
      ii. Provide that appropriate breaks are included during each class session, and
   c. Completion certificate policy.
      i. Require that a signed and dated completion certificate be issued promptly to all students who complete a course, and
      ii. Require that a completion certificate contain all information required on the form of certification provided by the Department.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28

A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-507. Secondary Providers

The Director shall hold a course owner responsible for the activities of a secondary provider who conducts the course owner's approved course in Arizona. To protect the integrity of the approval, a course owner shall have a written agreement with a secondary provider that requires the secondary provider to:

1. Use the materials required under subsection R4-46-506(5) and the examination required under subsection R4-46-506(6) without change;
2. Conduct the course in accordance with the policies required under R4-46-506(7) and (8);
3. Clearly state in advertising materials that the course has been lawfully acquired from the course owner and that approval was provided to the course owner and not to the secondary provider;
4. Cease using the materials and examination when the course approval expires under R4-46-510; and
5. If the course is to be delivered by distance learning, obtain approval of the course-delivery mechanism from a source listed in R4-46-502.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-508. Compliance Audit of Approved Courses

A. To improve the quality of education available to appraisers in this state, the Department may regularly audit approved courses for compliance with this Chapter.

B. The Director shall identify approved courses for audit using the following to establish the priority of audits:
1. Approved courses about which a complaint has been received,
2. Approved courses of a course owner that is new to this state, and
3. Approved courses that have not been audited in the last five years.

C. On request from the Director, the course owner of an approved course shall provide the dates, times, and locations at which the approved course will be taught and the name of the instructor who will teach each presentation of the approved course.

D. The audit of an approved course may be conducted by a volunteer auditor trained by the Department.

E. The course owner of an approved course shall allow an auditor described under subsection (D) to attend the approved course at no charge.

F. The auditor shall be identified to the instructor before the approved course starts.

G. On request from the auditor, the course owner shall allow the auditor to examine records, materials, and other documents relevant to the approved course audited.

H. After review by the Director, the Department shall provide a copy of the audit report to the course owner. If the audit identifies ways in which the approved course fails to comply with this Article, the Department shall:
1. Work with the course owner to establish a correction plan to bring the course into compliance,
2. Establish a time within which the course owner is required to complete the correction plan and bring the course into compliance, and
3. Inform the course owner of the manner in which to report the approved course is in compliance with this Article.

I. Failure of a course owner to comply with this Article may lead to revocation of course approval.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-509. Changes to an Approved Course

The Director encourages revisions and updates that improve and keep an approved course current. However, if any of the information provided under R4-46-506(1), (2), (4), or (5) changes so substantially as to alter the scope of the approved course as determined at the sole discretion of the Director, the course owner of the approved course shall submit a new application for approval under R4-46-504.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-510. Renewal of Course Approval

A. Course approval expires a maximum of two years after approval is granted. Approval of a distance education course expires in two years or, if applicable, when the distance education delivery-mechanism approval required under R4-46-502 or approval under R4-46-505 expires, whichever is less.

B. The Director may renew the approval of a course only if the information provided under R4-46-506(1), (2), (4), and (5) has not changed substantially.

C. If an approved course meets the standard in subsection (B), the course owner may apply for renewal of course approval within 90 days before the course approval expires.

D. To apply for renewal of course approval, a course owner shall submit a renewal application, which is available from the Department and on its website, and pay the renewal fee specified in subsection R4-46-106(A)(10).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-511. Transfer of an Approved Course

A. A course owner that transfers the proprietary rights to an approved course shall provide written notice of the transfer to the Department. The course owner shall include in the notice the name of and contact information for the new course owner and the date of the transfer.

B. The new course owner to which the proprietary rights to an approved course are transferred shall attach to the notice required under subsection (A) a certification available from the Department and on its website, that the new course owner:
1. Will adhere to the requirements in this Article, and

2. Will be responsible for the actions of all secondary providers who have an agreement under R4-46-507.

C. If proprietary rights to an approved course are transferred under this Section, the expiration date of the course approval does not change.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 1139, effective June 10, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

ARTICLE 6. PROPERTY TAX AGENTS

R4-46-601. Standards of Practice

The Director may revoke or suspend a property tax agent's registration or otherwise discipline a property tax agent to the extent permitted by A.R.S. § 32-3654 for any of the following acts or omissions:

1. Engaging in an activity that leads to a conviction for a crime involving the tax profession;
2. Operating beyond the boundaries of an agreed relationship with an employer or a client;
3. Inferring or implying representation of a person or firm that the agent does not represent, or filing a document on behalf of a taxpayer without specific authorization of the taxpayer;
4. Violating the confidential nature of the property tax agent-client relationship, except as required by law;
5. Inappropriately offering or accepting anything of value with the intent of inducing or in return for a specific action;
6. Assigning, accepting, or performing a tax assignment that is contingent upon producing a predetermined analysis or conclusion;
7. Issuing an appraisal analysis or opinion, in the performance of a tax assignment, that fails to disclose bias or the accommodation of a personal interest;
8. Willfully furnishing inaccurate, deceitful, or misleading information, or willfully concealing material information in the performance of a tax assignment;
9. Preparing or using, in any manner, a resume or statement of professional qualifications that is misleading or false;
10. Promoting a tax agent practice or soliciting assignments by using misleading or false advertising;
11. Soliciting a tax assignment by assuring a specific result or by stating a conclusion regarding that assignment without analysis of the facts; or
12. Performing an appraisal, as defined by A.R.S. § 32-3601, unless licensed or certified by the Director as an appraiser.

Historical Note

Adopted effective December 29, 1995 (Supp. 95-4). Section repealed; new Section adopted effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3). Amended by final rulemaking at 28 A.A.R. 893 (May 6, 2022), effective June 11, 2022 (Supp. 22-2).

R4-46-602. Repealed

Historical Note

Adopted effective October 1, 1998; filed in the Office of the Secretary of State September 10, 1998 (Supp. 98-3). Amended by final rulemaking at 13 A.A.R. 1388, effective June 2, 2007 (Supp. 07-2). Section repealed by final rulemaking at 21 A.A.R. 1675, effective October 6, 2015 (Supp. 15-3).

ARTICLE 7. REPEALED

R4-46-701. Repealed

R4-46-702. Repealed

R4-46-703. Repealed

R4-46-704. Repealed

Historical Note

New Section made by final rulemaking at 17 A.A.R. 566, effective April 5, 2011 (Supp. 11-2). Section repealed by exempt rulemaking at 19 A.A.R. 4023, effective November 21, 2013 (Supp. 13-4).

32-3605. Deputy director; duties; powers; immunity

A. The deputy director shall adopt rules in aid or in furtherance of this chapter.

B. The deputy director shall:

1. Adopt standards for appraisal practice that is regulated by this chapter. The standards at a minimum shall be equivalent to the standards of professional appraisal practice.

2. In prescribing criteria for certification, adopt criteria that at a minimum are equal to the minimum criteria for certification adopted by the appraiser qualifications board.

3. In prescribing criteria for licensing and registration, adopt criteria that at a minimum are equal to the minimum criteria for licensing and registration adopted by the appraiser qualifications board.

4. Further define by rule with respect to state-licensed or state-certified appraisers appropriate and reasonable educational experience, appraisal experience and equivalent experience that meets the statutory requirement of this chapter.

5. Adopt the national examination as approved by the appraiser qualifications board for state-certified appraisers.

6. Adopt the national examination as approved by the appraiser qualifications board for state-licensed appraisers.

7. Establish administrative procedures for:

(a) Processing applications for licenses and certificates, including registration certificates.

(b) Approving or disapproving applications for registration, licensure and certification.

(c) Issuing licenses and certificates, including registration certificates.

8. Define by rule, with respect to registered trainee appraisers and state-licensed and state-certified appraisers, the continuing education requirements for the renewal of licenses or certificates that satisfy the statutory requirements provided in this chapter.

9. Periodically review the requirements for the development and communication of appraisals provided in this chapter and adopt rules explaining and interpreting the requirements.

10. Define and explain by rule each stage and step associated with the administrative procedures for the disciplinary process pursuant to this chapter, including:

(a) Prescribing minimum criteria for accepting a complaint against a registered trainee appraiser or a licensed or certified appraiser. The deputy director may not consider a complaint for administrative action if the complaint either:

(i) Relates to an appraisal that was completed more than five years before the complaint was submitted to the deputy director or more than two years after final disposition of any judicial proceeding in which the appraisal was an issue, whichever period of time is greater.

(ii) Is filed against a person who is a staff person of the department and the person is a licensed or certified appraiser and the complaint is against the person's license or certificate and relates to the person's performance of duties. This item applies to a contract investigator who is under contract with the department for the performance of an appraisal review as defined by the uniform standards of professional appraisal practice.

(b) Defining the process and procedures used in investigating the allegations of the complaint. The deputy director shall consolidate complaints that are filed within a six-month period of time if the complaints are against

the same appraiser, relate to the same appraisal and property and are filed by an entity that is subject to the mandatory reporting provisions of the Dodd-Frank Wall Street reform and consumer protection act (P.L. 111-203; 124 Stat. 1376). Complaints that are consolidated pursuant to this subdivision must be considered and adjudicated as one complaint.

(c) Defining the process and procedures used in hearings on the complaint, including a description of the rights of the deputy director and any person who is alleged to have committed the violation.

(d) Establishing criteria to be used in determining the appropriate actions for violations.

11. Communicate information that is useful to the public and appraisers relating to actions for violations.

12. Issue decrees of censure, fix periods and terms of probation and suspend and revoke licenses and certificates pursuant to the disciplinary proceedings provided for in section 32-3631.

13. At least monthly transmit to the appraisal subcommittee a listing of all appraisal management companies that have received a state certificate of registration in accordance with this chapter.

14. Investigate and assess potential law or order violations and discipline, suspend, terminate or deny registration renewals of appraisal management companies that violate laws or orders. The deputy director shall report violations of appraisal-related laws or orders and disciplinary and enforcement actions to the appraisal subcommittee.

15. Transmit the national registry fee collected pursuant to section 32-3607 to the appraisal subcommittee.

16. Establish the fees in accordance with section 32-3607.

17. Receive applications for state licenses and certificates.

18. Maintain a registry of the names and addresses of persons who are registered, licensed or certified under this chapter.

19. Retain records and all application materials submitted to the deputy director.

20. Publish on the department's website a current list of supervisory appraisers and registered trainee appraisers.

21. Perform such other functions and duties as may be necessary to carry out this chapter.

C. The deputy director may accept and spend federal monies and grants, gifts, contributions and devises from any public or private source 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.

D. The deputy director may impose civil penalties pursuant to section 32-3631.

32-3607. Fees; use of credit cards; appraisal subcommittee fund

A. The deputy director shall charge and collect fees that are sufficient to fund the activities necessary to carry out this chapter. The fees include:

1. An application fee for licensure or certification of not more than $400.

2. An application fee for a resident temporary license or certificate of not more than $400.

3. An examination fee in an amount to be determined by the deputy director.

4. A fee for renewal of a license, certificate or resident temporary license or certificate of not more than $425.

5. A delinquent renewal fee in addition to the renewal fee of not more than $25.

6. A two-year national registry fee of not to exceed the actual cost of twice the current annual national registry fee for a state-licensed or state-certified appraiser.

7. A one-year national registry fee not to exceed the actual cost of the current annual national registry fee for appraisal management companies.

8. A nonresident temporary licensure or certification fee of not more than $150.

9. A course approval fee of not more than $500.

10. An application fee to be a registered trainee appraiser in an amount to be determined by the deputy director.

B. If the appraisal subcommittee raises the national registry fee during the second year of a biennial license or certificate, state-licensed and state-certified appraisers shall pay the additional national registry fee on demand by the deputy director. Failure to pay the additional fee within thirty days after notice by the deputy director subjects the license or certificate holder to a penalty of twice the amount owed but not to exceed $20. The deputy director shall not renew a license or certificate until all outstanding obligations of the license or certificate holder are paid.

C. Pursuant to section 35-142, subsection J, the deputy director may accept a credit card or debit card for the payment of fees established by this section. The deputy director may impose a convenience fee for payment made pursuant to this subsection in an amount to be determined by the deputy director.

D. The appraisal subcommittee fund is established consisting of national registry fee monies collected pursuant to this section. The department shall administer the fund. The department shall use the monies to promptly remit the national registry fees to the appraisal subcommittee for state-licensed appraisers, state-certified appraisers, registered appraisal management companies or appraisal management companies that operate as a subsidiary of a federally regulated financial institution.

32-3619. Renewal of license or certificate; fees

A. Except as otherwise provided in this section and in section 32-4301, to renew a registration certificate as a registered trainee appraiser or a license or certificate as a state-licensed or state-certified appraiser, the holder of a current, valid license or certificate shall apply and pay the prescribed fee to the deputy director not earlier than ninety days before the license or certificate expires. With the application for renewal, the registered trainee appraiser or the state-licensed or state-certified appraiser shall present evidence in the form prescribed by the deputy director of having completed the continuing education requirements for renewal specified in section 32-3625.

B. The deputy director may accept a renewal application after the expiration date and within ninety days of the date of expiration but shall assess a delinquent renewal fee in addition to the renewal fee.

C. An appraiser or registered trainee appraiser who fails to seek renewal within the time period specified in subsection A or B of this section must reapply for licensure or certification and meet all of the requirements of this chapter.

D. An appraiser or registered trainee appraiser shall not engage in, advertise or purport to engage in real estate appraisal activity in this state after a license or certificate has expired and before the renewal of the expired license or certificate except as provided in section 41-1092.11.

32-3625. Continuing education

A. As a prerequisite to renewal of a license or certificate, a state registered trainee appraiser or a state-licensed or state-certified appraiser shall present evidence satisfactory to the deputy director of having met the continuing education requirements of either subsection B or C of this section.

B. The basic continuing education requirement for renewal of a license or certificate is the completion by the applicant, during the immediately preceding term of the license or certificate, of courses or seminars that are approved by the deputy director.

C. An applicant for reregistering, relicensing or recertification may satisfy all or part of the continuing education requirements by presenting evidence of the following, which shall be approved by the deputy director:

1. Completion of an education program of study determined by the deputy director to be equivalent, for continuing education purposes, to courses approved by the deputy director pursuant to subsection B of this section.

2. Participation other than as a student in educational processes and programs that are approved by the deputy director and that relate to appropriate appraisal theory, practices or techniques, including teaching, program development and preparation of textbooks, monographs, articles and other instructional materials, not to exceed fifty percent of an applicant's continuing education requirements and not for the same course in consecutive renewal periods.

D. The deputy director shall adopt rules to ensure that a person who renews the person's license or certificate as a state-licensed or state-certified appraiser follows practices and techniques that provide a high degree of service and protection to members of the public with whom the person deals in the professional relationship under the authority of the license or certificate. The rules shall include the following:

1. Policies and procedures for obtaining the deputy director's approval of courses and instruction pursuant to subsection B of this section.

2. Standards, policies and procedures to be applied by the deputy director in evaluating an applicant's claims of equivalency in accordance with subsection C of this section.

3. Standards, monitoring methods and systems for recording attendance to be employed by course sponsors as a prerequisite to the deputy director's approval of courses for credit.

E. In adopting rules pursuant to subsection D, paragraph 1 of this section, the deputy director shall consider courses of instruction, seminars and other appropriate appraisal educational courses or programs previously or hereafter developed by or under the auspices of professional appraisal organizations and used by those associations for purposes of designation or indicating compliance with the continuing education requirements of such organizations. A person who offers these courses may not discriminate in the opportunity to participate in these courses on the basis of membership or nonmembership in an appraisal organization.

F. An amendment or repeal of a rule adopted by the deputy director pursuant to this section may not deprive a state registered trainee appraiser or a state-licensed or state-certified appraiser of credit toward renewal of a license or certificate for any course of instruction that the applicant either completed or enrolled in before the amendment or repeal of the rule that would have qualified for continuing education credit as the rule existed before the repeal or amendment.

G. A license or certificate as a registered trainee appraiser or a state-licensed or state-certified appraiser that has been suspended as a result of disciplinary action by the deputy director shall not be reinstated unless the applicant presents evidence of completion of the continuing education required by this chapter.

H. A license or certificate that has been revoked by the deputy director shall not be reinstated unless the applicant successfully completes the appropriate requirements of the appraisal qualifications board, including education and passage of the current national examination.

32-3631. Disciplinary proceedings; civil penalties

A. The rights of an applicant or holder under a license or certificate as a registered trainee appraiser or a state-licensed or state-certified appraiser may be revoked or suspended, or the holder of the license or certificate may otherwise be disciplined, including being placed on probation as prescribed by rule, in accordance with this chapter on any of the grounds set forth in this section. The deputy director may investigate the actions of a registered trainee appraiser or a state-licensed or state-certified appraiser in this state or in any other state and may revoke or suspend the rights of a license or certificate holder or otherwise discipline a registered trainee appraiser or a state-licensed or state-certified appraiser for any of the following acts or omissions:

1. Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or committing any form of fraud or misrepresentation.

2. Failing to meet the minimum qualifications established by this chapter.

3. Paying or offering to pay money or other considerations other than as provided by this chapter to any member or employee of the department to procure a license or certificate under this chapter.

4. Being convicted, including based on a plea of guilty, of a crime that is substantially related to the qualifications, functions and duties of a person developing appraisals and communicating appraisals to others, or being convicted of any felony or any crime involving moral turpitude.

5. Committing an act or omission involving dishonesty, fraud or misrepresentation with the intent to substantially benefit the license or certificate holder or another person or with the intent to substantially injure another person.

6. Violating any of the standards of the development or communication of appraisals as provided in this chapter.

7. Being negligent or incompetent as a state-licensed or state-certified appraiser in developing an appraisal, in preparing an appraisal report or in communicating an appraisal.

8. Wilfully disregarding or violating any provisions of this chapter or an order or rule of the deputy director for the administration and enforcement of this chapter.

9. Accepting an appraisal assignment if the employment itself is contingent on the appraiser reporting a predetermined estimate, analysis or opinion or if the fee to be paid is contingent on the opinion, conclusion or value reached or on the consequences resulting from the appraisal assignment.

10. Violating the confidential nature of any records to which the registered trainee appraiser or the state-licensed or state-certified appraiser gains access through employment or engagement as a registered trainee appraiser or an appraiser.

11. Having a final civil judgment entered against the person on grounds of fraud, misrepresentation or deceit in the making of any appraisal.

B. In a disciplinary proceeding based on a civil judgment, a registered trainee appraiser or state-licensed or state-certified appraiser may present matters in mitigation and extenuation.

C. The deputy director may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence necessary and relevant to an investigation or hearing.

D. The lapsing or suspension of a license or certificate by operation of law or by an order or decision of the deputy director or a court of law, or the voluntary surrender of a license or certificate by a license or certificate

holder, shall not deprive the deputy director of jurisdiction to do either of the following within twenty-four months after the expiration of the license or certificate pursuant to section 32-3616:

1. Proceed with any investigation of or action or disciplinary proceeding against the license or certificate holder.

2. Render a decision suspending or revoking the license or certificate or denying the renewal or right of renewal of the license or certificate.

E. If the deputy director determines that a state-licensed or state-certified appraiser is in violation of this chapter, the deputy director may take disciplinary or remedial action and may impose a civil penalty not to exceed $3,000 per complaint filed with the deputy director pursuant to this chapter. All civil penalties collected pursuant to this subsection shall be deposited in the department revolving fund established by section 6-135.

32-3652. Registration; renewal; fees

A. An individual who wishes to act as a property tax agent shall apply for registration by submitting to the deputy director a completed application form prescribed by the deputy director with the initial registration fee. The applicant shall also file with the deputy director an affidavit stating whether the applicant has been convicted of a felony or any misdemeanor involving dishonesty or moral turpitude in this or any other state within the last ten years. The deputy director may review the affidavit and issue or deny the registration based on its findings.

B. Except as provided in section 32-4301, registration is valid for two years. An individual may renew a registration by submitting to the deputy director a renewal form prescribed by the deputy director with the renewal fee on or before the date the registration expires.

C. An appraiser who is licensed or certified pursuant to this chapter may register and renew registration as a property tax agent without paying the fee prescribed by this section.

D. The deputy director shall issue a certificate of registration to an individual if the individual complies with this section and is not prohibited from registering pursuant to section 32-3654.

E. A person shall not act as a property tax agent if the person is not registered pursuant to this section.

F. The deputy director shall collect from each individual a fee of:

1. $200 for an initial registration.

2. $100 for a renewal.

32-3654. Disciplinary actions

A. On the complaint of any person or on the deputy director's own motion, the deputy director shall investigate any suspected violation of this article by a property tax agent. If the deputy director finds a violation, the deputy director may issue a letter of concern.

B. If the deputy director finds that the property tax agent committed any of the following violations, the deputy director shall revoke or suspend the agent's registration:

1. Secured registration by fraud or deceit.

2. Committed an act or is responsible for an omission involving fraud or knowing misrepresentation with the intent to obtain a benefit.

3. Knowingly violated section 32-3653.

C. The deputy director shall:

1. Suspend the agent's registration for not less than six months on the first finding of a violation pursuant to subsection B of this section.

2. Suspend the agent's registration for not less than twelve months on the second finding of a violation pursuant to subsection B of this section.

3. Revoke the agent's registration on a third or subsequent finding of a violation pursuant to subsection B of this section.

D. The deputy director shall not impose discipline until the agent has been provided an opportunity for a hearing pursuant to title 41, chapter 6, article 10. The deputy director shall notify the agent of the charges and the date and time of the hearing. The notice may be personally served or sent by certified mail to the agent's last known address. Except as provided in section 41-1092.08, subsection H, the final decision of the deputy director is subject to judicial review pursuant to title 12, chapter 7, article 6.

E. The deputy director shall not renew an agent's registration during the time the registration is suspended or revoked.

32-3667. Fee; bond

A. The deputy director shall establish the fee for appraisal management company registration by rule.

B. The appraisal management company shall show proof of a surety bond of at least $20,000 but not more than $50,000.

32-3680. Rulemaking authority

The deputy director shall adopt rules that are reasonably necessary to implement, administer and enforce this article, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with this article and rules requiring a surety bond to be posted with each application.

E-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 15

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 15

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers fifteen (15) rules in Title 9, Chapter 10, Article 15 related to licensing requirements and medical procedures of abortion clinics. The Department is tasked with the requirement to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of healthcare institutions including abortion clinics. Due to the fact that the rules were substantially changed in 2018, the 2019 5YRR was rescheduled, there was no prior proposed course of action for the Department to complete.

Proposed Action

At this time there is no proposed course of action as the Department is waiting for the decisions from the 9th Circuit Court of Appeals and the Arizona Supreme Court before making any 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:**

According to the Department, the rule changes were directly required by statutes; therefore, the costs imposed by and benefits derived from the rule changes were due to the statutes and not the rules. The Department anticipated that all stakeholders would significantly benefit from rule changes that clarify requirements, remove duplicated requirements, and correct grammatical errors and incorrect cross-references. The Department believed abortion clinics could incur minimal costs to comply with the changes. The Department believes that the actual costs and benefits experienced by persons affected by the rule are generally consistent with the estimated costs and benefits expressed in the economic impact statement.

The Department identifies stakeholders as patient care staff members, including physicians, registered nurse practitioners, nurses, physician assistants, and surgical assistants who provide medical services, nursing services, or health-related services to a patient, and the general public.

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

According to the Department, the rules establish minimum health and safety standards for abortion clinics. Any failure of an abortion clinic to meet the minimum requirements prescribed by rule poses a threat to the health and safety of patients and, potentially, a fetus delivered alive. The Department believes that the probable benefits of the rules outweigh the probable costs and impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department did not receive any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are generally clear, concise, and understandable with the following exceptions:

- R9-10-1506: Clarity could be improved if subsection (7)(g) were revised to specify subsection (3)(b) or (c) rather than all of subsection
- R9-10-1512: clarity could be improved if subsection (C)(5) were revised to specify that the information provided to the Department according to A.R.S. § 36-343 is required to be maintained

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are generally consistent with other rules and statutes with the following exceptions:

- R9-10-1503 and R9-10-1509: The requirements in R9-10-1503 and R9-10-1509 are not consistent with the requirements in A.R.S. § 36-449.03(F), however this is the subject of ongoing litigation and will not be amended until there is a final ruling
- R9-10-1512: the citation in subsection (F) should be to A.R.S. § 36-449.03(K), rather than to A.R.S. § 36-449.03(J)

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are generally effective in achieving their objectives with the exceptions of the items described in subsection 5 and 6.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

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

The Department states there is no corresponding federal law to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

A general permit is not used as the rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers fifteen rules in Title 9, Chapter 10, Article 15 related to licensing requirements and medical procedures of abortion clinics. As indicated above, the rules are generally effective in achieving their objectives, enforced as written, and consistent with other rules and statutes. As there is ongoing litigation regarding these rules, the Department did not propose a course of action, however will conduct a rulemaking in the event one is needed to comply with the outcome of the pending litigation. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

September 28, 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. 10, Article 15, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 15, which is due on or before September 29, 2023.

The Department is requesting that the rules be heard at the Council meeting on December 5, 2023.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services

Health Care Institutions: Licensing

Article 15. Abortion Clinics

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, 36-422, 36-449.01, 36-449.02, 36-449.03, 36-2151, 36-2152, 36-2153, 36-2155, 36-2156,36-2157, 36-2158, 36-2159, 36-2160, 36-2161, 36-2301, 36-2301.01, 36-2301.02

2. The objective of each rule:

Rule	Objective
R9-10-1501	To define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-10-1502	To specify license application requirements, in addition to those in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, that are specific to abortion clinics.
R9-10-1503	To establish minimum requirements for an abortion clinic's licensee and medical director, including requirements for policies and procedures for personnel, verification of physician competency, medications, patient medical records, abortion procedures, post-procedure recovery and follow-up care, infection control, medical emergencies, and patient discharge and transfer.
R9-10-1504	To establish minimum requirements for an abortion clinic's quality management program.
R9-10-1505	To establish minimum requirements for incident reporting and investigations.
R9-10-1506	To establish minimum standards for personnel, including physicians performing abortions, surgical assistants and volunteers who provide counseling and any other assigned responsibilities, and individuals performing ultrasounds. To specify requirements for personnel records.
R9-10-1507	To establish minimum staffing requirements for an abortion clinic.
R9-10-1508	To establish minimum standards for patient rights.
R9-10-1509	To establish minimum requirements for the procedures that are performed before, during, and after an abortion.
R9-10-1510	To establish minimum requirements for the transfer of a patient or a viable fetus for emergency care and for the discharge of a patient from an abortion clinic.
R9-10-1511	To establish minimum requirements for handling medications and controlled substances at an abortion clinic, for responding to and documenting medication errors and adverse reactions,

	for documenting the provision of medication to a patient or a fetus delivered alive, and for maintaining medical information in the medical record of a patient or a fetus delivered alive.
R9-10-1512	To establish minimum requirements for the collection and retention of information in medical records for a patient or fetus delivered alive in an abortion clinic. To specify what information may be shared, with what entities, and under what circumstances.
R9-10-1513	To establish minimum requirements for an abortion clinic's environmental services, storage of soiled linen and clothing, emergency plan, and evacuation drills.
R9-10-1514	To establish minimum requirements for equipment at an abortion clinic, including requirements for equipment maintenance and documentation of equipment maintenance.
R9-10-1515	To establish minimum requirements for an abortion clinic's physical plant.

3. Are the rules effective in achieving their objectives? **Yes _X_ No __**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
Multiple	Except as described under paragraphs 4 and 6, the rules are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes? **Yes ____ No X_**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-10-1503 and R9-10-1509	The requirements in R9-10-1503 and R9-10-1509 are not consistent with the requirements in A.R.S. § 36-449.03(F), as adopted by Laws 2021, Ch. 286, in that they do not contain requirements related to the final disposition of the bodily remains from a surgical abortion. Laws 2022, Ch. 105, restricts elective abortions to the first 15 weeks of gestation, absent a medical emergency. However, the statutory changes made by Laws 2021, Ch. 286, and Laws 2022, Ch. 105, are the subject of ongoing litigation (2:21-cv-01417-DLR; CV-23-0005-PR), and the Department is waiting the rulings of the Ninth Circuit Court and Arizona Supreme Court before making any changes.
R9-10-1512	Due to statutory changes, the citation in subsection (F) should be to A.R.S. § 36-449.03(K), rather than to A.R.S. § 36-449.03(J).

5. Are the rules enforced as written? **Yes _X_ No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-10-1506	The rule is clear, concise and understandable, but the clarity could be improved if subsection (7)(g) were revised to specify subsection (3)(b) or (c) rather than all of subsection (3), since the rules do not require a physician to complete a course referred to in subsection (7)(g).
R9-10-1512	The rule is clear, concise, and understandable, but the clarity could be improved if subsection (C)(5) were revised to specify that the information provided to the Department according to A.R.S. § 36-343 is required to be maintained, rather than that "[v]ital records and vital statistics are retained according to A.R.S. § 36-343."

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___No _X_**

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. A.R.S. § 36-449.03 requires the Department to adopt rules that establish minimum standards and requirements for abortion clinics. These statutes have been implemented in A.A.C. Title 9, Chapter 10, Article 15. As of July 11, 2023, there are nine health care institutions in Arizona licensed under Article 15.

All but two of the rules in Article 15 were last revised in a rulemaking effective October 2, 2018. This rulemaking was undertaken to implement Laws 2017, Ch. 133, and Laws 2017, Ch. 122. Laws 2017, Ch. 133, required an abortion clinic or hospital that performs an abortion at or after 20 weeks gestational age to implement and document procedures to make sure a physician takes measures to maintain the life of an aborted embryo or fetus born alive and documents and reports those measures. Laws 2017, Ch. 133, also required the equipment necessary to carry out these life-maintaining measures and includes specific requirements for abortions when a fetus has a lethal fetal condition. Laws 201, Ch. 122 established perpetual licenses for health care institutions.

An EIS is available for this rulemaking. The EIS lists changes made that are directly required by statutes, but does not include the costs or benefits in the analysis, since the costs imposed by or benefits derived from the changes were due to the statutes and not the rules. For those listed changes that were part of the analysis, the EIS stated that the Department might receive a significant benefit from clarifying requirements, making requirements in Article 15 more consistent with requirements in other

Articles in the Chapter, removing duplicative requirements, and correcting grammatical errors and incorrect cross-references. Abortion clinics were also thought to receive a significant benefit from changes that clarify requirements, remove duplicative requirements, and correct grammatical errors and incorrect cross-references. The Department believed that abortion clinics could incur minimal costs to comply with changes that make requirements in Article 15 more consistent with requirements in other Articles in the Chapter. These included using more consistent terminology; specifying that documentation required by Article 15, such as personnel records or policies and procedures, is to be provided to the Department within two hours after a Department request; and requiring an abortion clinic to establish and implement a quality management plan. The Department anticipated that the rule changes being made to improve the efficiency and effectiveness of the rules might provide a significant benefit to patient care staff members, including physicians, registered nurse practitioners, nurses, physician assistants, and surgical assistants who provide medical services, nursing services, or health-related services to a patient, by enabling them to better understand requirements and, thus, better comply with the requirements. The EIS stated that a patient undergoing an abortion procedure might receive better services from a patient care staff member that better understands and, thus, better complies with requirements in the rules. Therefore, the rule changes could provide a significant benefit to a patient undergoing an abortion procedure and the patient's family. Having rules that are more easily understood, complied with, and enforced was believed to provide a significant benefit to the general public. The Department believes that the actual costs and benefits experienced by persons affected by the rule are generally consistent with the estimated costs and benefits expressed in the EIS.

Two rules, R9-10-1505 and R9-10-1509, were last revised in an expedited rulemaking, effective July 2, 2019, so no EIS was prepared for this rulemaking. This rulemaking made the rules comply with Laws 2018, Ch. 219, which amended A.R.S. §§ 36-2161 and 36-2162 to require abortion providers to report complications according to A.R.S § 36-2161(A)(15), request information specified in A.R.S. § 36-2161(A)(12) from a patient, and provide information required in A.R.S. § 36-2161(C) to a patient, if applicable. The Department believed that the rulemaking met the criteria for expedited rulemaking since the changes made did not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but amended rules that became outdated with the statutory revisions made by Laws 2018, Ch. 219. The Department believes that the actual costs and benefits experienced by persons affected by the rule are generally consistent with these estimated costs and benefits.

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.

This is the first 5YRR for these rules, since the 5YRR of 2019 was rescheduled until now due to the 2018 rulemaking, which substantially changed all the rules in the Article.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The rules establish minimum health and safety standards for abortion clinics. Any failure of an abortion clinic to meet the minimum requirements prescribed by rule poses a threat to the health and safety of patients and, potentially a fetus delivered alive. The Department believes that the probable benefits of the rules outweigh the probable costs. With the exception of inconsistencies with recent statutory changes, the issues identified in this report are minor and pose little to no additional regulatory burden. An increased regulatory burden would be imposed on regulated entities when addressing the statutory changes. Thus, the rules in 9 A.A.C. 10, Article 15, impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

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 federal laws corresponding with the rules in 9 A.A.C. 10, Article 15, which were adopted pursuant to state statutes.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405. A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining "a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining." A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. Therefore, a general permit is not applicable and is not used.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Except for changes that may be necessary based on contested statutory changes, the changes to address other identified issues are minor, and these issues do not adversely affect the ability of a reader to understand and comply with requirements. Because some of the statutory requirements are being contested, the Department plans to wait for the decisions from the 9th Circuit Court of Appeals and the Arizona Supreme Court before making any

changes to the rules. However, the Department plans to request rulemaking authority under A.R.S. § 41-1039(A), as soon as the cases have been resolved, to revise the rules as appropriate.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 15. ABORTION CLINICS

ARTICLE 15. ABORTION CLINICS

R9-10-1501. Definitions

In addition to the definitions in A.R.S. §§ 36-401, 36-449.01, 36-449.03, 36-2151, 36-2158, and 36-2301.01 and R9-10-101, the following definitions apply in this Article, unless otherwise specified:

1. "Admitting privileges" means permission extended by a hospital to a physician to allow admission of an individual as an inpatient, as defined in R9-10-201:
   a. By the patient's own physician, or
   b. Through a written agreement between the patient's physician and another physician that states that the other physician has permission to personally admit the patient to a hospital in this state and agrees to do so.
2. "Course" means training or education, including hands-on practice under the supervision of a physician.
3. "Employee" means an individual who receives compensation from a licensee, but does not provide medical services, nursing services, or health-related services.
4. "First trimester" means 1 through 14 weeks as measured from the first day of the last menstrual period or 1 through 12 weeks as measured from the date of fertilization.
5. "Incident" means an abortion-related patient death or serious injury to a patient or fetus delivered alive.
6. "Local" means under the jurisdiction of a city or county in Arizona.
7. "Medical director" means a physician who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an abortion clinic.
8. "Medical evaluation" means obtaining a patient's medical history, performing a physical examination of a patient's body, and conducting laboratory tests as provided in R9-10-1509.
9. "Monitor" means to observe and document, continuously or intermittently, the values of certain physiologic variables on a patient such as pulse, blood pressure, oxygen saturation, respiration, and blood loss.
10. "Neonatal resuscitation" means procedures to assist in maintaining the life of a fetus delivered alive, as described in A.R.S. § 36-2301(D)(3).
11. "Patient" means a female receiving medical services, nursing services, or health-related services related to an abortion.

12. "Patient care staff member" means a physician, registered nurse practitioner, nurse, physician assistant, or surgical assistant who provides medical services, nursing services, or health-related services to a patient.
13. "Patient transfer" means relocating a patient requiring medical services from an abortion clinic to another health care institution.
14. "Personally identifiable patient information" means:
    a. The name, address, telephone number, e-mail address, Social Security number, and birth date of:
        i. The patient,
        ii. The patient's representative,
        iii. The patient's emergency contact,
        iv. The patient's children,
        v. The patient's spouse,
        vi. The patient's sexual partner, and
        vii. Any other individual identified in the patient's medical record other than patient care staff;
    b. The patient's place of employment;
    c. The patient's referring physician;
    d. The patient's insurance carrier or account;
    e. Any "individually identifiable health information" as proscribed in 45 CFR 164-514; and
    f. Any other information in the patient's medical record that could reasonably lead to the identification of the patient.
15. "Personnel" means patient care staff members, employees, and volunteers.
16. "Serious injury" means a life-threatening physical condition related to an abortion procedure.
17. "Surgical assistant" means an individual who is not licensed as a physician, physician assistant, registered nurse practitioner, or nurse who performs duties as directed by a physician, physician assistant, registered nurse practitioner, or nurse.
18. "Volunteer" means an individual who, without compensation, performs duties as directed by a patient care staff member at an abortion clinic.

R9-10-1502. Application Requirements and Documentation Submission

A. An applicant shall submit an application for licensure that meets the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1.

B. A licensee shall submit to the Department the documentation required according to A.R.S. § 36-449.02(B) with the applicable fees required in R9-10-106(C).

R9-10-1503. Administration

A. A licensee is responsible for the organization and management of an abortion clinic.

B. A licensee shall:

1. Adopt policies and procedures for the administration and operation of an abortion clinic;
2. Designate a medical director who:
    a. Is licensed according to A.R.S. Title 32, Chapter 13, 17, or 29; and
    b. May be the same individual as the licensee;
3. Ensure the following documents are conspicuously posted on the premises:
    a. Current abortion clinic license issued by the Department,
    b. Current telephone number and address of the unit in the Department responsible for licensing the abortion clinic,
    c. Evacuation map, and
    d. Signs that comply with A.R.S. § 36-2153(H); and
4. Except as specified in R9-10-1512(D)(4), ensure that documentation required by this Article is provided to the Department within two hours after a Department request.

C. A medical director shall ensure written policies and procedures are established, documented, and implemented to protect the health and safety of a patient including:

1. Personnel qualifications, duties, and responsibilities;
2. Individuals qualified to provide counseling in the abortion clinic and the amount and type of training required for an individual to provide counseling;
3. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age:
    a. Individuals qualified in neonatal resuscitation and the amount and type of training required for an individual to provide neonatal resuscitation, and
    b. Designation of an individual to arrange the transfer to a hospital of a fetus delivered alive;
4. Verification of the competency of the physician performing an abortion according to R9-10-1506;

5. The storage, administration, accessibility, disposal, and documentation of a medication or controlled substance;
6. Accessibility and security of medical records;
7. Abortion procedures including:
    a. Recovery and follow-up care;
    b. The minimum length of time a patient remains in the recovery room or area based on:
        i. The type of abortion performed,
        ii. The estimated gestational age of the fetus,
        iii. The type and amount of medication administered, and
        iv. The physiologic signs including vital signs and blood loss; and
    c. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, the requirements in A.R.S. § 36-2301(D);
8. Infection control including methods of sterilizing equipment and supplies;
9. Medical emergencies; and
10. Patient discharge and patient transfer.

D. For an abortion clinic that is not in substantial compliance or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the Department, the Department may take enforcement action as specified in R9-10-111.

R9-10-1504. Quality Management

A medical director shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
    a. A method to identify, document, and evaluate incidents;
    b. A method to collect data to evaluate services provided to patients;
    c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
    d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
    e. The frequency of submitting a documented report required in subsection (2) to the licensee;
2. A documented report is submitted to the licensee that includes:

a. An identification of each concern about the delivery of services related to patient care, and

b. Any changes made or actions taken as a result of the identification of a concern about the delivery of services related to patient care; and

3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the licensee.

R9-10-1505. Incident Reporting

A. A licensee shall ensure that the Department is notified of an incident as follows:

1. For the death of a patient, verbal notification the next working day;
2. For a fetus delivered alive, verbal notification the next working day; and
3. For a serious injury of a patient or viable fetus, written notification within 10 calendar days after the date of the serious injury.

B. A medical director shall conduct an investigation of an incident and document an incident report that includes:

1. The date and time of the incident;
2. The name of the patient;
3. A description of the incident, including, if applicable, information required in A.R.S. § 36-2161(A)(15);
4. Names of individuals who observed the incident;
5. Action taken by patient care staff members and employees during the incident and immediately following the incident; and
6. Action taken by the patient care staff members and employees to prevent the incident from occurring in the future.

C. A medical director shall ensure that the incident report is:

1. Submitted to the Department and, if the incident involved a licensed individual, the applicable professional licensing board within 10 calendar days after the date of the notification in subsection (A); and
2. Maintained on the premises for at least two years after the date of the incident.

R9-10-1506. Personnel Qualifications and Records

A licensee shall ensure that:

1. A physician who performs an abortion demonstrates to the medical director that the physician is competent to perform an abortion by:

a. The submission of documentation of education and experience, and

b. Observation by or interaction with the medical director;

2. Surgical assistants and volunteers who provide counseling and patient advocacy receive training in these specific responsibilities and any other responsibilities assigned and that documentation of the training received is maintained in the individual's personnel file;

3. An individual who performs an ultrasound provides documentation that the individual is:

a. A physician;

b. A physician assistant, registered nurse practitioner, or nurse who completed a course in performing ultrasounds under the supervision of a physician; or

c. An individual who:

i. Completed a course in performing ultrasounds under the supervision of a physician, and

ii. Is not otherwise precluded by law from performing an ultrasound;

4. An individual has completed a course for the type of ultrasound the individual performs;

5. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, an individual who is available to perform neonatal resuscitation provides documentation that the individual:

a. Is a:

i. Physician,

ii. Physician assistant,

iii. Registered nurse practitioner, or

iv. Nurse; and

b. Has completed a course in performing neonatal resuscitation that is consistent with training provided by the American Academy of Pediatrics Neonatal Resuscitation Program and includes:

i. Instruction in the use of resuscitation devices for positive-pressure ventilation, tracheal intubation, medications that may be necessary for neonatal resuscitation and their administration, and resuscitation of pre-term newborns; and

ii. Assessment of the individual's skill in applying the information provided through the instruction in subsection (5)(b)(i);

6. A personnel file for each patient care staff member and each volunteer is maintained either electronically or in writing and includes:

a. The individual's name and position title;

b. The first and, if applicable, the last date of employment or volunteer service;
c. Verification of qualifications, training, or licensure, as applicable;
d. Documentation of cardiopulmonary resuscitation certification, as applicable;
e. Documentation of verification of competency, as required in subsection (1), and signed and dated by the medical director;
f. Documentation of training for surgical assistants and volunteers;
g. Documentation of completion of a course as required in subsection (3), for an individual performing ultrasounds; and
h. Documentation of competency to perform neonatal resuscitation, as required in subsection (5), if applicable; and

7. Personnel files are maintained on the premises for at least two years after the ending date of employment or volunteer service.

R9-10-1507. Staffing Requirements

A. A licensee shall ensure that there is a sufficient number of patient care staff members and employees to:

1. Meet the requirements of this Article,
2. Ensure the health and safety of a patient, and
3. Meet the needs of a patient based on the patient's medical evaluation.

B. A licensee shall ensure that:

1. A patient care staff member other than a surgical assistant, who is current in cardiopulmonary resuscitation certification, is on the premises until all patients are discharged;
2. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B), remains on the premises of the abortion clinic until all patients who received a medication abortion are stable and ready to leave;
3. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B) and that is within 30 miles of the abortion clinic by road, as defined in A.R.S. § 17-451, remains on the abortion clinic's premises until all patients who received a surgical abortion are stable and discharged from the recovery room;
4. A patient care staff member is on the premises to comply with R9-10-1509(H); and

5. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, a patient care staff member qualified according to policies and procedures to perform neonatal resuscitation is available for the abortion procedure.

R9-10-1508. Patient Rights

A licensee shall ensure that a patient is afforded the following rights, and is informed of these rights:

1. To refuse treatment, or withdraw consent for treatment;
2. To have medical records kept confidential; and
3. To be informed of:
    a. Billing procedures and financial liability before abortion services are provided;
    b. Proposed medical or surgical procedures, associated risks, possible complications, and alternatives;
    c. Counseling services that are provided on the premises;
    d. The right to review the ultrasound results with a physician, a physician assistant, a registered nurse practitioner, or a registered nurse before the abortion procedure; and
    e. The right to receive a print of the ultrasound image.

R9-10-1509. Abortion Procedures

A. A medical director shall ensure that a medical evaluation of a patient is conducted before the patient's abortion is performed that includes:

1. A medical history including:
    a. Allergies to medications, antiseptic solutions, or latex;
    b. Obstetrical and gynecological history;
    c. Past surgeries;
    d. Medication the patient is currently taking; and
    e. Other medical conditions;
2. A physical examination, performed by a physician that includes a bimanual examination to estimate uterine size and palpation of adnexa;
3. The following laboratory tests:
    a. A urine or blood test to determine pregnancy;
    b. Rh typing, unless the patient provides written documentation of blood type acceptable to the physician;
    c. Anemia screening; and

d. Other laboratory tests recommended by the physician or medical director on the basis of the physical examination; and

4. An ultrasound imaging study of the fetus, performed as required in A.R.S. §§ 36-2156 and 36-2301.02(A).

B. If the medical evaluation indicates a patient is Rh negative, a medical director shall ensure that:

1. The patient receives information from a physician on this condition;
2. The patient is offered RhO(d) immune globulin within 72 hours after the abortion procedure;
3. If a patient refuses RhO(d) immune globulin, the patient signs and dates a form acknowledging the patient's condition and refusing the RhO(d) immune globulin;
4. The form in subsection (B)(3) is maintained in the patient's medical record; and
5. If a patient refuses RhO(d) immune globulin or if a patient refuses to sign and date an acknowledgment and refusal form, the physician documents the patient's refusal in the patient's medical record.

C. A physician shall estimate the gestational age of the fetus, based on one of the following criteria, and record the estimated gestational age in the patient's medical record:

1. Ultrasound measurements of the biparietal diameter, length of femur, abdominal circumference, visible pregnancy sac, or crown-rump length or a combination of these; or
2. The date of the last menstrual period or the date of fertilization and a bimanual examination of the patient.

D. A medical director shall ensure that:

1. The ultrasound of a patient required in subsection (A)(4) is performed by an individual who meets the requirements in R9-10-1506(3);
2. An ultrasound estimate of gestational age of a fetus is performed using methods and tables or charts in a publication distributed nationally that contains peer-reviewed medical information, such as medical information derived from a publication describing research in obstetrics and gynecology or in diagnostic imaging;
3. An original patient ultrasound image is:
   a. Interpreted by a physician, and
   b. Maintained in the patient's medical record in either electronic or paper form; and
4. If requested by the patient, the ultrasound image is reviewed with the patient by a physician, physician assistant, registered nurse practitioner, or registered nurse.

E. A medical director shall ensure that before an abortion is performed on a patient:

1. Written consent, that meets the requirements in A.R.S. § 36-2152 or 36-2153, as applicable, and A.R.S. § 36-2158 is signed and dated by the patient or the patient's representative;
2. Information is provided to the patient on the abortion procedure, including alternatives, risks, and potential complications;
3. Information specified in A.R.S. § 36-2161(A)(12) is requested from the patient; and
4. If applicable, information required in A.R.S. § 36-2161(C) is provided to the patient.

F. A medical director shall ensure that an abortion is performed according to the abortion clinic's policies and procedures and this Article.

G. A medical director shall ensure that:

1. A patient care staff member monitors a patient's vital signs throughout an abortion procedure to ensure the patient's health and safety;
2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record;
3. If an abortion procedure is performed at or after 20 weeks gestational age, a patient care staff member qualified in neonatal resuscitation, other than the physician performing the abortion procedure, is in the room in which the abortion procedure takes place before the delivery of the fetus; and
4. If a fetus is delivered alive:
    a. Resuscitative measures, including the following, are used to support life:
        i. Warming and drying of the fetus,
        ii. Clearing secretions from and positioning the airway of the fetus,
        iii. Administering oxygen as needed to the fetus, and
        iv. Assessing and monitoring the cardiopulmonary status of the fetus;
    b. A determination is made of whether the fetus is a viable fetus;
    c. A viable fetus is provided treatment to support life;
    d. A viable fetus is transferred as required in R9-10-1510; and
    e. Resuscitative measures and the transfer, as applicable, are documented.

H. To ensure a patient's health and safety, a medical director shall ensure that following the abortion procedure:

1. A patient's vital signs and bleeding are monitored by:
    a. A physician;

b. A physician assistant;

c. A registered nurse practitioner;

d. A nurse; or

e. If a physician is able to provide direct supervision, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, as applicable, to a medical assistant, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, a medical assistant under the direct supervision of the physician; and

2. A patient remains in the recovery room or recovery area until a physician, physician assistant, registered nurse practitioner, or nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area.

I. A medical director shall ensure that follow-up care:

1. For a surgical abortion is offered to a patient that includes:

   a. With a patient's consent, a telephone call made to the patient to assess the patient's recovery:

      i. By a patient care staff member other than a surgical assistant; and

      ii. Within 24 hours after the patient's discharge following a surgical abortion; and

   b. A follow-up visit scheduled, if requested, no more than 21 calendar days after the abortion that includes:

      i. A physical examination,

      ii. A review of all laboratory tests as required in subsection (A)(3), and

      iii. A urine pregnancy test;

2. For a medication abortion includes a follow-up visit, scheduled between seven and 21 calendar days after the initial dose of a substance used to induce an abortion, that includes:

   a. A urine pregnancy test, and

   b. An assessment of the degree of bleeding; and

3. Is documented in the patient's medical record, including:

   a. A patient's acceptance or refusal of a follow-up visit following a surgical abortion;

   b. If applicable, the results of the follow-up visit; and

   c. If applicable, whether the patient consented to a telephone call and, if so, whether the patient care staff member making the telephone call to the patient:

i. Spoke with the patient about the patient's recovery, or

ii. Was unable to speak with the patient.

J. If a continuing pregnancy is suspected as a result of the follow-up visit in subsection (I)(1)(b) or (I)(2), a physician who performs abortions shall be consulted.

R9-10-1510. Patient Transfer and Discharge

A. A medical director shall ensure that:

1. For a patient:
   a. A patient is transferred to a hospital for an emergency involving the patient;
   b. A patient transfer is documented in the patient's medical record; and
   c. Documentation of a medical evaluation, treatment provided, and laboratory and diagnostic information is transferred with a patient; and
2. For a viable fetus:
   a. A viable fetus requiring emergency care is transferred to a hospital,
   b. The transfer of a viable fetus is documented in the viable fetus's medical record, and
   c. Documentation of an assessment of cardiopulmonary function and treatment provided to a viable fetus is transferred with the viable fetus.

B. A medical director shall ensure that before a patient is discharged:

1. A physician signs the patient's discharge order; and
2. A patient receives follow-up instructions at discharge that include:
   a. Signs of possible complications,
   b. When to access medical services in response to complications,
   c. A telephone number of an individual or entity to contact for medical emergencies,
   d. Information and precautions for resuming vaginal intercourse after the abortion, and
   e. Information specific to the patient's abortion or condition.

R9-10-1511. Medications and Controlled Substances

A medical director shall ensure that:

1. The abortion clinic complies with the requirements for medications and controlled substances in A.R.S. Title 32, Chapter 18, and A.R.S. Title 36, Chapter 27;

2. A medication is administered in compliance with an order from a physician, physician assistant, registered nurse practitioner, or as otherwise provided by law;
3. A medication is administered to a patient or to a viable fetus by a physician or as otherwise provided by law;
4. Medications and controlled substances are maintained in a locked area on the premises;
5. Only personnel designated by policies and procedures have access to the locked area containing medications and controlled substances;
6. Expired, mislabeled, or unusable medications and controlled substances are disposed of according to policies and procedures;
7. A medication error or an adverse reaction, including any actions taken in response to the medication error or adverse reaction, is immediately reported to the medical director and licensee, and recorded in the patient's medical record;
8. Medication information for a patient is maintained in the patient's medical record and contains:
    a. The patient's name, age, and weight;
    b. The medications the patient is currently taking;
    c. Allergies or sensitivities to medications, antiseptic solutions, or latex; and
    d. If medication is administered to the patient:
        i. The date and time of administration;
        ii. The name, strength, dosage form, amount of medication, and route of administration; and
        iii. The identification and signature of the individual administering the medication; and
9. If administered to a fetus delivered alive, the following are documented in the fetus's medical record:
    a. The date and time of oxygen administration;
    b. The amount and flow rate of the oxygen;
    c. The identification and signature of the individual administering the oxygen; and
    d. For a viable fetus:
        i. The date and time of medication administration;
        ii. The name, strength, dosage form, amount of medication, and route of administration; and
        iii. The identification and signature of the individual administering the medication.

R9-10-1512. Medical Records

A. A licensee shall ensure that a medical record is established and maintained for a patient that contains:

1. Patient identification including:
    a. The patient's name, address, and date of birth;
    b. The designated patient's representative, if applicable; and
    c. The name and telephone number of an individual to contact in an emergency;
2. The patient's medical history required in R9-10-1509(A)(1);
3. The patient's physical examination required in R9-10-1509(A)(2);
4. The laboratory test results required in R9-10-1509(A)(3);
5. The ultrasound results, including the original print, required in R9-10-1509(A)(4);
6. The physician's estimated gestational age of the fetus required in R9-10-1509(C);
7. Each consent form signed by the patient or the patient's representative;
8. Orders issued by a physician, physician assistant, or registered nurse practitioner;
9. A record of medical services, nursing services, and health-related services provided to the patient;
10. The patient's medication information;
11. Documentation related to follow-up care specified in R9-10-1509(I); and
12. If the abortion procedure was performed at or after 20 weeks gestational age and the fetus was not delivered alive, documentation from the physician and other patient care staff member present certifying that the fetus was not delivered alive.

B. A licensee shall ensure that a medical record is established and maintained for a fetus delivered alive that contains:

1. An identification of the fetus, including:
    a. The name of the patient from whom the fetus was delivered alive, and
    b. The date the fetus was delivered alive;
2. Orders issued by a physician, physician assistant, or registered nurse practitioner;
3. A record of medical services, nursing services, and health-related services provided to the fetus delivered alive;
4. If applicable, information about medication administered to the fetus delivered alive; and
5. If the abortion procedure was performed at or after 20 weeks gestational age:
    a. Documentation of the requirements in R9-10-1509(G)(4); and

b. If the fetus had a lethal fetal condition, the results of the confirmation of the lethal fetal condition.

C. A licensee shall ensure that:

1. A medical record is accessible only to the Department or personnel authorized by policies and procedures;
2. Medical record information is confidential and released only with the written informed consent of a patient or the patient's representative or as otherwise permitted by law;
3. A medical record is protected from loss, damage, or unauthorized use and is maintained and accessible for at least seven years after the date of an adult patient's discharge or if the patient is a child, either for at least three years after the child's 18th birthday or for at least seven years after the patient's discharge, whichever date occurs last;
4. A medical record is maintained at the abortion clinic for at least six months after the date of the patient's discharge; and
5. Vital records and vital statistics are retained according to A.R.S. § 36-343.

D. If the Department requests patient medical records for review, the licensee:

1. Is not required to produce any patient medical records created or prepared by a referring physician's office;
2. May provide patient medical records to the Department either in paper or in an electronic format that is acceptable to the Department;
3. Shall provide the Department with the following patient medical records related to medical services associated with an abortion, including any follow-up visits to the abortion clinic in connection with the abortion:
   a. The patient's medical history required in R9-10-1509(A)(1);
   b. The patient's physical examination required in R9-10-1509(A)(2);
   c. The laboratory test results required in R9-10-1509(A)(3);
   d. The physician's estimate of gestational age of the fetus required in R9-10-1509(C);
   e. The ultrasound results required in R9-10-1509(D)(2);
   f. Each consent form signed by the patient or the patient's representative;
   g. Orders issued by a physician, physician assistant, or registered nurse practitioner;
   h. A record of medical services, nursing services, and health-related services provided to the patient; and
   i. The patient's medication information;
4. If the Department's request is in connection with a licensing or compliance inspection:

a. Is not required to produce any patient medical records associated with an abortion that occurred before the licensing inspection or a previous compliance inspection of the abortion clinic; and

b. Shall:

i. Redact only personally identifiable patient information from the patient medical records before the licensee discloses the patient medical records to the Department;

ii. Upon request by the Department, code the requested patient medical records by a means that allows the Department to track all patient medical records related to a specific patient without the personally identifiable patient information; and

iii. Unless the Department and the licensee agree otherwise, provide redacted copies of patient medical records to the Department:

(1) For one to ten patients, within two working days after the request, and

(2) For every additional five patients, within an additional two working days; and

5. If the Department's request is in connection with a complaint investigation, shall:

a. Not redact patient information from the patient medical records before the licensee discloses the patient medical records to the Department; and

b. Ensure the patient medical records include:

i. The patient's name, address, and date of birth;

ii. The patient's representative, if applicable; and

iii. The name and telephone number of an individual to contact in an emergency.

E. A medical director shall ensure that only personnel authorized by policies and procedures, records or signs an entry in a medical record and:

1. An entry in a medical record is dated and legible;

2. An entry is authenticated by:

a. A signature; or

b. An individual's initials if the individual's signature already appears in the medical record;

3. An entry is not changed after it has been recorded, but additional information related to an entry may be recorded in the medical record;

4. When a verbal or telephone order is entered in the medical record, the entry is authenticated within 21 calendar days by the individual who issued the order;
5. If a rubber-stamp signature or an electronic signature is used:
    a. An individual's rubber stamp or electronic signature is not used by another individual;
    b. The individual who uses a rubber stamp or electronic signature signs a statement that the individual is responsible for the use of the rubber stamp or the electronic signature; and
    c. The signed statement is included in the individual's personnel record; and
6. If an abortion clinic maintains medical records electronically, the medical director shall ensure the date and time of an entry is recorded by the computer's internal clock.

F. As required by A.R.S. § 36-449.03(J), the Department shall not release any personally identifiable patient or physician information.

R9-10-1513. Environmental and Safety Standards

A licensee shall ensure that:

1. The premises:
    a. Provide lighting and ventilation to ensure the health and safety of a patient,
    b. Are maintained in a clean condition,
    c. Are free from a condition or situation that may cause a patient to suffer physical injury,
    d. Are maintained free from insects and vermin, and
    e. Are smoke-free;
2. A warning notice is placed at the entrance to a room or area where oxygen is in use;
3. Soiled linen and clothing are kept:
    a. In a covered container, and
    b. Separate from clean linen and clothing;
4. Personnel wash hands after each direct patient contact and after handling soiled linen, soiled clothing, or biohazardous medical waste;
5. A written emergency plan is established, documented, and implemented that includes procedures for protecting the health and safety of patients and other individuals in a fire, natural disaster, loss of electrical power, or threat or incidence of violence;
6. An evacuation drill is conducted at least once every six months that includes all personnel on the premises on the day of the evacuation drill; and

7. Documentation of the evacuation drill is maintained on the premises for at least one year after the date of the evacuation drill and includes:
    a. The date and time of the evacuation drill, and
    b. The names of personnel participating in the evacuation drill.

R9-10-1514. Equipment Standards

A licensee shall ensure that:

1. Equipment and supplies are maintained in a:
    a. Clean condition, and
    b. Quantity sufficient to meet the needs of patients present in the abortion clinic;
2. Equipment to monitor vital signs is in each room in which an abortion is performed;
3. A surgical or gynecologic examination table is used for an abortion;
4. The following equipment and supplies are available in the abortion clinic:
    a. Equipment to measure blood pressure;
    b. A stethoscope;
    c. A scale for weighing a patient;
    d. Supplies for obtaining specimens and cultures and for laboratory tests; and
    e. Equipment and supplies for use in a medical emergency including:
        i. Ventilatory assistance equipment,
        ii. Oxygen source,
        iii. Suction apparatus, and
        iv. Intravenous fluid equipment and supplies; and
    f. Ultrasound equipment;
5. In addition to the requirements in subsection (4), the following equipment is available for an abortion procedure performed after the first trimester:
    a. Drugs to support cardiopulmonary function of a patient, and
    b. Equipment to monitor the cardiopulmonary status of a patient;
6. In addition to the requirements in subsections (4) and (5), if the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, the following equipment is available for the abortion procedure:
    a. Equipment to provide warmth and drying of a fetus delivered alive,
    b. Equipment necessary to clear secretions from and position the airway of a fetus delivered alive,
    c. Equipment necessary to administer oxygen to a fetus delivered alive,

d. Equipment to assess and monitor the cardiopulmonary status of a fetus delivered alive, and

e. Drugs to support cardiopulmonary function in a viable fetus;

7. Equipment and supplies are clean and, if applicable, sterile before each use;

8. Equipment required in this Section is maintained in working order, tested and calibrated at least once every 12 months or according to the manufacturer's recommendations, and used according to the manufacturer's recommendations; and

9. Documentation of each equipment test, calibration, and repair is maintained on the premises for at least 12 months after the date of the testing, calibration, or repair and provided to the Department for review within two hours after the Department requests the documentation.

R9-10-1515. Physical Plant Standards

A. A licensee shall ensure that an abortion clinic complies with all local building codes, ordinances, fire codes, and zoning requirements. If there are no local building codes, ordinances, fire codes, or zoning requirements, the abortion clinic shall comply with the applicable codes and standards incorporated by reference in A.A.C. R9-1-412 that were in effect on the date the abortion clinic's architectural plans and specifications were submitted to the Department for approval.

B. A licensee shall ensure that an abortion clinic provides areas or rooms:

1. That provide privacy for:

a. A patient's interview, medical evaluation, and counseling;

b. A patient to dress; and

c. Performing an abortion procedure;

2. For personnel to dress;

3. With a sink and a flushable toilet in working order;

4. For cleaning and sterilizing equipment and supplies;

5. For storing medical records;

6. For storing equipment and supplies;

7. For hand washing before the abortion procedure; and

8. For a patient recovering after an abortion.

C. A licensee shall ensure that an abortion clinic has an emergency exit to accommodate a stretcher or gurney.

Statutory Authority for Rules in 9 A.A.C. 10, Article 15

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture

pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of

subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The attestation required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

K. Except for an outpatient treatment center that provides dialysis services or abortion procedures or that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.

2. All applicable application and license fees.

3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. An outpatient treatment center that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12 and that has the same governing authority as a hospital licensed pursuant to this chapter is subject to reasonable inspection by the department if the director has reasonable cause to believe that patient harm is or may be occurring at that outpatient treatment center. A substantiated complaint that harm is occurring at an exempt outpatient treatment center is a violation of this chapter against the hospital's license.

P. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-449.01. Definitions

In this article, unless the context otherwise requires:

1. "Abortion" means the use of any means with the intent to terminate a woman's pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives.

2. "Abortion clinic" means a facility, other than a hospital, in which five or more first trimester abortions in any month or any second or third trimester abortions are performed.

3. "Bodily remains" has the same meaning prescribed in section 36-2151.

4. "Director" means the director of the department of health services.

5. "Final disposition" has the same meaning prescribed in section 36-301.

6. "Medication abortion" means the use of any medication, drug or other substance that is intended to cause or induce an abortion.

7. "Perform" includes the initial administration of any medication, drug or other substance intended to cause or induce an abortion.

8. "Surgical abortion" has the same meaning prescribed in section 36-2151.

9. "Viable fetus" has the same meaning prescribed in section 36-2301.01.

36-449.02. Abortion clinics; licensure requirements; rules; inspections; standing to intervene; legal counsel

A. Beginning on April 1, 2000, an abortion clinic shall meet the same licensure requirements as prescribed in article 2 of this chapter for health care institutions. At the time of licensure, an abortion clinic shall submit to the director all documentation required by this article, including verification that the clinic's physicians who are required to be available have admitting privileges at a health care institution as required by section 36-449.03, subsection C, paragraph 3.

B. On or before the anniversary of the issue date of an abortion clinic's license, the abortion clinic shall submit to the director all documentation required by this article.

C. Beginning on April 1, 2000, abortion clinics shall comply with department requirements for abortion clinics and department rules that govern abortion clinics.

D. If the director determines that there is reasonable cause to believe an abortion clinic is not adhering to the licensing requirements of this article or any other law or rule concerning abortion, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of the abortion clinic that is licensed or required to be licensed pursuant to this article during regular business hours of the abortion clinic to determine compliance with this article, rules adopted pursuant to this article, local fire ordinances or rules and any other law or rule relating to abortion.

E. An application for licensure pursuant to this article constitutes permission for, and complete acquiescence in, an entry or inspection of the premises during the pendency of the application and, if licensed, while the abortion clinic is licensed.

F. If an inspection conducted pursuant to this section reveals that an abortion clinic is not adhering to the licensing requirements prescribed pursuant to this article or any other law or rule concerning abortion, the director may take action authorized by this article.

G. An abortion clinic whose license has been suspended or revoked pursuant to this article or section 36-424 is subject to inspection on application for relicensure or reinstatement of the license.

H. In any proceeding in which the constitutionality, legality or application of this section is challenged, the attorney general or any county or city attorney who wishes to defend the law has the right to intervene as a party and is deemed to have proper standing in the matter. The only objection that may be raised to a motion to intervene as of right pursuant to this subsection is that the proposed intervenor does not have a good faith intention to defend the law. Any party or proposed intervenor may raise this objection. Notwithstanding section 41-192, the department may employ legal counsel and make an expenditure or incur an indebtedness for legal services for the purposes of defending this section.

36-449.03. Abortion clinics; rules; civil penalties

A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.

2. Dressing rooms for staff and patients.

3. Appropriate lavatory areas.

4. Areas for preprocedure hand washing.

5. Private procedure rooms.

6. Adequate lighting and ventilation for abortion procedures.

7. Surgical or gynecologic examination tables and other fixed equipment.

8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.

9. Emergency exits to accommodate a stretcher or gurney.

10. Areas for cleaning and sterilizing instruments.

11. Adequate areas to securely store medical records and necessary equipment and supplies.

12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:

1. Prescribe required equipment and supplies, including medications, required to conduct, in an appropriate fashion, any abortion procedure that the medical staff of the clinic anticipates performing and to monitor the progress of each patient throughout the procedure and recovery period.

2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to ensure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.

3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.

5. Require ultrasound equipment.

6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:

1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

2. Physicians performing abortions are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.

3. A physician is available:

(a) For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic.

(b) For a medication abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B.

4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, or monitoring and care after inducing a medication abortion, until each patient who had an abortion that day is discharged.

5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.

6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

1. A medical history, including the following:

(a) Reported allergies to medications, antiseptic solutions or latex.

(b) Obstetric and gynecologic history.

(c) Past surgeries.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

(a) Urine or blood tests for pregnancy performed before the abortion procedure.

(b) A test for anemia.

(c) Rh typing, unless reliable written documentation of blood type is available.

(d) Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in operating ultrasound equipment as prescribed in rule. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the fetus.

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

E. The director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:

1. That medical personnel is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of local anesthesia, analgesia and sedation if ordered by the physician.

4. The use of appropriate precautions, such as establishing intravenous access at least for patients undergoing second or third trimester abortions.

5. The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

6. For abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of twenty weeks or more, minimum equipment standards to assist the physician in complying with section 36-2301. For the purposes of this paragraph, "abortion" and "gestational age" have the same meanings prescribed in section 36-2151.

F. The director shall adopt rules relating to the final disposition of bodily remains. At a minimum these rules shall require that:

1. The final disposition of bodily remains from a surgical abortion be by cremation or interment.

2. For a surgical abortion, the woman on whom the abortion is performed has the right to determine the method and location for final disposition of bodily remains.

G. The director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:

1. For a surgical abortion, immediate postprocedure care, or care provided after inducing a medication abortion, consists of observation in a supervised recovery room for as long as the patient's condition warrants.

2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.

3. A licensed health professional who is trained in managing the recovery area and who is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.

4. For a surgical abortion, a physician with admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.

5. A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and ensures that it is offered to the patient in the immediate postoperative period or that it will be available to her within seventy-two hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

7. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

8. The physician ensures that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four hours after a surgical abortion to assess the patient's recovery.

9. Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

H. The director shall adopt rules that prescribe standards for follow-up visits. At a minimum these rules shall require that:

1. For a surgical abortion, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. For a medication abortion, the rules shall require that a postabortion medical visit is scheduled between one week and three weeks after the initial dose for a medication abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.

2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

I. The director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:

1. The abortion clinic records each incident resulting in a patient's or viable fetus' serious injury occurring at an abortion clinic and shall report them in writing to the department within ten days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ and includes any injury or condition that requires ambulance transportation of the patient.

2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department work day.

3. Incident reports are filed with the department and appropriate professional regulatory boards.

J. The director shall adopt rules relating to enforcement of this article. At a minimum, these rules shall require that:

1. For an abortion clinic that is not in substantial compliance with this article and the rules adopted pursuant to this article and section 36-2301 or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the department of any deficiencies that are listed on the department's statement of deficiency, the department may do any of the following:

(a) Assess a civil penalty pursuant to section 36-431.01.

(b) Impose an intermediate sanction pursuant to section 36-427.

(c) Suspend or revoke a license pursuant to section 36-427.

(d) Deny a license.

(e) Bring an action for an injunction pursuant to section 36-430.

2. In determining the appropriate enforcement action, the department consider the threat to the health, safety and welfare of the abortion clinic's patients or the general public, including:

(a) Whether the abortion clinic has repeated violations of statutes or rules.

(b) Whether the abortion clinic has engaged in a pattern of noncompliance.

(c) The type, severity and number of violations.

K. The department shall not release personally identifiable patient or physician information.

L. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.

36-2151. Definitions

In this article, unless the context otherwise requires:

1. "Abortion" means the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child.

Abortion does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus.

2. "Auscultation" means the act of listening for sounds made by internal organs of the unborn child, specifically for a heartbeat, using an ultrasound transducer and fetal heart rate monitor.

3. "Bodily remains" means the physical remains, corpse or body parts of an unborn child who has been expelled or extracted from his or her mother through abortion.

4. "Conception" means the fusion of a human spermatozoon with a human ovum.

5. "Final disposition" has the same meaning prescribed in section 36-301.

6. "Genetic abnormality" has the same meaning prescribed in section 13-3603.02.

7. "Gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

8. "Health professional" has the same meaning prescribed in section 32-3201.

9. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

10. "Medication abortion" means the use of any medication, drug or other substance that is intended to cause or induce an abortion.

11. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

12. "Pregnant" or "pregnancy" means a female reproductive condition of having a developing unborn child in the body and that begins with conception.

13. "Probable gestational age" means the gestational age of the unborn child at the time the abortion is planned to be performed and as determined with reasonable probability by the attending physician.

14. "Surgical abortion" means the use of a surgical instrument or a machine to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Surgical abortion does not include the use of any means to increase the probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Surgical abortion does not include patient care incidental to the procedure.

15. "Ultrasound" means the use of ultrasonic waves for diagnostic or therapeutic purposes to monitor a developing unborn child.

16. "Unborn child" means the offspring of human beings from conception until birth.

36-2152. <u>Parental consent; exception; hearings; time limits; violations; classification; civil relief; statute of limitations</u>

A. In addition to the other requirements of this chapter, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written and notarized consent from one of the minor's parents or the minor's guardian or conservator or unless a judge of the superior court authorizes the physician to perform the abortion pursuant to subsection B of this section. Notwithstanding section 41-319, the notarized statement of parental consent and the description of the document or notarial act recorded in the notary journal are confidential and are not public records.

B. A judge of the superior court, on petition or motion, and after an appropriate hearing, shall authorize a physician to perform the abortion if the judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant minor is not mature or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion on her without the consent from one of her parents or her guardian or conservator would be in her best interests and shall authorize a physician to perform the abortion without consent if the judge concludes that the pregnant minor's best interests would be served.

C. If the pregnant minor claims to be mature at a proceeding held pursuant to subsection B of this section, the minor must prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without consulting her parent or legal guardian based on her experience level, perspective and judgment.

In assessing the pregnant minor's experience level, the court may consider, among other relevant factors, the minor's age and experiences working outside the home, living away from home, traveling on her own, handling personal finances and making other significant decisions. In assessing the pregnant minor's perspective, the court may consider, among other relevant factors, what steps the minor took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the pregnant minor's judgment, the court may consider, among other relevant factors, the minor's conduct since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision.

D. The pregnant minor may participate in the court proceedings on her own behalf. The court shall appoint a guardian ad litem for her. The court shall advise her that she has the right to court-appointed counsel and, on her request, shall provide her with counsel unless she appears through private counsel or she knowingly and intelligently waives her right to counsel.

E. Proceedings in the court under this section are confidential and have precedence over other pending matters. Members of the public shall not inspect, obtain copies of or otherwise have access to records of court proceedings under this section unless authorized by law. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained, including the judge's own findings and conclusions. The minor may file the petition using a fictitious name. For the purposes of this subsection, public does not include judges, clerks, administrators, professionals or other persons employed by or working under the supervision of the court or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records.

F. The court shall hold the hearing and shall issue a ruling within forty-eight hours, excluding weekends and holidays, after the petition is filed. If the court fails to issue a ruling within this time period, the petition is deemed to have been granted and the consent requirement is waived.

G. An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. The appellate court shall hold the hearing and issue a ruling within forty-eight hours, excluding weekends and holidays, after the petition for appellate review is filed. Filing fees are not required of the pregnant minor at either the trial or the appellate level.

H. Parental consent or judicial authorization is not required under this section if either:

1. The pregnant minor certifies to the attending physician that the pregnancy resulted from sexual conduct with a minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent or by a person who lives in the same household with the minor and the minor's mother. The physician performing the abortion shall report the sexual conduct with a minor to the proper law enforcement officials pursuant to section 13-3620 and shall preserve and forward a sample of the fetal tissue to these officials for use in a criminal investigation.

2. The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, the pregnant minor has a condition that so complicates her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

I. A person who performs an abortion in violation of this section is guilty of a class 1 misdemeanor. A person who intentionally causes, aids or assists a minor in obtaining an abortion in violation of this section is guilty of a class 1 misdemeanor. A person is not subject to any liability under this section if the person establishes by written evidence that the person relied on evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are true.

J. In addition to other remedies available under the common or statutory law of this state, one or both of the minor's parents or the minor's guardian may bring a civil action in the superior court in the county in which the parents or the guardian resides to obtain appropriate relief for a violation of this section, unless the pregnancy resulted from the criminal conduct of the parent or guardian. The civil action may be based on a claim that failure to obtain consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. The civil action may be brought against the person who performs the abortion in violation of this section and any person who causes, aids or assists a minor to obtain an abortion without meeting the requirements of this section. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries that result from the violation of this section.

2. Statutory damages in an amount equal to $5,000 or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

K. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

L. The consent required by this section must be obtained on a form prescribed by the department of health services. At a minimum, the form must:

1. List the possible medical risks that may occur with any surgical, medical or diagnostic procedure, including the potential for infection, blood clots, hemorrhage, allergic reactions and death.

2. List the possible medical risks that may occur with a surgical abortion, including hemorrhage, uterine perforation, sterility, injury to the bowel or bladder, a possible hysterectomy as a result of a complication or injury during the procedure and failure to remove the unborn child that may result in an additional procedure.

3. List the possible medical risks that may occur with a medication abortion, including hemorrhage, infection, failure to remove the unborn child that may result in an additional procedure, sterility and the possible continuation of the pregnancy.

4. Require the pregnant minor's and the pregnant minor's parent's initials on each page of the form and a full signature on the final page of the form.

5. Include a space for the notary's signature and seal on the final page of the form.

M. The physician must maintain the form in the pregnant minor's records for seven years after the date of the procedure or five years after the date of the minor's maturity, whichever is longer.

36-2153. Informed consent; requirements; information; website; signage; violation; civil relief; statute of limitations

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following are true:

1. At least twenty-four hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of:

(a) The name of the physician who will perform the abortion.

(b) The nature of the proposed procedure or treatment.

(c) The immediate and long-term medical risks associated with the procedure that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(d) Alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(e) The probable gestational age of the unborn child at the time the abortion is to be performed.

(f) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

(g) The medical risks associated with carrying the child to term.

2. At least twenty-four hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified physician, physician assistant, nurse, psychologist or licensed behavioral health professional to whom the responsibility has been delegated by either physician has informed the woman, orally and in person, that:

(a) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care.

(b) The father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted.

(c) Public and private agencies and services are available to assist the woman during her pregnancy and after the birth of her child if she chooses not to have an abortion, whether she chooses to keep the child or place the child for adoption.

(d) It is unlawful for any person to coerce a woman to undergo an abortion.

(e) The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

(f) The department of health services maintains a website that describes the unborn child and lists the agencies that offer alternatives to abortion.

(g) The woman has the right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

(h) In the case of a surgical abortion, the woman has the right to determine final disposition of bodily remains and to be informed of the available options for locations and methods for disposition of bodily remains.

3. The information in paragraphs 1 and 2 of this subsection is provided to the woman individually and in a private room to protect her privacy and to ensure that the information focuses on her individual circumstances and that she has adequate opportunity to ask questions.

4. The woman certifies in writing before the abortion that the information required to be provided pursuant to paragraphs 1 and 2 of this subsection has been provided.

5. In the case of a surgical abortion, if the woman desires to exercise her right to determine final disposition of bodily remains, the woman indicates in writing her choice for the location and method of final disposition of bodily remains.

B. If a woman has taken mifepristone as part of a two-drug regimen to terminate her pregnancy, has not yet taken the second drug and consults an abortion clinic questioning her decision to terminate her pregnancy or seeking information regarding the health of her fetus or the efficacy of mifepristone alone to terminate a pregnancy, the abortion clinic staff shall inform the woman that the use of mifepristone alone to end a pregnancy is not always effective and that she should immediately consult a physician if she would like more information.

C. If a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or to avert substantial and irreversible impairment of a major bodily function.

D. The department of health services shall establish and shall annually update a website that includes a link to a printable version of all materials listed on the website. The materials must be written in an easily understood manner and printed in a typeface that is large enough to be clearly legible. The website must include all of the following materials:

1. Information that is organized geographically by location and that is designed to inform the woman about public and private agencies and services that are available to assist a woman through pregnancy, at childbirth and while her child is dependent, including adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the manner in which these agencies may be contacted, including the agencies' telephone numbers and website addresses.

2. Information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care.

3. A statement that it is unlawful for any person to coerce a woman to undergo an abortion.

4. A statement that any physician who performs an abortion on a woman without obtaining the woman's voluntary and informed consent or without affording her a private medical consultation may be liable to the woman for damages in a civil action.

5. A statement that the father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth and neonatal care.

6. Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival. The pictures or drawings must contain the dimensions of the unborn child and must be realistic and appropriate for each stage of pregnancy. The information provided pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

7. Objective information that describes the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.

8. Information explaining the efficacy of mifepristone taken alone, without a follow-up drug as part of a two-drug regimen, to terminate a pregnancy and advising a woman to immediately contact a physician if the woman has

taken only mifepristone and questions her decision to terminate her pregnancy or seeks information regarding the health of her fetus.

E. An individual who is not a physician shall not perform a surgical abortion.

F. A person shall not write or communicate a prescription for a drug or drugs to induce an abortion or require or obtain payment for a service provided to a patient who has inquired about an abortion or scheduled an abortion until the twenty-four-hour reflection period required by subsection A of this section expires.

G. A person shall not intimidate or coerce in any way any person to obtain an abortion. A parent, a guardian or any other person shall not coerce a minor to obtain an abortion. If a minor is denied financial support by the minor's parents, guardians or custodian due to the minor's refusal to have an abortion performed, the minor is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the emancipated minor may not use these benefits to obtain an abortion.

H. An abortion clinic as defined in section 36-449.01 shall conspicuously post signs that are visible to all who enter the abortion clinic, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion and a woman who is being forced to have an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse. The signs shall be posted in the waiting room, consultation rooms and procedure rooms.

I. A person shall not require a woman to obtain an abortion as a provision in a contract or as a condition of employment.

J. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

K. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.

2. The father of the unborn child if the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

3. A maternal grandparent of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

L. A civil action filed pursuant to subsection K of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection K of this section includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to $5,000 or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

M. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

36-2155. Performance of an abortion by individual who is not a physician; prohibition; definitions

A. An individual who is not a physician shall not perform a surgical abortion.

B. For the purposes of this section:

1. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

2. "Surgical abortion" means the use of a surgical instrument or a machine to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Surgical abortion does not include the use of any means to increase the probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Surgical abortion does not include patient care incidental to the procedure.

36-2156. Informed consent; ultrasound required; violation; civil relief; statute of limitations

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if both of the following are true:

1. At least twenty-four hours before the woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, the referring physician or a qualified person working in conjunction with either physician shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the woman undergoing the abortion.

(b) Offer to provide the woman with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child and accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child. The auscultation of fetal heart tone must be of a quality consistent with standard medical practice in the community.

(c) Offer to provide the woman with a simultaneous explanation of what the ultrasound is depicting, including the presence and location of the unborn child within the uterus, the number of unborn children depicted, the dimensions of the unborn child and the presence of any external members and internal organs, if present or viewable.

(d) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child.

2. The woman certifies in writing before the abortion that she has been given the opportunity to view the active ultrasound image and hear the heartbeat of the unborn child if the heartbeat is audible and that she opted to view or not view the active ultrasound image and hear or not hear the heartbeat of the unborn child.

B. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

C. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.

2. The father of the unborn child if married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

3. The maternal grandparents of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

D. A civil action filed pursuant to subsection C of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection C of this section includes any of the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to five thousand dollars or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

E. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

36-2157. Affidavit

A person shall not knowingly perform or induce an abortion before that person completes an affidavit that:

1. States that the person making the affidavit is not aborting the child because of the child's sex or race or because of a genetic abnormality of the child and has no knowledge that the child to be aborted is being aborted because of the child's sex or race or because of a genetic abnormality of the child.

2. Is signed by the person performing or inducing the abortion.

36-2158. Informed consent; fetal condition; website; unprofessional conduct; civil relief; statute of limitations; definitions

A. A person shall not perform or induce an abortion without first obtaining the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following occur:

1. In the case of a woman seeking an abortion of her unborn child diagnosed with a lethal fetal condition, at least twenty-four hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, that:

(a) Perinatal hospice services are available and the physician has offered this care as an alternative to abortion.

(b) The department of health services maintains a website that lists perinatal hospice programs that are available both in this state and nationally and that are organized geographically by location.

(c) The woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

2. In the case of a woman seeking an abortion of her unborn child diagnosed with a nonlethal fetal condition, at least twenty-four hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person:

(a) Of up-to-date, evidence-based information concerning the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes.

(b) That the department of health services maintains a website that lists information regarding support services, hotlines, resource centers or clearinghouses, national and local peer support groups and other education and support programs available to assist the woman and her unborn child, any national or local registries of families willing to adopt newborns with the nonlethal fetal condition and contact information for adoption agencies willing to place newborns with the nonlethal fetal condition with families willing to adopt.

(c) That the woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

(d) That section 13-3603.02 prohibits abortion because of the unborn child's sex or race or because of a genetic abnormality.

3. The woman certifies in writing before the abortion that the information required to be provided pursuant to this subsection has been provided.

B. The department of health services shall establish and annually update a website that includes the information prescribed in subsection A, paragraph 1, subdivision (b) and paragraph 2, subdivision (b) of this section.

C. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

D. In addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.

2. The father of the unborn child if the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.

3. A maternal grandparent of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the maternal grandparent's criminal conduct.

E. A civil action filed pursuant to subsection D of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to $5,000 or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

F. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

G. For the purposes of this section:

1. "Lethal fetal condition" means a fetal condition that is diagnosed before birth and that will result, with reasonable certainty, in the death of the unborn child within three months after birth.

2. "Nonlethal fetal condition" means a fetal condition that is diagnosed before birth and that will not result in the death of the unborn child within three months after birth but may result in physical or mental disability or abnormality.

3. "Perinatal hospice" means comprehensive support to the pregnant woman and her family that includes supportive care from the time of diagnosis through the time of birth and death of the infant and through the postpartum period. Supportive care may include counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers and specialty nurses who are focused on alleviating fear and ensuring that the woman and her family experience the life and death of the child in a comfortable and supportive environment.

36-2159. Abortion; gestational age; violation; classification; unprofessional conduct; civil relief; statute of limitations

A. Except in a medical emergency, a person shall not perform, induce or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn child. In making that determination, the physician or referring physician shall make any inquiries of the pregnant woman and perform or cause to be performed all medical examinations, imaging studies and tests as a reasonably prudent physician in the community, knowledgeable about the medical facts and conditions of both the woman and the unborn child involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age.

B. Except in a medical emergency, a person shall not knowingly perform, induce or attempt to perform or induce an abortion on a pregnant woman if the probable gestational age of her unborn child has been determined to be at least twenty weeks.

C. A person who knowingly violates this section commits a class 1 misdemeanor.

D. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

E. In addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed in violation of this section.

2. The father of the unborn child if the father is married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.

3. The maternal grandparents of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from either of the maternal grandparent's criminal conduct.

F. A civil action filed pursuant to subsection E of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to five thousand dollars or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

G. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

H. A woman on whom an abortion is performed or induced in violation of this section may not be prosecuted under this section or for conspiracy to commit a violation of this section.

36-2160. Abortion-inducing drugs; definition

A. An abortion-inducing drug may be provided only by a qualified physician in accordance with the requirements of this chapter.

B. A manufacturer, supplier or physician or any other person is prohibited from providing an abortion-inducing drug via courier, delivery or mail service.

C. This section does not apply to drugs that may be known to cause an abortion but that are prescribed for other medical indications.

D. For the purposes of this section, "abortion-inducing drug" means a medicine or drug or any other substance used for a medication abortion.

36-2161. Abortions; reporting requirements

A. A hospital or facility in this state where abortions are performed must submit to the department of health services on a form prescribed by the department a report of each abortion performed in the hospital or facility. The report shall not identify the individual patient by name or include any other information or identifier that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or sought to obtain an abortion. The report must include the following information:

1. The name and address of the facility where the abortion was performed.

2. The type of facility where the abortion was performed.

3. The county where the abortion was performed.

4. The woman's age.

5. The woman's educational background by highest grade completed and, if applicable, level of college completed.

6. The county and state in which the woman resides.

7. The woman's race and ethnicity.

8. The woman's marital status.

9. The number of prior pregnancies and prior abortions of the woman.

10. The number of previous spontaneous terminations of pregnancy of the woman.

11. The gestational age of the unborn child at the time of the abortion.

12. The reason for the abortion, including at least one of the following:

(a) The abortion is elective.

(b) The abortion is due to maternal health considerations, including one of the following:

(i) A premature rupture of membranes.

(ii) An anatomical abnormality.

(iii) Chorioamnionitis.

(iv) Preeclampsia.

(v) Other.

(c) The abortion is due to fetal health considerations, including the fetus being diagnosed with at least one of the following:

(i) A lethal anomaly.

(ii) A central nervous system anomaly.

(iii) Other.

(d) The pregnancy is the result of a sexual assault.

(e) The pregnancy is the result of incest.

(f) The woman is being coerced into obtaining an abortion.

(g) The woman is a victim of sex trafficking.

(h) The woman is a victim of domestic violence.

(i) Other.

(j) The woman declined to answer.

13. The type of procedure performed or prescribed and the date of the abortion.

14. Any preexisting medical conditions of the woman that would complicate pregnancy.

15. Any known medical complication that resulted from the abortion, including at least one of the following:

(a) Shock.

(b) Uterine perforation.

(c) Cervical laceration requiring suture or repair.

(d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.

(e) Aspiration or allergic response.

(f) Postprocedure infection.

(g) Sepsis.

(h) Incomplete abortion retaining part of the fetus requiring reevacuation.

(i) Damage to the uterus.

(j) Failed termination of pregnancy.

(k) Death of the patient.

(l) Other.

(m) None.

16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.

17. The physician's statement if required pursuant to section 36-2301.01.

18. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.

19. Whether a fetus or embryo was delivered alive as defined in section 36-2301 during or immediately after an attempted abortion and the efforts made to promote, preserve and maintain the life of the fetus or embryo pursuant to section 36-2301.

20. Statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive as defined in section 36-2301.

21. The medical specialty of the physician performing the abortion, including one of the following:

(a) Obstetrics-gynecology.

(b) General or family practice.

(c) Emergency medicine.

(d) Other.

22. The type of admission for the patient, including whether the abortion was performed:

(a) As an outpatient procedure in an abortion clinic.

(b) As an outpatient procedure at a hospital.

(c) As an inpatient procedure at a hospital.

(d) As an outpatient procedure at a health care institution other than an abortion clinic or hospital.

23. Whether anesthesia was administered to the mother.

24. Whether anesthesia was administered to the unborn child.

25. Whether any genetic abnormality of the unborn child was detected at or before the time of the abortion by genetic testing, such as maternal serum tests, or by ultrasound, such as nuchal translucency screening, or by other forms of testing.

26. If a surgical abortion was performed, the method of final disposition of bodily remains and whether the woman exercised her right to choose the final disposition of bodily remains.

B. The hospital or facility shall request the information specified in subsection A, paragraph 12 of this section at the same time the information pursuant to section 36-2153 is provided to the woman individually and in a private room to protect the woman's privacy. The information requested pursuant to subsection A, paragraph 12 of this section may be obtained on a medical form provided to the woman to complete if the woman completes the form individually and in a private room.

C. If the woman who is seeking the abortion discloses that the abortion is being sought because of a reason described in subsection A, paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the hospital or facility shall provide the woman with information regarding the woman's right to report a crime to law enforcement and resources available for assistance and services, including a national human trafficking resource hotline.

D. The report must be signed by the physician who performed the abortion or, if a health professional other than a physician is authorized by law to prescribe or administer abortion medication, the signature and title of the person

who prescribed or administered the abortion medication. The form may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of the person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.

E. Any report filed pursuant to this section shall be filed electronically at an internet website that is designated by the department unless the person required to file the report applies for a waiver from electronic reporting by submitting a written request to the department.

36-2301. Duty to promote life of fetus or embryo delivered alive; rules; judicial enforcement; civil action; damages; definitions

A. If an abortion is performed and a human fetus or embryo is delivered alive, it is the duty of any physician performing such an abortion and any additional physician in attendance as required by section 36-2301.01 to see that all available means and medical skills are used to promote, preserve and maintain the life of such a fetus or embryo.

B. If an abortion is performed and a human fetus or embryo is delivered alive, the physician performing the abortion shall document and report to the department of health services the measures the physician performed to maintain the life of the fetus or embryo. If an abortion is performed and a human fetus or embryo with a lethal fetal condition is delivered alive, the physician performing the abortion shall also document and report to the department of health services the specific lethal fetal condition that was diagnosed before the performance of the abortion and that was confirmed by an examination performed after the human embryo or fetus was delivered alive.

C. Before an abortion of a human fetus or embryo diagnosed with a lethal fetal condition, the physician performing the abortion must comply with the requirements of section 36-2158, subsection A and shall also inform the woman, orally and in person, that if the fetus or embryo is delivered alive, the diagnosis must be confirmed after the delivery and the standard of care required in subsection D of this section must be given.

D. The director of the department of health services shall prescribe rules requiring an abortion clinic or a hospital that performs or induces an abortion at or after twenty weeks' gestational age as defined in section 36-2151 to establish, document and implement policies and procedures to ensure compliance with this section. At a minimum, these policies and procedures shall require that:

1. In the case of an abortion clinic, a person is designated to contact emergency services immediately at the birth of a fetus or embryo delivered alive to arrange transfer to a hospital.

2. At least one person who is trained in neonatal resuscitation is present in the room where the abortion takes place for any abortion performed or induced at or after twenty weeks' gestational age.

3. Establish a protocol for rapid neonatal resuscitation of a fetus or embryo delivered alive, including assessing respiration and heart rate, clearing secretions, positioning the airway, providing warmth, drying and administering oxygen as needed.

E. If an abortion is performed and a human fetus or embryo with a lethal fetal condition is delivered alive, and the protocol for rapid neonatal resuscitation of a fetus or embryo pursuant to subsection D of this section is complied with and any further treatment beyond what is prescribed pursuant to subsection D of this section will do no more than temporarily prolong the act of dying when death is imminent, no further treatment is required by this section.

F. A hospital that is not in substantial compliance with the rules or policies and procedures adopted pursuant to this section may be subject to the penalties and sanctions specified in sections 36-427 and 36-431.01.

G. An action to enforce this section shall be brought in the name of the state by the attorney general or the county attorney in the superior court in the county in which the violation occurred.

H. In addition to other remedies available under the common or statutory law of this state, any of the following persons may file a civil action to obtain appropriate relief for a violation of this section:

1. The mother of the human fetus or embryo delivered alive.

2. The father of the human fetus or embryo delivered alive, unless the pregnancy resulted from the plaintiff's criminal conduct.

3. A maternal grandparent of the human fetus or embryo delivered alive if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

I. A civil action filed pursuant to subsection H of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that the failure to see that all available means and medical skills were used to promote, preserve and maintain the life of the human fetus

or embryo was a result of simple negligence, gross negligence or wanton, wilful or intentional misconduct or any other legal standard of care. Relief for a civil action filed pursuant to subsection H of this section may include any of the following:

1. Monetary damages for psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to five thousand dollars or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

J. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

K. For the purposes of this section:

1. "Abortion" has the same meaning prescribed in section 36-2151.

2. "Delivered alive" means the complete expulsion or extraction from the mother of a fetus or embryo, regardless of the state of gestational development, who, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, shows any evidence of life, including one or more of the following:

(a) Breathing.

(b) A heartbeat.

(c) Umbilical cord pulsation.

(d) Definite movement of voluntary muscles.

3. "Lethal fetal condition" has the same meaning prescribed in section 36-2158.

36-2301.01. Abortion of viable fetus; requirements; definitions

A. A physician shall not knowingly perform an abortion of a viable fetus unless:

1. The physician states in writing before the abortion is performed that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329.

2. The physician uses the available method or technique of abortion most likely to preserve the life and health of the fetus, unless the use of such method or technique would present a greater risk to the life or health of the woman than the use of another available method or technique.

3. The physician states in writing the available methods or techniques considered, the method or technique used and the reasons for choosing that method or technique. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329.

4. In addition to the physician performing the abortion, there is another physician in attendance who shall take control of and provide immediate medical care for a living child born as a result of the abortion.

5. The physician takes all reasonable steps during the performance of the abortion, consistent with the procedure used and in keeping with good medical practice, to preserve the life and health of the fetus, if these steps do not pose an increased risk to the life or health of the woman on whom the abortion is performed.

B. This section does not apply if there is a medical emergency.

C. For the purposes of this section and section 36-2301.02:

1. "Abortion" has the same meaning prescribed in section 36-2151.

2. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of the pregnancy to avoid the woman's death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

3. "Physician" means any person licensed under title 32, chapter 13 or 17.

4. "Viable fetus" means the unborn offspring of human beings that has reached a stage of fetal development so that, in the judgment of the attending physician on the particular facts of the case, there is a reasonable probability of the fetus' sustained survival outside the uterus, with or without artificial support.

36-2301.02. Review of ultrasound results

A. Beginning on January 1, 2001, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person estimates the gestational age of the fetus based on biparietal diameter and femur length

according to the hadlok measurement system or other equivalent measurement systems using ultrasound examination as provided in rule.

B. Beginning on January 1, 2001, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person ensures that a copy of each ultrasound result taken of a fetus of a woman as a result of a second or third trimester abortion is sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that the ultrasound result or results from the woman is sent in a manner that is distinguishable from, and not mixed with, any other set of ultrasound results and is accompanied with a copy of any report that notes the estimate of the fetus' gestational age that was made before the abortion.

C. The department of health services shall contract with qualified public or private persons or corporations for review of ultrasound results to determine compliance with this section. The department shall issue requests for proposals for the purpose of establishing contracts pursuant to this section. At a minimum, the contracts shall require the contractor to review ultrasound results to verify the accuracy of the fetus' estimated gestational age made before the abortion and to verify that the estimate was made in reasonable compliance with the hadlok measurement system or another equivalent measurement system as provided in rule.

D. The contractor shall use a statistically valid method of sampling to conduct the review of ultrasound results from a woman as a result of a second trimester abortion of a fetus of up to eighteen weeks' gestation. The contractor shall conduct a review of all ultrasound results from a woman as a result of an abortion of a fetus of eighteen or more weeks' gestation.

E. Beginning on January 1, 2001, on a monthly basis, persons or corporations providing ultrasound review services to the department pursuant to this section shall file a report with the director regarding ultrasound results, noting:

1. Any instances in which the contractor believes there was a significant inaccuracy in the estimated gestational age of the fetus made before the abortion.

2. Any circumstances that, based on the contractor's professional judgment, might explain a significant inaccuracy reported pursuant to paragraph 1 of this subsection.

3. Whether there was reasonable compliance pursuant to subsection C of this section.

4. Whether, based on the results of the review of each ultrasound, the physician should have filed a fetal death certificate with the department of health services as required by section 36-329, subsection C.

F. The department of health services shall forward the report or portions of the report within thirty working days to the appropriate professional regulatory boards for their review and appropriate action.

G. Except as provided by subsection F of this section, the reports required by this section are confidential and disclosable by the department or its contractor only in aggregate form for statistical or research purposes. Except as provided by subsection F of this section, information relating to any physician, hospital, clinic or other institution shall not be released. Personally identifiable patient information shall not be released by the department or its contractor.

Conference Engrossed

abortion; unborn child; genetic abnormality

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 286

SENATE BILL 1457

AN ACT

AMENDING TITLE 1, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 1-219; AMENDING SECTION 13-3603.02, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3604, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-115.01; AMENDING SECTIONS 35-196.04, 36-449.01, 36-449.03, 36-2151, 36-2153, 36-2157 AND 36-2158, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2160; AMENDING SECTION 36-2161, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 1, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 1-219, to read:

1-219. Interpretation of laws; unborn child; definition

A. THE LAWS OF THIS STATE SHALL BE INTERPRETED AND CONSTRUED TO ACKNOWLEDGE, ON BEHALF OF AN UNBORN CHILD AT EVERY STAGE OF DEVELOPMENT, ALL RIGHTS, PRIVILEGES AND IMMUNITIES AVAILABLE TO OTHER PERSONS, CITIZENS AND RESIDENTS OF THIS STATE, SUBJECT ONLY TO THE CONSTITUTION OF THE UNITED STATES AND DECISIONAL INTERPRETATIONS THEREOF BY THE UNITED STATES SUPREME COURT.

B. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION AGAINST:

1. A PERSON WHO PERFORMS IN VITRO FERTILIZATION PROCEDURES AS AUTHORIZED UNDER THE LAWS OF THIS STATE.

2. A WOMAN FOR INDIRECTLY HARMING HER UNBORN CHILD BY FAILING TO PROPERLY CARE FOR HERSELF OR BY FAILING TO FOLLOW ANY PARTICULAR PROGRAM OF PRENATAL CARE.

C. FOR THE PURPOSES OF THIS SECTION, "UNBORN CHILD" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

Sec. 2. Section 13-3603.02, Arizona Revised Statutes, is amended to read:

13-3603.02. Abortion; sex and race selection; genetic abnormality; injunctive and civil relief; failure to report; definitions

A. EXCEPT IN A MEDICAL EMERGENCY, a person who knowingly does any of the following is guilty of a class ~~3~~ 6 felony:

1. Performs an abortion knowing that the abortion is sought based on the sex or race of the child or the race of a parent of that child.

2. PERFORMS AN ABORTION KNOWING THAT THE ABORTION IS SOUGHT SOLELY BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD.

B. A PERSON WHO KNOWINGLY DOES EITHER OF THE FOLLOWING IS GUILTY OF A CLASS 3 FELONY:

~~2.~~ 1. Uses force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection or race-selection abortion OR AN ABORTION BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD.

~~3.~~ 2. Solicits or accepts monies to finance a sex-selection or race-selection abortion OR AN ABORTION BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD.

~~B.~~ C. The attorney general or the county attorney may bring an action in superior court to enjoin the activity described in subsection A OR B of this section.

~~C.~~ D. The father of the unborn child who is married to the mother at the time she receives a sex-selection or race-selection abortion OR AN ABORTION BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD, or, if the mother has not attained eighteen years of age at the time of the abortion, ~~the~~ A

maternal ~~grandparents~~ GRANDPARENT of the unborn child, may bring a civil action on behalf of the unborn child to obtain appropriate relief with respect to a violation of subsection A OR B of this section. The court may award reasonable attorney fees as part of the costs in an action brought pursuant to this subsection. For the purposes of this subsection, "appropriate relief" includes monetary damages for all injuries, whether psychological, physical or financial, including loss of companionship and support, resulting from the violation of subsection A OR B of this section.

~~D.~~ E. A physician, physician's assistant, nurse, counselor or other medical or mental health professional who knowingly does not report known violations of this section to appropriate law enforcement authorities shall be subject to a civil fine of not more than ~~ten thousand dollars~~ $10,000.

~~E.~~ F. A woman on whom a sex-selection or race-selection abortion OR AN ABORTION BECAUSE OF A CHILD'S GENETIC ABNORMALITY is performed is not subject to criminal prosecution or civil liability for any violation of this section or for a conspiracy to violate this section.

~~F.~~ G. For the purposes of this section: ~~,~~

1. "Abortion" has the same meaning prescribed in section 36-2151.

2. "GENETIC ABNORMALITY":

(a) MEANS THE PRESENCE OR PRESUMED PRESENCE OF AN ABNORMAL GENE EXPRESSION IN AN UNBORN CHILD, INCLUDING A CHROMOSOMAL DISORDER OR MORPHOLOGICAL MALFORMATION OCCURRING AS THE RESULT OF ABNORMAL GENE EXPRESSION.

(b) DOES NOT INCLUDE A LETHAL FETAL CONDITION. FOR THE PURPOSES OF THIS SUBDIVISION, "LETHAL FETAL CONDITION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2158.

3. "MEDICAL EMERGENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

Sec. 3. Repeal

Section 13-3604, Arizona Revised Statutes, is repealed.

Sec. 4. Title 15, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 15-115.01, to read:

15-115.01. Public educational institution facility; prohibition; definitions

A. A FACILITY THAT IS RUN BY OR THAT OPERATES ON THE PROPERTY OF A PUBLIC EDUCATIONAL INSTITUTION MAY NOT PERFORM OR PROVIDE AN ABORTION, UNLESS THE ABORTION IS NECESSARY TO SAVE THE LIFE OF THE WOMAN HAVING THE ABORTION.

B. FOR THE PURPOSES OF THIS SECTION:

1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

2. "MEDICAL EMERGENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

3. "PUBLIC EDUCATIONAL INSTITUTION" MEANS ANY OF THE FOLLOWING:

(a) A COMMUNITY COLLEGE AS DEFINED IN SECTION 15-1401.
(b) A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS.
(c) A SCHOOL DISTRICT, INCLUDING ITS SCHOOLS.
(d) A CHARTER SCHOOL.
(e) AN ACCOMMODATION SCHOOL.
(f) THE ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND.

Sec. 5. Section 35-196.04, Arizona Revised Statutes, is amended to read:

35-196.04. Use of public monies prohibited; human cloning research involving fetal remains from abortion; other prohibited research; definition

A. Notwithstanding any other law, tax monies of this state or any political subdivision of this state, federal monies passing through the state treasury or the treasury of any political subdivision of this state or any other public monies shall not be used by any person or entity, including any state funded institution or facility, for human somatic cell nuclear transfer, commonly known as human cloning.

B. NOTWITHSTANDING ANY OTHER LAW, PUBLIC MONIES OR TAX MONIES OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, ANY FEDERAL MONIES PASSING THROUGH THE STATE TREASURY OR THE TREASURY OF ANY POLITICAL SUBDIVISION OF THIS STATE OR MONIES PAID BY STUDENTS AS PART OF TUITION OR FEES TO A STATE UNIVERSITY OR A COMMUNITY COLLEGE SHALL NOT BE EXPENDED OR ALLOCATED FOR OR GRANTED TO OR ON BEHALF OF AN EXISTING OR PROPOSED RESEARCH PROJECT THAT INVOLVES FETAL REMAINS FROM AN ABORTION OR HUMAN SOMATIC CELL NUCLEAR TRANSFER OR ANY RESEARCH THAT IS PROHIBITED BY TITLE 36, CHAPTER 23.

~~B.~~ C. This section does not restrict areas of scientific research that are not specifically prohibited by this section, including research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, cells other than human embryos, tissues, organs, plants or animals other than humans.

~~C.~~ D. For the purposes of this section, "human somatic cell nuclear transfer" means human asexual reproduction that is accomplished by introducing the genetic material from one or more human somatic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated so as to produce an organism, at any stage of development, that is genetically virtually identical to an existing or previously existing human organism.

Sec. 6. Section 36-449.01, Arizona Revised Statutes, is amended to read:

36-449.01. Definitions

In this article, unless the context otherwise requires:

1. "Abortion" means the use of any means with the intent to terminate a woman's pregnancy for reasons other than to increase the

probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives.

2. "Abortion clinic" means a facility, other than a hospital, in which five or more first trimester abortions in any month or any second or third trimester abortions are performed.

3. "BODILY REMAINS" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

~~3.~~ 4. "Director" means the director of the department of health services.

5. "FINAL DISPOSITION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-301.

~~4.~~ 6. "Medication abortion" means the use of any medication, drug or other substance that is intended to cause or induce an abortion.

~~5.~~ 7. "Perform" includes the initial administration of any medication, drug or other substance intended to cause or induce an abortion.

~~6.~~ 8. "Surgical abortion" has the same meaning prescribed in section 36-2151.

~~7.~~ 9. "Viable fetus" has the same meaning prescribed in section 36-2301.01.

Sec. 7. Section 36-449.03, Arizona Revised Statutes, is amended to read:

36-449.03. Abortion clinics; rules; civil penalties

A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.

2. Dressing rooms for staff and patients.

3. Appropriate lavatory areas.

4. Areas for preprocedure hand washing.

5. Private procedure rooms.

6. Adequate lighting and ventilation for abortion procedures.

7. Surgical or gynecologic examination tables and other fixed equipment.

8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.

9. Emergency exits to accommodate a stretcher or gurney.

10. Areas for cleaning and sterilizing instruments.

11. Adequate areas ~~for the secure storage of~~ TO SECURELY STORE medical records and necessary equipment and supplies.

12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:

1. Prescribe required equipment and supplies, including medications, required ~~for the~~ TO conduct, in an appropriate fashion, ~~of~~ any abortion procedure that the medical staff of the clinic anticipates performing and ~~for monitoring~~ TO MONITOR the progress of each patient throughout the procedure and recovery period.

2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to ~~assure~~ ENSURE sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.

3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.

5. Require ultrasound equipment.

6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:

1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

2. Physicians performing abortions are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.

3. A physician is available:

(a) For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic.

(b) For a medication abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B.

4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, or monitoring and care after inducing a medication abortion, until each patient who had an abortion that day is discharged.

5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.

6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

1. A medical history, including the following:

(a) Reported allergies to medications, antiseptic solutions or latex.

(b) Obstetric and gynecologic history.

(c) Past surgeries.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

(a) Urine or blood tests for pregnancy performed before the abortion procedure.

(b) A test for anemia.

(c) Rh typing, unless reliable written documentation of blood type is available.

(d) Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in ~~the operation of~~ OPERATING ultrasound equipment as prescribed in rule. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the fetus.

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

E. The director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:

1. That medical personnel is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of local anesthesia, analgesia and sedation if ordered by the physician.

4. The use of appropriate precautions, such as ~~the establishment of~~ ESTABLISHING intravenous access at least for patients undergoing second or third trimester abortions.

5. The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

6. For abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of twenty weeks or more, minimum equipment standards to assist the physician in complying with section 36-2301. For the purposes of this paragraph, "abortion" and "gestational age" have the same meanings prescribed in section 36-2151.

F. THE DIRECTOR SHALL ADOPT RULES RELATING TO THE FINAL DISPOSITION OF BODILY REMAINS. AT A MINIMUM THESE RULES SHALL REQUIRE THAT:

1. THE FINAL DISPOSITION OF BODILY REMAINS FROM A SURGICAL ABORTION BE BY CREMATION OR INTERMENT.

2. FOR A SURGICAL ABORTION, THE WOMAN ON WHOM THE ABORTION IS PERFORMED HAS THE RIGHT TO DETERMINE THE METHOD AND LOCATION FOR FINAL DISPOSITION OF BODILY REMAINS.

~~F.~~ G. The director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:

1. For a surgical abortion, immediate postprocedure care, or care provided after inducing a medication abortion, consists of observation in a supervised recovery room for as long as the patient's condition warrants.

2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.

3. A licensed health professional who is trained in ~~the management of~~ MANAGING the recovery area and WHO is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.

4. For a surgical abortion, a physician with admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.

5. A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and ~~assures~~ ENSURES THAT it is offered to the patient in the immediate postoperative period or that it will be available to her within seventy-two hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

7. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

8. The physician ~~assures~~ ENSURES that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four hours after a surgical abortion to assess the patient's recovery.

9. Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

~~G.~~ H. The director shall adopt rules that prescribe standards for follow-up visits. At a minimum these rules shall require that:

1. For a surgical abortion, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. For a medication abortion, the rules shall require that a postabortion medical visit is scheduled between one week and three weeks after the initial dose for a medication abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.

2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

~~H.~~ I. The director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:

1. The abortion clinic records each incident resulting in a patient's or viable fetus' serious injury occurring at an abortion clinic and shall report them in writing to the department within ten days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ and includes any injury or condition that requires ambulance transportation of the patient.

2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department work day.

3. Incident reports are filed with the department and appropriate professional regulatory boards.

~~I.~~ J. The director shall adopt rules relating to enforcement of this article. At a minimum, these rules shall require that:

1. For an abortion clinic that is not in substantial compliance with this article and the rules adopted pursuant to this article and section 36-2301 or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the department of any deficiencies that are listed on the department's statement of deficiency, the department may do any of the following:

(a) Assess a civil penalty pursuant to section 36-431.01.

(b) Impose an intermediate sanction pursuant to section 36-427.

(c) Suspend or revoke a license pursuant to section 36-427.

(d) Deny a license.

(e) Bring an action for an injunction pursuant to section 36-430.

2. In determining the appropriate enforcement action, the department consider the threat to the health, safety and welfare of the abortion clinic's patients or the general public, including:

(a) Whether the abortion clinic has repeated violations of statutes or rules.

(b) Whether the abortion clinic has engaged in a pattern of noncompliance.

(c) The type, severity and number of violations.

~~J.~~ K. The department shall not release personally identifiable patient or physician information.

~~K.~~ L. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.

Sec. 8. Section 36-2151, Arizona Revised Statutes, is amended to read:

36-2151. Definitions

In this article, unless the context otherwise requires:

1. "Abortion" means the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Abortion does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus.

2. "Auscultation" means the act of listening for sounds made by internal organs of the unborn child, specifically for a heartbeat, using an ultrasound transducer and fetal heart rate monitor.

3. "BODILY REMAINS" MEANS THE PHYSICAL REMAINS, CORPSE OR BODY PARTS OF AN UNBORN CHILD WHO HAS BEEN EXPELLED OR EXTRACTED FROM HIS OR HER MOTHER THROUGH ABORTION.

~~3.~~ 4. "Conception" means the fusion of a human spermatozoon with a human ovum.

5. "FINAL DISPOSITION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-301.

6. "GENETIC ABNORMALITY" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3603.02.

~~4.~~ 7. "Gestational age" means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

~~5.~~ 8. "Health professional" has the same meaning prescribed in section 32-3201.

~~6.~~ 9. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

~~7.~~ 10. "Medication abortion" means the use of any medication, drug or other substance that is intended to cause or induce an abortion.

~~8.~~ 11. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

~~9.~~ 12. "Pregnant" or "pregnancy" means a female reproductive condition of having a developing unborn child in the body and that begins with conception.

~~10.~~ 13. "Probable gestational age" means the gestational age of the unborn child at the time the abortion is planned to be performed and as determined with reasonable probability by the attending physician.

~~11.~~ 14. "Surgical abortion" means the use of a surgical instrument or a machine to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Surgical abortion does not include the use of any means to increase the probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Surgical abortion does not include patient care incidental to the procedure.

~~12.~~ 15. "Ultrasound" means the use of ultrasonic waves for diagnostic or therapeutic purposes to monitor a developing unborn child.

~~13.~~ 16. "Unborn child" means the offspring of human beings from conception until birth.

Sec. 9. Section 36-2153, Arizona Revised Statutes, is amended to read:

36-2153. Informed consent; requirements; information; website; signage; violation; civil relief; statute of limitations

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following are true:

1. At least twenty-four hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of:

(a) The name of the physician who will perform the abortion.

(b) The nature of the proposed procedure or treatment.

(c) The immediate and long-term medical risks associated with the procedure that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(d) Alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(e) The probable gestational age of the unborn child at the time the abortion is to be performed.

(f) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

(g) The medical risks associated with carrying the child to term.

2. At least twenty-four hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified physician, physician assistant, nurse, psychologist or licensed behavioral health professional to whom the responsibility has been delegated by either physician has informed the woman, orally and in person, that:

(a) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care.

(b) The father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted.

(c) Public and private agencies and services are available to assist the woman during her pregnancy and after the birth of her child if she chooses not to have an abortion, whether she chooses to keep the child or place the child for adoption.

(d) It is unlawful for any person to coerce a woman to undergo an abortion.

(e) The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

(f) The department of health services maintains a website that describes the unborn child and lists the agencies that offer alternatives to abortion.

(g) The woman has ~~a~~ THE right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

(h) IN THE CASE OF A SURGICAL ABORTION, THE WOMAN HAS THE RIGHT TO DETERMINE FINAL DISPOSITION OF BODILY REMAINS AND TO BE INFORMED OF THE AVAILABLE OPTIONS FOR LOCATIONS AND METHODS FOR DISPOSITION OF BODILY REMAINS.

3. The information in paragraphs 1 and 2 of this subsection is provided to the woman individually and in a private room to protect her privacy and to ensure that the information focuses on her individual circumstances and that she has adequate opportunity to ask questions.

4. The woman certifies in writing before the abortion that the information required to be provided pursuant to paragraphs 1 and 2 of this subsection has been provided.

5. IN THE CASE OF A SURGICAL ABORTION, IF THE WOMAN DESIRES TO EXERCISE HER RIGHT TO DETERMINE FINAL DISPOSITION OF BODILY REMAINS, THE WOMAN INDICATES IN WRITING HER CHOICE FOR THE LOCATION AND METHOD OF FINAL DISPOSITION OF BODILY REMAINS.

B. If a woman has taken mifepristone as part of a two-drug regimen to terminate her pregnancy, has not yet taken the second drug and consults an abortion clinic questioning her decision to terminate her pregnancy or seeking information regarding the health of her fetus or the efficacy of mifepristone alone to terminate a pregnancy, the abortion clinic staff shall inform the woman that the use of mifepristone alone to end a pregnancy is not always effective and that she should immediately consult a physician if she would like more information.

C. If a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or to avert substantial and irreversible impairment of a major bodily function.

D. The department of health services shall establish and shall annually update a website that includes a link to a printable version of all materials listed on the website. The materials must be written in an easily understood manner and printed in a typeface that is large enough to be clearly legible. The website must include all of the following materials:

1. Information that is organized geographically by location and that is designed to inform the woman about public and private agencies and services that are available to assist a woman through pregnancy, at childbirth and while her child is dependent, including adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the manner in which these agencies may be contacted, including the agencies' telephone numbers and website addresses.

2. Information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care.

3. A statement that it is unlawful for any person to coerce a woman to undergo an abortion.

4. A statement that any physician who performs an abortion on a woman without obtaining the woman's voluntary and informed consent or without affording her a private medical consultation may be liable to the woman for damages in a civil action.

5. A statement that the father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth and neonatal care.

6. Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival. The pictures or drawings must contain the dimensions of the unborn child and must be realistic and appropriate for each stage of pregnancy. The information provided pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

7. Objective information that describes the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.

8. Information explaining the efficacy of mifepristone taken alone, without a follow-up drug as part of a two-drug regimen, to terminate a pregnancy and advising a woman to immediately contact a physician if the woman has taken only mifepristone and questions her decision to terminate her pregnancy or seeks information regarding the health of her fetus.

E. An individual who is not a physician shall not perform a surgical abortion.

F. A person shall not write or communicate a prescription for a drug or drugs to induce an abortion or require or obtain payment for a service provided to a patient who has inquired about an abortion or

scheduled an abortion until the ~~expiration of the~~ twenty-four-hour reflection period required by subsection A of this section EXPIRES.

G. A person shall not intimidate or coerce in any way any person to obtain an abortion. A parent, a guardian or any other person shall not coerce a minor to obtain an abortion. If a minor is denied financial support by the minor's parents, guardians or custodian due to the minor's refusal to have an abortion performed, the minor is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the emancipated minor may not use these benefits to obtain an abortion.

H. An abortion clinic as defined in section 36-449.01 shall conspicuously post signs that are visible to all who enter the abortion clinic, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion and a woman who is being forced to have an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse. The signs shall be posted in the waiting room, consultation rooms and procedure rooms.

I. A person shall not require a woman to obtain an abortion as a provision in a contract or as a condition of employment.

J. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

K. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.

2. The father of the unborn child if the father was married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

3. ~~The~~ A maternal ~~grandparents~~ GRANDPARENT of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff's criminal conduct.

L. A civil action filed pursuant to subsection K of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection K of this section includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to ~~five thousand dollars~~ $5,000 or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

M. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

Sec. 10. Section 36-2157, Arizona Revised Statutes, is amended to read:

36-2157. Affidavit

A person shall not knowingly perform or induce an abortion before that person completes an affidavit that:

1. States that the person making the affidavit is not aborting the child because of the child's sex or race OR BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD and has no knowledge that the child to be aborted is being aborted because of the child's sex or race OR BECAUSE OF A GENETIC ABNORMALITY OF THE CHILD.

2. Is signed by the person performing or inducing the abortion.

Sec. 11. Section 36-2158, Arizona Revised Statutes, is amended to read:

36-2158. Informed consent; fetal condition; website; unprofessional conduct; civil relief; statute of limitations; definitions

A. A person shall not perform or induce an abortion without first obtaining the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following occur:

1. In the case of a woman seeking an abortion of her unborn child diagnosed with a lethal fetal condition, at least twenty-four hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, that:

(a) Perinatal hospice services are available and the physician has offered this care as an alternative to abortion.

(b) The department of health services maintains a website that lists perinatal hospice programs that are available both in this state and nationally and that are organized geographically by location.

(c) The woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

2. In the case of a woman seeking an abortion of her unborn child diagnosed with a nonlethal fetal condition, at least twenty-four hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person:

(a) Of up-to-date, evidence-based information concerning the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes.

(b) That the department of health services maintains a website that lists information regarding support services, hotlines, resource centers or clearinghouses, national and local peer support groups and other education and support programs available to assist the woman and her unborn child, any national or local registries of families willing to adopt newborns with the nonlethal fetal condition and contact information for adoption agencies willing to place newborns with the nonlethal fetal condition with families willing to adopt.

(c) That the woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.

(d) THAT SECTION 13-3603.02 PROHIBITS ABORTION BECAUSE OF THE UNBORN CHILD'S SEX OR RACE OR BECAUSE OF A GENETIC ABNORMALITY.

3. The woman certifies in writing before the abortion that the information required to be provided pursuant to this subsection has been provided.

B. The department of health services shall establish ~~a website within ninety days after the effective date of this section~~ and ~~shall~~ annually update ~~the~~ A website~~. The website shall include~~ THAT INCLUDES the information prescribed in subsection A, paragraph 1, subdivision (b) and paragraph 2, subdivision (b) of this section.

C. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

D. In addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.

2. The father of the unborn child if the father ~~is~~ WAS married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.

3. ~~The~~ A maternal ~~grandparents~~ GRANDPARENT of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from ~~either of~~ the maternal grandparent's criminal conduct.

E. A civil action filed pursuant to subsection D of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to this subsection includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.

2. Statutory damages in an amount equal to ~~five thousand dollars~~ $5,000 or three times the cost of the abortion, whichever is greater.

3. Reasonable attorney fees and costs.

F. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

G. For the purposes of this section:

1. "Lethal fetal condition" means a fetal condition that is diagnosed before birth and that will result, with reasonable certainty, in the death of the unborn child within three months after birth.

2. "Nonlethal fetal condition" means a fetal condition that is diagnosed before birth and that will not result in the death of the unborn child within three months after birth but may result in physical or mental disability or abnormality.

3. "Perinatal hospice" means comprehensive support to the pregnant woman and her family that includes supportive care from the time of diagnosis through the time of birth and death of the infant and through the postpartum period. Supportive care may include counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers and specialty nurses who are focused on alleviating fear and ensuring that the woman and her family experience the life and death of the child in a comfortable and supportive environment.

Sec. 12. Title 36, chapter 20, article 1, Arizona Revised Statutes, is amended by adding section 36-2160, to read:

36-2160. Abortion-inducing drugs; definition

A. AN ABORTION-INDUCING DRUG MAY BE PROVIDED ONLY BY A QUALIFIED PHYSICIAN IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

B. A MANUFACTURER, SUPPLIER OR PHYSICIAN OR ANY OTHER PERSON IS PROHIBITED FROM PROVIDING AN ABORTION-INDUCING DRUG VIA COURIER, DELIVERY OR MAIL SERVICE.

C. THIS SECTION DOES NOT APPLY TO DRUGS THAT MAY BE KNOWN TO CAUSE AN ABORTION BUT THAT ARE PRESCRIBED FOR OTHER MEDICAL INDICATIONS.

D. FOR THE PURPOSES OF THIS SECTION, "ABORTION-INDUCING DRUG" MEANS A MEDICINE OR DRUG OR ANY OTHER SUBSTANCE USED FOR A MEDICATION ABORTION.

Sec. 13. Section 36-2161, Arizona Revised Statutes, is amended to read:

36-2161. Abortions; reporting requirements

A. A hospital or facility in this state where abortions are performed must submit to the department of health services on a form prescribed by the department a report of each abortion performed in the hospital or facility. The report shall not identify the individual patient by name or include any other information or identifier that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or sought to obtain an abortion. The report must include the following information:

1. The name and address of the facility where the abortion was performed.

2. The type of facility where the abortion was performed.

3. The county where the abortion was performed.

4. The woman's age.

5. The woman's educational background by highest grade completed and, if applicable, level of college completed.

6. The county and state in which the woman resides.

7. The woman's race and ethnicity.

8. The woman's marital status.

9. The number of prior pregnancies and prior abortions of the woman.

10. The number of previous spontaneous terminations of pregnancy of the woman.

11. The gestational age of the unborn child at the time of the abortion.

12. The reason for the abortion, including at least one of the following:

(a) The abortion is elective.

(b) The abortion is due to maternal health considerations, including one of the following:

(i) A premature rupture of membranes.

(ii) An anatomical abnormality.

(iii) Chorioamnionitis.

(iv) Preeclampsia.

(v) Other.

(c) The abortion is due to fetal health considerations, including the fetus being diagnosed with at least one of the following:

(i) A lethal anomaly.

(ii) A central nervous system anomaly.

~~(iii) Trisomy 18.~~

~~(iv) Trisomy 21.~~

~~(v) Triploidy.~~

~~(vi)~~ (iii) Other.

(d) The pregnancy is the result of a sexual assault.

(e) The pregnancy is the result of incest.

(f) The woman is being coerced into obtaining an abortion.

(g) The woman is a victim of sex trafficking.

(h) The woman is a victim of domestic violence.

(i) Other.

(j) The woman declined to answer.

13. The type of procedure performed or prescribed and the date of the abortion.

14. Any preexisting medical conditions of the woman that would complicate pregnancy.

15. Any known medical complication that resulted from the abortion, including at least one of the following:

(a) Shock.

(b) Uterine perforation.

(c) Cervical laceration requiring suture or repair.

(d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.

(e) Aspiration or allergic response.

(f) Postprocedure infection.

(g) Sepsis.

(h) Incomplete abortion retaining part of the fetus requiring reevacuation.

(i) Damage to the uterus.

(j) Failed termination of pregnancy.

(k) Death of the patient.

(l) Other.

(m) None.

16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.

17. The physician's statement if required pursuant to section 36-2301.01.

18. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.

19. Whether a fetus or embryo was delivered alive as defined in section 36-2301 during or immediately after an attempted abortion and the efforts made to promote, preserve and maintain the life of the fetus or embryo pursuant to section 36-2301.

20. Statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive as defined in section 36-2301.

21. The medical specialty of the physician performing the abortion, including one of the following:

(a) Obstetrics-gynecology.

(b) General or family practice.

(c) Emergency medicine.

(d) Other.

22. The type of admission for the patient, including whether the abortion was performed:

(a) As an outpatient procedure in an abortion clinic.

(b) As an outpatient procedure at a hospital.

(c) As an inpatient procedure at a hospital.

(d) As an outpatient procedure at a health care institution other than an abortion clinic or hospital.

23. Whether anesthesia was administered to the mother.

24. Whether anesthesia was administered to the unborn child.

25. WHETHER ANY GENETIC ABNORMALITY OF THE UNBORN CHILD WAS DETECTED AT OR BEFORE THE TIME OF THE ABORTION BY GENETIC TESTING, SUCH AS MATERNAL SERUM TESTS, OR BY ULTRASOUND, SUCH AS NUCHAL TRANSLUCENCY SCREENING, OR BY OTHER FORMS OF TESTING.

26. IF A SURGICAL ABORTION WAS PERFORMED, THE METHOD OF FINAL DISPOSITION OF BODILY REMAINS AND WHETHER THE WOMAN EXERCISED HER RIGHT TO CHOOSE THE FINAL DISPOSITION OF BODILY REMAINS.

B. The hospital or facility shall request the information specified in subsection A, paragraph 12 of this section at the same time the information pursuant to section 36-2153 is provided to the woman individually and in a private room to protect the woman's privacy. The information requested pursuant to subsection A, paragraph 12 of this section may be obtained on a medical form provided to the woman to complete if the woman completes the form individually and in a private room.

C. If the woman who is seeking the abortion discloses that the abortion is being sought because of a reason described in subsection A, paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the hospital or facility shall provide the woman with information regarding the woman's right to report a crime to law enforcement and resources available for assistance and services, including a national human trafficking resource hotline.

D. The report must be signed by the physician who performed the abortion or, if a health professional other than a physician is authorized by law to prescribe or administer abortion medication, the signature and title of the person who prescribed or administered the abortion medication. The form may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of the person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.

E. Any report filed pursuant to this section shall be filed electronically at an internet website that is designated by the department unless the person required to file the report applies for a waiver from electronic reporting by submitting a written request to the department.

Sec. 14. Exemption from rulemaking

For the purposes of this act, the department of health services is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 15. Legislative findings and intent

The Legislature finds that prohibiting persons from performing abortions knowing that the abortion is sought because of a genetic abnormality of the child advances at least three compelling state interests. First, this act protects the disability community from discriminatory abortions, including for example Down-syndrome-selective abortions. The Legislature finds that in the United States and abroad fetuses with Down syndrome are disproportionately targeted for abortions, with between 61 percent and 91 percent choosing abortion when it is discovered on a prenatal test. See Box v. Planned Parenthood of Indiana and Kentucky, Inc., 139 S. Ct. 1780, 1790-91 (2019) (Thomas, J., concurring). The Legislature intends to send an unambiguous message that children with genetic abnormalities, whether born or unborn, are equal in dignity and value to their peers without genetic abnormalities, born or unborn. Second, this act protects against coercive health care practices that encourage selective abortions of persons with genetic abnormalities. The Sixth Circuit Court of Appeals recently found that empirical reports from parents of children with Down syndrome attest that their doctors explicitly encouraged abortion or emphasized the challenges of raising children with Down syndrome, and there is medical literature to that effect. See Preterm-Cleveland v. McCloud, No. 18-3329, __ F.3d __, 2021 WL 1377279, at *2 (6th Cir. Apr. 13, 2021) (citing David A. Savitz, How Far Can Prenatal Screening Go in Preventing Birth Defects, 152 J. of Pediatrics 3, 3 (2008) (arguing that "selective pregnancy terminations and reduced birth prevalence [of Down syndrome is] a desirable and attainable goal")). Third, this act protects the integrity and ethics of the medical profession by preventing doctors from becoming witting participants in genetic-abnormality-selective abortions. The Legislature finds that an industry that is associated with the view that some lives or potential lives are worth more than others is less likely to earn or retain the public's trust. All three of these purposes are also present for the similar prohibition in Arizona law on performing abortions knowing that the abortion is sought based on the sex or race of the child or the race of a parent of that child. The Legislature incorporates into its findings the statistics recently provided by this state and other states to the Supreme Court of the United States. See Brief of the States of Wisconsin et al. at pages 17-25, Box v. Planned Parenthood of Indiana and Kentucky Inc., No. 18-483, 2018 WL 6042853, available at https://www.supremecourt.gov/DocketPDF/18/18-483/72184/20181115122354603_18-483%20Brief%20of%20States%20of%20Wisconsin%20et%20al%20Supporting%20Petitioners.pdf.

Sec. 16. Intervention

The Legislature, by concurrent resolution, may appoint one or more of its members who sponsored or cosponsored this act in the member's

official capacity to intervene as a matter of right in any case in which the constitutionality of this act is challenged.

Sec. 17. Construction

This act does not create or recognize a right to an abortion and does not make lawful an abortion that is currently unlawful.

Sec. 18. 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 this 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 APRIL 27, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2021.

Senate Engrossed

abortion; gestational age; limit

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 105

SENATE BILL 1164

AN ACT

AMENDING TITLE 36, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, chapter 23, Arizona Revised Statutes, is amended by adding article 3, to read:

ARTICLE 3. GESTATIONAL LIMIT ON ABORTION

36-2321. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ABORTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-2151.

2. "ATTEMPT TO PERFORM OR INDUCE AN ABORTION" MEANS TO DO OR TO OMIT DOING ANYTHING THAT, UNDER THE CIRCUMSTANCES AS THE PHYSICIAN BELIEVES THEM TO BE, IS AN ACT OR OMISSION THAT CONSTITUTES A SUBSTANTIAL STEP IN A COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR INDUCTION OF AN ABORTION IN VIOLATION OF THIS ARTICLE.

3. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

4. "GESTATIONAL AGE" OR "PROBABLE GESTATIONAL AGE" MEANS THE AGE OF AN UNBORN HUMAN BEING AS CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE PREGNANT WOMAN.

5. "HUMAN BEING" MEANS AN INDIVIDUAL MEMBER OF THE SPECIES HOMO SAPIENS, FROM AND AFTER THE POINT OF CONCEPTION.

6. "MAJOR BODILY FUNCTION" INCLUDES FUNCTIONS OF THE IMMUNE SYSTEM, NORMAL CELL GROWTH, AND DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE FUNCTIONS.

7. "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE THE IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

8. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17.

36-2322. Gestational limit on abortion; medical emergency exception; physician reports; confidentiality

A. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION UNLESS THE PHYSICIAN OR THE REFERRING PHYSICIAN HAS FIRST MADE A DETERMINATION OF THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND DOCUMENTED THAT GESTATIONAL AGE IN THE MATERNAL PATIENT'S CHART AND, IF REQUIRED, IN A REPORT REQUIRED TO BE FILED WITH THE DEPARTMENT AS SET FORTH IN SUBSECTION C OF THIS SECTION. THE DETERMINATION OF PROBABLE GESTATIONAL AGE SHALL BE MADE ACCORDING TO STANDARD MEDICAL PRACTICES AND TECHNIQUES USED IN THE MEDICAL COMMUNITY.

B. EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN MAY NOT INTENTIONALLY OR KNOWINGLY PERFORM, INDUCE OR ATTEMPT TO PERFORM OR INDUCE AN ABORTION IF THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING HAS BEEN DETERMINED TO BE GREATER THAN FIFTEEN WEEKS.

C. IN EVERY CASE IN WHICH A PHYSICIAN PERFORMS OR INDUCES AN ABORTION ON AN UNBORN HUMAN BEING WHOSE GESTATIONAL AGE IS GREATER THAN FIFTEEN WEEKS, THE PHYSICIAN, WITHIN FIFTEEN DAYS AFTER THE ABORTION, SHALL FILE WITH THE DEPARTMENT, ON A FORM SUPPLIED BY THE DEPARTMENT, A REPORT CONTAINING ALL OF THE FOLLOWING:

1. THE DATE THE ABORTION WAS PERFORMED.

2. SPECIFIC METHOD OF ABORTION USED.

3. THE PROBABLE GESTATIONAL AGE OF THE UNBORN HUMAN BEING AND THE METHOD USED TO CALCULATE GESTATIONAL AGE.

4. A STATEMENT THAT THE ABORTION WAS NECESSARY BECAUSE OF A MEDICAL EMERGENCY.

5. THE SPECIFIC MEDICAL INDICATIONS SUPPORTING THE DETERMINATION THAT A MEDICAL EMERGENCY EXISTED.

6. THE PROBABLE HEALTH CONSEQUENCES OF THE ABORTION.

7. THE PHYSICIAN'S SIGNATURE AS THE PHYSICIAN'S ATTESTATION UNDER OATH THAT THE INFORMATION STATED IS TRUE AND CORRECT TO THE BEST OF THE PHYSICIAN'S KNOWLEDGE.

D. REPORTS REQUIRED AND SUBMITTED PURSUANT TO SUBSECTION C OF THIS SECTION MAY NOT CONTAIN THE NAME OF THE MATERNAL PATIENT ON WHOM THE ABORTION WAS PERFORMED OR ANY OTHER INFORMATION OR IDENTIFIERS THAT WOULD MAKE IT POSSIBLE TO IDENTIFY, IN ANY MANNER OR UNDER ANY CIRCUMSTANCES, A WOMAN WHO OBTAINED OR SOUGHT TO OBTAIN AN ABORTION.

36-2323. Department; forms

THE DEPARTMENT SHALL CREATE THE FORMS REQUIRED BY SECTION 36-2322 WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE REPORTING REQUIREMENTS OF SECTION 36-2322 ON FORMS PUBLISHED BY THE DEPARTMENT DO NOT APPLY UNTIL TEN DAYS AFTER THE REQUISITE FORMS HAVE BEEN MADE AVAILABLE OR THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER IS LATER.

36-2324. Violation; classification; exclusion from prosecution

A. ANY PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE PROHIBITION IN SECTION 36-2322, SUBSECTION B IS GUILTY OF A CLASS 6 FELONY.

B. A PREGNANT WOMAN ON WHOM AN ABORTION IS PERFORMED, INDUCED OR ATTEMPTED IN VIOLATION OF SECTION 36-2322 MAY NOT BE PROSECUTED FOR CONSPIRACY TO COMMIT ANY VIOLATION OF THIS ARTICLE.

36-2325. Unprofessional conduct; civil penalties

A. A PHYSICIAN WHO INTENTIONALLY OR KNOWINGLY VIOLATES THE PROHIBITION IN SECTION 36-2322, SUBSECTION B COMMITS AN ACT OF UNPROFESSIONAL CONDUCT AND THE PHYSICIAN'S LICENSE TO PRACTICE MEDICINE IN THIS STATE SHALL BE SUSPENDED OR REVOKED PURSUANT TO TITLE 32, CHAPTER 13 OR 17, AS APPLICABLE.

B. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY DELIVERS TO THE DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C THAT CONTAINS A FALSE STATEMENT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN $10,000 IMPOSED BY THE DEPARTMENT.

C. A PHYSICIAN WHO KNOWINGLY OR INTENTIONALLY FAILS TO FILE WITH THE DEPARTMENT ANY REPORT REQUIRED BY SECTION 36-2322, SUBSECTION C IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN $10,000 IMPOSED BY THE DEPARTMENT.

36-2326. Enforcement; attorney general

THE ATTORNEY GENERAL MAY BRING AN ACTION IN LAW OR EQUITY TO ENFORCE THIS ARTICLE ON BEHALF OF THE DIRECTOR OF THE DEPARTMENT, THE ARIZONA MEDICAL BOARD OR THE BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY.

Sec. 2. Construction

This act does not:

1. Create or recognize a right to abortion or alter generally accepted medical standards. The Legislature does not intend this act to make lawful an abortion that is currently unlawful.

2. Repeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes, or any other applicable state law regulating or restricting abortion.

Sec. 3. Legislative intent

A. The Legislature makes the following findings of fact and incorporates them herein by reference:

1. The United States is one of only six nations in the world that allows nontherapeutic or elective abortion-on-demand after the twentieth week of gestation. In fact, fully seventy-five percent of all nations do not allow abortion after twelve weeks' gestation, except in most instances to save the life or to preserve the physical health of the mother.

2. Medical and other authorities now know more about human prenatal development than ever before, including that:

(a) Between five and six weeks' gestation, an unborn human being's heart begins beating.

(b) An unborn human being begins to move about in the womb at approximately eight weeks' gestation.

(c) At nine weeks' gestation, all basic physiological functions are present. Teeth and eyes are present, as well as external genitalia.

(d) An unborn human being's vital organs begin to function at ten weeks' gestation. Hair, fingernails and toenails also begin to form.

(e) At eleven weeks' gestation, an unborn human being's diaphragm is developing, and he or she may even hiccup. The unborn human being is beginning to move about freely in the womb.

(f) At twelve weeks' gestation, an unborn human being can open and close his or her fingers, starts to make sucking motions and senses stimulation from the world outside the womb. Importantly, the unborn

human being has taken on "the human form" in all relevant aspects. Gonzales v. Carhart, 550 U.S. 124, 160 (2007).

3. The United States Supreme Court has long recognized that this state has an "important and legitimate interest in protecting the potentiality of human life," Roe v. Wade, 410 U.S. 113, 162 (1973), and specifically that this state "has an interest in protecting the life of the unborn." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 873 (1992).

4. The majority of abortion procedures performed after fifteen weeks' gestation are dilation and evacuation procedures that involve the use of surgical instruments to crush and tear the unborn human being apart before removing the pieces of the dead human being from the womb. The Legislature finds that the intentional commission of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient and demeaning to the medical profession.

5. Most obstetricians and gynecologists practicing in this state do not offer or perform nontherapeutic or elective abortions. Even fewer offer or perform the dilation and evacuation abortion procedure even though it is within their scope of practice.

6. This state also has "legitimate interests from the outset of pregnancy in protecting the health of women." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992), as the "medical, emotional, and psychological consequences of abortion are serious and can be lasting.…" H.L. v. Matheson, 450 U.S. 398, 411 (1981).

7. Abortion carries significant physical and psychological risks to the maternal patient and these physical and psychological risks increase with gestational age. Specifically, in abortions performed after eight weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases. L. Bartlett et al., Risk factors for legal induced abortion mortality in the United States, OBSTETRICS AND GYNECOLOGY 103(4):729 (2004).

8. Importantly, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term.

9. Medical complications from dilation and evacuation abortions include pelvic infection, incomplete abortions (retained tissue), blood clots, heavy bleeding or hemorrhage, laceration, tear or other injury to the cervix, puncture, laceration, tear or other injury to the uterus, injury to the bowel or bladder, depression, anxiety, substance abuse and other emotional or psychological problems. Further, in abortions performed after fifteen weeks' gestation, there is a higher risk of requiring a hysterectomy, other reparative surgery or blood transfusion.

B. This Legislature intends through this act and any rules and policies adopted hereunder, to restrict the practice of nontherapeutic or elective abortion to the period up to fifteen weeks of gestation.

Sec. 4. Right of intervention

The Legislature may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of this act is challenged.

Sec. 5. 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 MARCH 30, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 30, 2022.

E-4.

BOARD OF PHARMACY
Title 4, Chapter 23, Articles 6 & 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: **January 5, 2024**

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23, Articles 6 & 8

Summary

This Five Year Review Report (5YRR) from the Arizona Board of Pharmacy (Board) covers forty-two (42) rules in Title 4, Chapter 23, Articles 6 & 8. Article 6 relates to Permits and Distribution of Drugs involving entities such as pharmacies and drug wholesalers and Article 8 relates to Drug Classification and distribution of veterinary drugs. The Board protects the health, safety and welfare of the citizens of Arizona by regulating the practice of pharmacy and the distribution, sale and storage of prescription medications and devices and non-prescription medications. The Board indicates that they mostly completed their prior course of action in the 5YRR approved by the Council on December 4, 2018 by completing three separate rulemakings in 2019 and 2020. The Board has not completed a rulemaking addressing sterile compounding and the current compendium.

Proposed Action

The Board intends to complete a rulemaking that will address the issues identified in subsection 5, modernize the rules regarding sterile compounding, and incorporate the most current version of the compendium. The Board expects to submit the rulemaking to Council by December 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:**

Since the Board's last 5YRR, nine amendments and two new rules were introduced in Article 6 and one rule was repealed in Article 8. The Board received no information indicating the economic, small business, and consumer impact statements prepared when the remaining 32 rules were made are inaccurate. The rulemakings associated with the changes included establishing requirements and procedures for obtaining a permit for an automated prescription-dispensing kiosk, deleting detail regarding the application for 3PL permits, and repealing a burdensome regulation for dealing with dietary supplements—all of which had minimal economic impact as a direct result of the rule. The board has determined that it is possible to improve the clarity and understandability of the reviewed rules; however, the existing issues do not create enforcement difficulties or impose regulatory burdens. The Board has determined that the rules are effective at promoting the safe and professional practice of pharmacy and protecting public health and safety.

Stakeholders are identified as the Board; entities looking to ship or sell into Arizona a regulated chemical, including narcotics, prescription and non-prescription drugs and precursor chemicals; resident drug manufacturers and wholesalers; pharmacies; nonresidents looking to sell or distribute a regulated chemical in Arizona; hospitals and their patients; third-party logistics providers; compressed medical gas distributors; durable medical equipment and compressed medical gas suppliers; veterinary drug manufacturers and suppliers; 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 determined the probable benefits of the rules outweigh the probable costs of the rules and impose the least burden and costs to persons regulated.

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 over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board states the rules are generally clear, concise, and understandable with the following exceptions:

- Some rules are inconsistent with Secretary of State requirements;
- Some rules are inconsistent with statute;
- Some rules have incorrect internal citations;

- Some subsections are repetitive and duplicative;
- R4-23-620 does not indicate the Section applies only to hospital pharmacies;
- The incorporated by reference materials in R4-23-110 and R4-23-670 are obsolete

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board states the rules are mostly consistent with other rules and statutes with the exceptions mentioned in subsection 5.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board states the rules are effective in achieving its objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board states the rules are enforced as written.

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

The Board states there are no rules more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board does not issue general permits or licenses, but does issue individual licenses as required by the Board's statutes to each person that is qualified by statute and rule.

11. **Conclusion**

This Five Year Review Report from the Arizona Board of Pharmacy covers forty-two rules in Title 4, Chapter 23, Articles 6 & 8. As indicated above, the rules are generally consistent with other rules and statutes, enforced as written, and effective in achieving their objectives. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Arizona State Board of Pharmacy

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September 13, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Board of Pharmacy
Five-year-review Report
4 A.A.C. 23, Articles 6 and 8

Dear Ms Sornsin:

The Board submits the referenced report for the Council's review and approval. It is due November 28, 2023, under an extension.

The Board certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Kamlesh Gandhi, at 602-771-2727 or kgandhi@azpharmacy.gov.

Sincerely,

Kam Gandhi

Kamlesh Gandhi
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy
Articles 6 and 8
Submitted for November 7, 2023

INTRODUCTION

The purpose of the Arizona State Board of Pharmacy (Board) is to promote the safe and professional practice of pharmacy. The Board's rules constitute the standards of practice for the profession of pharmacy in this state. This 5YRR covers the 42 rules in A.A.C. Title 4, Chapter 23, Articles 6 and 8.

The rules in Article 6 address the numerous permits issued by the Board and establish standards regarding distribution of drugs. The Board completed two rulemakings since the Board's previous 5YRR was approved on December 4, 2018, addressing Article 6. Both rulemakings were to make the rules consistent with statutory changes (See Laws 2017, Chapter 95 regarding a third-party logistics provider and Laws 2018, Chapter 227 regarding an automated prescription-dispensing kiosk). Additionally, the Board completed one rulemaking that repealed a rule in Article 8 for which the Board lacked statutory authority. The only remaining rule in Article 8 indicates to whom a prescription-only or non-prescription veterinary preparation may be distributed.

The Board has 20 FTEs using appropriated funds and eight FTEs using grant funds. It collected $3,866,094 in fees and charges during the last year and was appropriated $3,487,000.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1904(A)(1)

1. Specific statute authorizing the rule:
   R4-23-601. General Provisions: A.R.S. § 32-1904(B)(3)

R4-23-602. Permit Application Process and Time-frames: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930(A), and 32-1931

R4-23-603. Resident-Nonprescription Drugs, Retail: A.R.S. §§ 32-1904 (B)(3), 32-1930(A), and 32-1931

R4-23-604. Resident Drug Manufacturer: A.R.S. §§ 32-1904 (B)(3), 32-1930(A), and 32-1931

R4-23-605. Resident Drug Wholesaler Permit: A.R.S. §§ 32-1904(B)(3), 32-1930(A), 32-1931, 32-1981, and 32-1982

R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service: A.R.S. §§ 32-1904(A)(2), and (A)(4) and (B)(3), 32-1930(A), and 32-1931

R4-23-607. Nonresident Permits: A.R.S. §§ 32-1904 (A)(2) through (A)(4) and (B)(3), 32-1930(A), 32-1931, 32-1981, 32-1982, and 32-1983

R4-23-608. Change of Personnel and Responsibility: A.R.S. §§32-1926(B), 32-1934(B)(5), and 32-1963(A)

R4-23-609. Pharmacy Area of Community Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, and 32-1930

R4-23-610. Community Pharmacy Personnel and Security Procedures: A.R.S. §32-1901

R4-23-611. Pharmacy Facilities: A.R.S. § 32-1904(B)(3)

R4-23-612. Equipment: A.R.S. § 32-1904(B)(3)

R4-23-613. Procedure for Discontinuing a Pharmacy: A.R.S. §§ 32-1904(B)(3) and 36-2523

R4-23-614. Automated Storage and Distribution System: A.R.S. § 32-1904(B)(3)

R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form: A.R.S. § 32-1904(B)(3)

R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form: A.R.S. § 32-1904(B)(3)

R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies: A.R.S. §§ 32-1904(B)(3) and 32-1910

R4-23-620. Continuous Quality Assurance Program: A.R.S. § 32-1973

R4-23-621. Shared Services: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-651. Definitions: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-652. Hospital Pharmacy Permit: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-653. Personnel: Professional or Technician: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-654. Absence of Pharmacist: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-655. Physical Facility: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-656. Sanitation and Equipment: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-657. Security: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-658. Drug Distribution and Control: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-659. Administration of Drugs: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-660. Investigational Drugs: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-670. Sterile Pharmaceutical Products: A.R.S. §§ 32-1904(B)(3) and (5), 32-1929, 32-1930, 32-1931, and 32-1934

R4-23-671. General Requirements for Limited-service Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-672. Limited-service Correctional Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-673. Limited-service Mail-order Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-674. Limited-service Long-term Care Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931

R4-23-676. Third-party Logistics Provider Permit: A.R.S. §§ 32-1901and 32-1941

R4-23-677. Automated Prescription-dispensing Kiosk Permit: A.R.S. §§ 32-1901, 32-1930, and 32-1931(C)(4)
R4-23-681. General Requirements for Limited-service Nuclear Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931
R4-23-682. Limited-service Nuclear Pharmacy: A.R.S. §§ 32-1904(B)(3), 32-1929, 32-1930, and 32-1931
R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident: A.R.S. §§ 32-1901, 32-1904(B)(3), 32-1929, 32-1930, and 32-1931
R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident: A.R.S. §§ 32-1901, 32-1904 (B)(3), 32-1929, 32-1930, and 32-1931
R4-23-802. Veterinary: A.R.S. § 32-1904(A)(1)

2. Objective of the rules:

R4-23-601. General Provisions: The objective of this rule is specify a permit is required from the Board, except in very limited circumstances, to sell or ship into Arizona a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. The rule also specifies recordkeeping requirements and prohibits the sale of damaged drugs.

R4-23-602. Permit Application Process and Time-frames: The objective of this rule is to specify the time-frames within which the Board will act on a permit application. The rule also specifies that a permittee is required to conspicuously display the permit.

R4-23-603. Resident-Nonprescription Drugs, Retail: The objective of this rule is to specify a permit from the Board is required for a non-pharmacy retailer, such as a grocery store, to sell or distribute non-prescription drugs and establishes requirements for obtaining and maintaining the permit. Special requirements for selling or distributing non-prescription drugs in a vending machine are specified.

R4-23-604. Resident Drug Manufacturer: The objective of this rule is to specify a permit from the Board is required for a resident to manufacture, package, label, or relabel a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical and establishes requirements for obtaining and maintaining a permit.

R4-23-605. Resident Drug Wholesaler Permit: The objective of this rule is to specify a permit from the Board is required for a resident to operate a business engaged in the wholesale distribution of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. The rule also provides information regarding applying for and maintaining a permit; establishes restrictions on drug distributions and prescription-only drug returns or exchanges, handling of returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband drugs, and establishes quality control requirements.

R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service: The objective of this rule is to specify a permit from the Board is required to operate a pharmacy in Arizona. The rule provides information regarding applying for and maintaining a permit.

R4-23-607. Nonresident Permits: The objective of this rule is to specify a permit from the Board is required for a nonresident to sell or distribute a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona. The rule provides information regarding applying for and maintaining a permit.

R4-23-608. Change of Personnel and Responsibility: The objective of this rule is to provide notice regarding a pharmacy permittee's responsibility to communicate with the Board and manage the pharmacy in an ethical manner consistent with law.

R4-23-609. Pharmacy Area of Community Pharmacy: The objective of this rule is to establish minimum standards for a community pharmacy regarding overall area, space

required per person in the work area, and counter work space and addresses storage, security, and privacy concerns.

R4-23-610. Community Pharmacy Personnel and Security Procedures: The objective of this rule is to specify a pharmacist-in-charge is required in each pharmacy and the duties of the pharmacist-in-charge regarding compliance with the law, supervision of personnel, and security of drugs.

R4-23-611. Pharmacy Facilities: The objective of this rule is to establish requirements regarding a pharmacy facility's cleanliness and supply of drugs and chemicals.

R4-23-612. Equipment: The objective of this rule is to establish minimum equipment required to operate a pharmacy professionally.

R4-23-613. Procedure for Discontinuing a Pharmacy: The objective of this rule is to establish requirements for a pharmacy permittee to discontinue a pharmacy including safeguarding drugs during the process and maintaining records.

R4-23-614. Automated Storage and Distribution System: The objective of this rule is to establish requirements for a pharmacy permittee, including required policies and procedures, to use an automated storage and distribution system in a pharmacy.

R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form: The objective of this rule is to establish requirements for a pharmacy permittee to use a device that mechanically stores and dispenses a drug in solid, oral dosage form.

R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form: The objective of this rule is to establish requirements for a pharmacy permittee to use a device that counts a drug in solid, oral dosage form.

R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies: The objective of this rule is to establish requirements for operating a temporary or mobile pharmacy during a declared emergency.

R4-23-620. Continuous Quality Assurance Program: The objective of this rule is to require a pharmacy permittee to participate in or develop and implement a continuous quality assurance program. Minimum standards are provided for a permittee that develops and implements its own CQA program.

R4-23-621. Shared Services: The objective of this rule is to establish the circumstances under which multiple pharmacy permittees may participate in sharing services and provides minimum standards for permittees that decide to share services.

R4-23-651. Definitions: The objective of this rule is to define terms used in R4-23-651 through R4-23-659 in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-23-652. Hospital Pharmacy Permit: The objective of this rule is to clarify which rules apply to a hospital pharmacy.

R4-23-653. Personnel: Professional or Technician: The objective of this rule is to establish the personnel required in a hospital pharmacy and the tasks required or permitted of each.

R4-23-654. Absence of Pharmacist: The objective of this rule is to establish procedures for hospital personnel to obtain needed drugs when a pharmacist is not present in the hospital pharmacy.

R4-23-655. Physical Facility: The objective of this rule is to establish standards regarding the minimum equipment and physical facility necessary for safe compounding, dispensing, and storing of drugs in a hospital pharmacy.

R4-23-656. Sanitation and Equipment: The objective of this rule is to specify minimum standards for space and technical equipment required to operate a hospital pharmacy.

R4-23-657. Security: The objective of this rule is to specify hospital pharmacy security standards regarding personnel and blank prescription forms.

R4-23-658. Drug Distribution and Control: The objective of this rule is to specify minimum standards for the safe and efficient procuring, dispensing, distributing, administering, and controlling drugs in a hospital pharmacy.

R4-23-659. Administration of Drugs: The objective of this rule is to specify the circumstances under which a patient in a hospital may self-administer a drug or when a patient will be administered a patient-owned drug.

R4-23-660. Investigational Drugs: The objective of this rule is to specify minimum standards for handling and distributing investigational drugs in a hospital.

R4-23-670. Sterile Pharmaceutical Products: The objective of this rule is to establish minimum standards regarding preparing and distributing sterile pharmaceutical products.

R4-23-671. General Requirements for Limited-service Pharmacy: The objective of this rule is to establish minimum standards for operating a limited-service pharmacy.

R4-23-672. Limited-service Correctional Pharmacy: The objective of this rule is to establish minimum standards for operating a limited-service correctional pharmacy.

R4-23-673. Limited-service Mail-order Pharmacy: The objective of this rule is to establish minimum standards for operating a limited-service mail-order pharmacy.

R4-23-674. Limited-service Long-term Care Pharmacy: The objective of this rule is to establish minimum standards for operating a limited-service long-term care pharmacy.

R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy: The objective of this rule is to establish minimum standards for operating a limited-service sterile pharmaceutical products pharmacy.

R4-23-676. Third-party Logistics Provider Permit: The objective of this rule to specify a person is required to obtain a permit from the Board before providing logistics services. The rule also addresses change of ownership, renewal, and time frames.

R4-23-677. Automated Prescription-dispensing Kiosk Permit: The objective of this rule is to specify a person is required to obtain a permit from the Board for each automated prescription-dispensing kiosk operated, the procedure for obtaining a permit, policies and procedures for operating a kiosk, change of ownership, renewal, and time frames.

R4-23-681. General Requirements for Limited-service Nuclear Pharmacy: The objective of this rule is to establish general standards for operating a limited-service nuclear pharmacy including requirements for an authorized nuclear pharmacist.

R4-23-682. Limited-service Nuclear Pharmacy: The objective of this rule is to establish specific standards for operating a limited-service nuclear pharmacy.

R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident: The objective of this rule is to establish minimum standards for distributors of compressed medical gas.

R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident: The objective of this rule is to establish minimum standards for suppliers of durable medical equipment and compressed medical gas.

R4-23-802. Veterinary: The objective of this rule is to specify to whom a veterinary drug manufacturer or supplier may distribute a prescription-only or nonprescription veterinary drug.

3. Are the rules effective in achieving their objectives? Yes

The Board believes the rules are effective in achieving the Board's statutory purpose to promote the safe and professional practice of pharmacy and protect public health and safety. The Board is able to issue numerous different permits in a timely and efficient manner.

4. Are the rules consistent with other rules and statutes? Mostly yes

See item 6 for items that are inconsistent with other rules or statutes.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Mostly yes

It is possible to improve the clarity and understandability of the reviewed rules although existing issues do not create enforcement difficulties or impose regulatory burdens. Some of the issues identified include:

Inconsistency with requirements of the Secretary of State;

Inconsistency with statute (See R4-23-609, R4-23-610, R4-23-615, R4-23-616, R4-23-621, R4-23-653, R4-23-657, and R4-23-658) regarding use of the phrases "graduate intern" and "pharmacy intern;"

Incorrect internal citations (See R4-23-609(G), R4-23-658(D)(2), and R4-23-682(E)(1) and (E)(2));

Subsections are repetitive;

Subsections duplicate statutory language;

R4-23-620 is confusing because it does not indicate the Section applies only to hospital pharmacies;

Materials incorporated by reference in R4-23-110 and referenced in R4-23-670 are obsolete;

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

The three rulemakings completed since the Board's last 5YRR was approved by the Council amended nine rules and made two new rules in Article 6 and repealed one rule in Article 8. The Board received no information indicating the economic, small business, and consumer impact statements prepared when the remaining 32 rules were made are inaccurate.

2019 rulemaking (See 25 A.A.R. 1012)

In this rulemaking, the Board defined an automated prescription-dispensing kiosk, established requirements and procedures for obtaining a permit for an automated prescription-dispensing kiosk, and established a $480 biennial fee for obtaining the permit. The EIS prepared with the rulemaking was available for review.

The Board expected a pharmacy permittee that chose to operate an automated prescription-dispensing kiosk would have minimal economic impact from the rules. The pharmacy permittee would incur the expense of completing an application and paying the permit fee, establishing written policies and procedures and adhering to standards designed to protect public health and safety. The cost of obtaining and operating an automated prescription –dispensing kiosk is substantial but that cost does not result from the rules. The Board expected to issue permits for approximately 60 automated prescription-dispensing kiosks. The Board currently has issued 105 permits to operate an automated prescription-dispensing kiosk of which, 33 are open and operating. This means $1,584 is contributed to the state general fund biennially.

2019 rulemaking (See 25 A.A.R. 1015)

In this rulemaking, the Board amended R4-23-601 through R4-23-607, R4-23-692 and R4-23-693, and made R4-23-676. The Board deleted detail regarding the application process from the amended rules. This was done to ensure the rules did not become inconsistent with the many permit applications used by the Board. R4-23-676 was added to address the requirements regarding third-party logistics providers established at A.R.S. § 32-1941. The EIS prepared with the rulemaking was available for review.

The Board expected deleting application detail from the rules would have minimal economic impact and would have the benefit of ensuring the rules are consistent with the applications. The Board expected to issue fewer than 200 3PL permits. The Board has currently issued 562 3PL permits of which, 305 are open for operation. Each 3PL permittee pays a biennial fee of $1,000. This means $30,500 is contributed to the state general fund biennially.

2020 rulemaking (26 A.A.R. 223)

In this rulemaking, the Board repealed R4-23-801 dealing with dietary supplements. The EIS prepared with the rulemaking was available for review. The Board expected that repealing a burdensome regulation would have minimal but important economic impact.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR:

Mostly yes

In the 5YRR approved by the Council on December 4, 2018, the Board indicated it would amend multiple rules in Article 6 and make rules regarding third-party logistics providers and automated prescription-dispensing kiosks. Final rulemakings for each of these were published at 25 A.A.R. 1012, 25 A.A.R. 1015, and 26 A.A.R. 223. The Board has yet to complete a rulemaking addressing sterile compounding and the current compendium. The Board reassessed the term "Director of Pharmacy" as used by hospital pharmacies and concluded no rulemaking is required.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the probable benefits of each rule outweigh the probable costs of the rule and each rule imposes the least burden and costs on persons regulated by the rule. It is statute that requires individuals and entities obtain a permit from the Board before doing business in Arizona, specifies certain requirements for obtaining a permit, and authorizes the

Board to charge a fee to cover the costs of issuing permits. The rules simply specify how to obtain a required permit. There are paperwork requirements. An applicant must complete an application and submit it for review. A permittee must renew the permit timely and pay a renewal fee. A permittee is required to maintain records of the business done in Arizona and to allow the Board to inspect records. A permittee is required to maintain quality control regarding pharmaceutical products and provide notice to the Board when certain changes occur. Each of the requirements promotes the safe and professional practice of pharmacy and protects the health and safety of Arizona consumers of pharmaceutical products.

12. Are the rules more stringent than corresponding federal laws? No

The Board determined no rule is more stringent than a corresponding federal law. There are federal laws regarding pharmaceutical products, especially controlled substances. Federal law also addresses certain manufacturing practices and third-party logistics providers. It is federal law rather than these rules that places requirements on individuals and entities.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The following rules were made or last amended after July 29, 2010: R4-23-601, R4-23-602, R4-23-603, R4-23-604, R4-23-605, R4-23-606, R4-23-607, R4-23-609, R4-23-611, R4-23-612, R4-23-620, R4-23-621, R4-23-674, R4-23-676, R4-23-677, R4-23-692, and R4-23-693. The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute and rule.

14. Proposed course of action:

The Board intends to complete a rulemaking that will address the minor issues identified in item 6, modernize the rules regarding sterile compounding, and incorporate the most current version of the compendium. The Board expects to submit the rulemaking to Council by December 2024.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-601. General Provisions

A. Permit required to sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. A person shall have a current Board permit to:

1. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical in Arizona; or
2. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical from outside Arizona and ship the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona.

B. A medical practitioner is exempt from subsection (A) to administer a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for the emergency needs of a patient.

C. Permit fee. Permits are issued biennially on an odd- and even- year expiration based on the assigned permit number. The fee, specified in R4-23-205, is not refundable unless the Board fails to comply with the permit time frames established in R4-23-602.

D. Record of receipt and disposal of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.

1. Every person manufacturing a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, including repackaging or relabeling, shall prepare and retain for no fewer than three years the manufacturing, repackaging, or relabeling date for each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
2. Every person receiving, selling, delivering, or disposing of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall record and retain for no fewer than three years the following information:
    a. The name, strength, dosage form, and quantity of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical received, sold, delivered, or disposed;
    b. The name, address, and license or permit number, if applicable, of the person from whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is received;
    c. The name, address, and license or permit number, if applicable, of the person to whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is sold or delivered, or of the person who disposes of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    d. The receipt, sale, deliver, or disposal date of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.

3. The record required in this subsection shall be available for inspection by the Board or its compliance officer during regular business hours.
4. If the record required in this subsection is stored in a centralized recordkeeping system and not immediately available for inspection, a permittee, manager, or pharmacist-in-charge shall provide the record within four working days of the Board's or its compliance officer's request.

E. Narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals damaged by water, fire, or from human or animal consumption or use. A person shall not sell or offer to sell any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical damaged by water, fire, or from human or animal consumption or use.

F. At least 14 days before there is a change in ownership, as defined at R4-23-110, of a license or permit issued under this Chapter, the new licensee or permittee shall apply to the Board for a new license or permit.

Historical Note

Former Rules 6.1100, 6.1200, 6.1300, 6.1400, and 6.1500. Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Amended subsection (C) effective August 12, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-602. Permit Application Process and Time frames

A. A person applying for a permit shall:
1. Submit a completed application for the desired permit electronically or manually on a form furnished by the Board, and
2. Submit with the application form:
   a. The documents specified in the application form, and
   b. The permit fee specified in R4-23-205.

B. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

C. Time frames for permits.
1. The Board office shall finish an administrative completeness review within 60 days from the date the application form is received.
   a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
   b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-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.
   c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.

2. An applicant with an incomplete application form shall submit to the Board office all of the missing information within 90 days of service of the notice of incompleteness.
    a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness;
    b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline; and
    c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines an extension of the 90-day deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall submit a new application and fee as specified in subsection (A).
4. For a nonprescription drug permit applicant, a compressed medical gas distributor permit applicant, and a durable medical equipment and compressed medical gas supplier permit applicant, the Board office shall issue a permit on the day the Board office determines an administratively complete application form is received.
5. Except as described in subsection (C)(4), from the date on which the administrative completeness review of an application form is finished, the Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days.
    a. If an applicant is found to be ineligible, the Board office shall issue a written notice of denial to the applicant.
    b. If an applicant is found to be eligible, the Board office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board office.
    c. If the Board office finds deficiencies during the substantive review of the application form, the Board office shall issue a written request to the applicant for additional documentation.
    d. The 120-day time frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date all documentation is received. The applicant shall submit the additional documentation according to subsection (C)(2).
    e. 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 45 days.
6. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time frames for permits:
    a. Administrative completeness review time frame: 60 days.
    b. Substantive review time frame:
        i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: none.
        ii. Except as described in subsection (C)(6)(b)(i): 120 days.

c. Overall time frame:
   i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: 60 days.
   ii. Except as described in subsection (C)(6)(c)(i): 180 days.

D. Permit renewal.
1. To renew a permit, a permittee shall submit a completed application for permit renewal electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205.
2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1931, the permit is suspended. The permittee shall pay a penalty as provided in A.R.S. § 32-1931 and R4-23-205 to vacate the suspension.
3. Time frames for permit renewals. The Board office shall follow the time frames established in subsection (C).

E. Display of permit. A permittee shall conspicuously display the permit in the location to which it applies.

Historical Note

Former Rules 6.2100, 6.2200, 6.2300, 6.2400, 6.2500, 6.2600, 6.2610, 6.2620, 6.2630, 6.2640, and 6.2650. Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Repealed effective August 12, 1988 (Supp. 88-3). New Section adopted effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-603. Resident-Nonprescription Drugs, Retail

A. Permit. A person, including the following, shall not sell or distribute a nonprescription drug without a current Board-issued permit:
1. A grocer;
2. Other non-pharmacy retail outlet; or
3. Mobile or non-fixed location retailer, such as a swap-meet vendor.

B. A medical practitioner licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).

C. Application. To obtain a permit to sell a nonprescription drug, a person shall submit
1. A completed application form and fee as specified in R4-23-602; and
2. Documentation of compliance with local zoning laws, if required by the Board.

D. Drug sales. A nonprescription drug permittee:
1. Shall sell a drug only in the original container packaged and labeled by the manufacturer; and
2. Shall not package, repackage, label, or relabel any drug.

E. Inspection. A nonprescription drug permittee shall consent to inspection during business hours by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.

F. Quality control. A nonprescription drug permittee shall:
1. Ensure that all drugs stocked, sold, or offered for sale are:
   a. Kept clean;

b. Protected from contamination, excessive heat, cold, sunlight, and other deteriorating factors;
c. In compliance with federal law; and
d. Received from a supplier with a current Board-issued permit as specified in R4-23-601(A).

2. Develop and implement a program to ensure that:
a. Any expiration-dated drug is reviewed regularly;
b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
c. Any quarantined drug is destroyed or returned to its source of supply.

G. Notification. A nonprescription drug permittee shall submit using the permittee's online profile or provide written notice by mail, fax, or e-mail to the Board office within 10 days of changes involving the telephone or fax number, e-mail or mailing address, or business name.

H. Change of ownership. A nonprescription drug permittee shall comply with R4-23-601(F).

I. Relocation. No less than 30 days before an existing nonprescription drug permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (C).

J. Records. A nonprescription drug permittee shall:
1. Retain records of the receipt and disposal of nonprescription drugs as required in R4-23-601(D), and
2. Comply with the requirements of A.R.S. § 32-1977 and federal law for the retail sale of methamphetamine precursors.

K. Permit renewal. To renew a nonprescription drug permit, the permittee shall comply with R4-23-602(D).

L. Nonprescription drug vending machine outlet. In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through (K), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:
1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, and telephone contact number
3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901 as follows:
a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
b. The Board compliance staff shall have independent access to the vending machine;
6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:

a. Permit number;
b. Vending machine's serial number;
c. Action planned (relocate or retire); and
d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;

7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited; and
8. Under no circumstance may expired drugs be sold or distributed.

Historical Note

Adopted effective August 10, 1978 (Supp. 78-4). Amended subsection (D) paragraph (1) and added subsection (G) effective April 20, 1982 (Supp. 82-2). Amended effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-604. Resident Drug Manufacturer

A. Permit. A person shall not manufacture, package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical without a current Board-issued drug manufacturer permit.

B. Application. To obtain a permit to operate a drug manufacturing firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, and the fee specified in R4-23-205.

C. Before issuing a drug manufacturer permit, the Board shall:
1. Receive and approve a completed permit application;
2. Interview the applicant and manager, if different from the applicant, at a Board meeting; and
3. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.

D. Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, address, telephone number, business name, or manager, including manager's telephone number. The resident drug manufacturer permittee shall submit using the permittee's online profile or a written notice by mail, fax, or e-mail to the Board office within 24 hours of the change.

E. Change of ownership. A resident drug manufacturer permittee shall comply with R4-23-601(F).

F. Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.

G. No later than 14 days after the change occurs, a resident drug manufacturer permittee shall submit the application described under subsection R4-23-604(B), excluding the fee, for any change of officers in a corporation.

H. Manufacturing and distribution.
1. A drug manufacturer permittee shall manufacture and distribute a drug only:
   a. To a pharmacy, drug manufacturer, or full-service or nonprescription drug wholesaler currently permitted by the Board;

b. To a medical practitioner currently licensed as a medical practitioner as defined in A.R.S. § 32-1901; or
c. To a properly permitted, registered, licensed, or certified person or firm of another jurisdiction.

2. Before manufacturing and distributing a drug that is not listed on a drug manufacturer's permit application, the drug manufacturer permittee shall send to the Board office a written request to amend the permit application, including documentation of FDA approval to manufacture the drug not listed on the original permit application. If a request to amend a permit application includes the documentation required in this subsection, the Board or its designee shall approve the request to amend within 30 days of receipt.

I. A drug manufacturer permit is subject to denial, suspension, probation, or revocation under A.R.S. § 32-1927.02.

J. Current Good Manufacturing Practice. A drug manufacturer permittee is required under federal law to follow the good manufacturing practice requirements of 21 CFR 210 through 211.

K. Records. A drug manufacturer permittee shall:

1. Establish and implement written procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law;
2. Retain the records required by this Article and 21 CFR 210 through 211 for at least two years after distribution of a drug or one year after the expiration date of a drug, whichever is longer; and
3. Make the records required by this Article and 21 CFR 210 through 211 available within 48 hours for review by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.

L. Inspections. A drug manufacturer permittee shall make the drug manufacturer's facility available for inspection by the Board or its compliance officer under A.R.S. § 32-1904.

M. Nonresident drug manufacturer. A nonresident drug manufacturer shall comply with the requirements of R4-23-607.

N. Manufacturing radiopharmaceuticals. Before manufacturing a radiopharmaceutical, a drug manufacturer permittee shall:

1. Comply with the regulatory requirements of the Arizona Radiation Regulatory Agency, the U.S. Nuclear Regulatory Commission, the FDA, and this Section; and
2. Hold a current Arizona Radiation Regulatory Agency Radioactive Materials License. If a drug manufacturer permittee who manufactures radiopharmaceuticals fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License, the permittee's drug manufacturer permit shall be immediately suspended pending a hearing by the Board.

Historical Note

Former Rules 6.4001, 6.4002, 6.4003, 6.4004, 6.4005, 6.4006, 6.4007, 6.4008, 6.4009, 6.4100, 6.4110, 6.4111, 6.4115, 6.4116, 6.4120, 6.4122, 6.4190, 6.4191, 6.4200, 6.4250, 6.4300, 6.4350, 6.4355, 6.4360, 6.4400, 6.4401, 6.4403, 6.4410, 6.4430, 6.4450, 6.4500, 6.4510, 6.4530, 6.4533, 6.4600, 6.4610, 6.4640, 6.4660, 6.4700, 6.4710, and 6.4750. Adopted effective December 3, 1974 (Supp. 75-1). Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) paragraph (2) effective April 20, 1982 (Supp. 82-2). Amended subsections (B), (G), (K) and (L) effective August 12, 1988 (Supp. 88-3). Amended effective August 24, 1992 (Supp. 92-3).

Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 3815, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-605. Resident Drug Wholesaler Permit

A. Permit. A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemical, or regulated chemical without a current Board-issued full-service or nonprescription drug wholesale permit.

B. Application.

1. To obtain a permit to operate a full-service or nonprescription drug wholesale firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, and the fee specified in R4-23-205.
2. Before issuing a full-service or nonprescription drug wholesale permit, the Board shall:
   a. Receive and approve a completed permit application;
   b. Interview the applicant and the designated representative, if different from the applicant, at a Board meeting;
   c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer; and
   d. For a full-service drug wholesale permit, issue a fingerprint clearance to a qualified designated representative, as specified in subsection (L). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee specified in the application required in subsection (B).

C. Notification. A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, address, telephone number, business name, or manager or designated representative, including the manager's or designated representative's telephone number.

1. The resident full-service or nonprescription drug wholesale permittee shall submit using the permittee's online profile or a written notice by mail, fax, or e-mail to the Board office within 10 days of the change.
2. For a change of designated representative, a resident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee specified in the application required in subsection (B).

D. Change of ownership. A resident full-service or nonprescription drug wholesale permittee shall comply with R4-23-601(F).

E. Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesale permittee shall submit the application required under subsection (B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.

F. No later than 14 days after the change occurs, a resident full-service or nonprescription drug wholesale permittee shall submit the application described under subsection (B), excluding the fee, for any change of officers in a corporation.

G. Distribution restrictions. In addition to the requirements of this subsection, a resident full-service wholesale permittee shall comply with the distribution restrictions specified in A.R.S. § 32-1983.

1. Records.
    a. A full-service drug wholesale permittee shall:
        i. Maintain records to ensure full accountability of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
        ii. File the records required in subsection (G)(1)(a)(i) in a readily retrievable manner for a minimum of three years;
        iii. Make the records required in subsection (G)(1)(a)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days; and
        iv. In addition to the records requirements of subsection (G)(1)(a)(i), comply with the retention of track and trace documents required under the Drug Supply Chain and Security Act for all prescription-only drugs that leave the normal distribution channel as defined in A.R.S. § 32-1981.
    b. A nonprescription drug wholesale permittee shall:
        i. Maintain records to ensure full accountability of any nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
        ii. File the records required in subsection (G)(1)(b)(i) in a readily retrievable manner for a minimum of three years; and
        iii. Make the records required in subsection (G)(1)(b)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days.
2. Drug sales.
    a. A full-service drug wholesale permittee shall:
        i. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
        ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
        iii. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, or prescription-only drug or device, to anyone except a pharmacy, drug manufacturer, or

full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

iv. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

v. Provide track and trace documents required under the Drug Supply Chain and Security Act upon request, if immediately available, or within two business days from the date of a request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901;

vi. Maintain a copy of the current permit or license of each person that buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and

vii. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).

b. A nonprescription drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical except in the original container packaged and labeled by the manufacturer or repackager;

ii. ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;

iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;

iv. Maintain a record of the current permit or license of each person that buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and

v. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).

c. Nothing in this subsection shall be construed to prevent the return of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.

3. Out-of-state drug sales.

a. A full-service drug wholesale permittee shall:

i. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical except in the original container packaged and labeled by the manufacturer or repackager;

ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;

iii. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone except a person that is properly permitted, registered, licensed, or certified in another jurisdiction;
iv. Provide track and trace documents required under the Drug Supply Chain and Security Act upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901;
v. Maintain a copy of the current permit, registration, license, or certificate of each person that buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
vi. Provide permit, registration, license, and certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5); and

b. A nonprescription drug wholesale permittee shall:
i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical except in the original container packaged and labeled by the manufacturer or repackager;
ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical to anyone except a person that is properly permitted, registered, licensed, or certified in another jurisdiction;
iv. Maintain a record of the current permit, registration, license, or certificate of each person that buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
v. Provide permit, registration, license, or certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).

4. Cash-and-carry sales.
a. A full-service drug wholesale permittee shall complete a cash-and-carry sale or distribution of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical only after:
i. Verifying the validity of the order;
ii. Verifying the identity of the pick-up person for each transaction by confirming that the person represented placed the cash-and-carry order; and
iii. For a prescription-only drug order, verifying that the cash-and-carry sale or distribution is used only to meet the immediate needs of a particular patient of the person that placed the cash-and-carry order; and

b. A nonprescription drug wholesale permittee shall complete a cash-and-carry sale or distribution of any nonprescription drug, precursor chemical, or regulated chemical only after:
i. Verifying the validity of the order; and

ii. Verifying the identity of the pick-up person for each transaction by confirming that the person represented placed the cash-and-carry order.

H. Prescription-only drug returns or exchanges. A full-service drug wholesale permittee shall ensure that any prescription-only drug returned or exchanged by a pharmacy or chain pharmacy warehouse under A.R.S. § 32-1983(A) meets the following criteria:

1. The prescription-only drug is not adulterated or counterfeited, except an adulterated or counterfeited prescription-only drug that is the subject of an FDA or manufacturer recall may be returned for destruction or subsequent return to the manufacturer;
2. The quantity of prescription-only drug returned or exchanged does not exceed the quantity of prescription-only drug that the full-service drug wholesale permittee or a full-service drug wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse; and
3. The pharmacy or chain pharmacy warehouse provides documentation that:
   a. Lists the name, strength, and manufacturer of the prescription-only drug being returned or exchanged; and
   b. States that the prescription-only drug was maintained in compliance with storage conditions prescribed on the drug label or manufacturer's package insert.

I. Returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, and contraband drugs.

1. Except as specified in subsection (H)(1) for a prescription-only drug, a full-service drug wholesale permittee shall ensure that the return of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
   a. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
   b. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded,

counterfeited, or contraband, the full-service drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabanding or suspected misbranding, counterfeiting, or contrabanding within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical was acquired.

c. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be identified as opened or used, or both, and quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.

d. If the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the safety, identity, strength, quality, or purity of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(1)(d)(i).

    i. If examination, testing, or other investigation proves that the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not have to be destroyed or returned to the manufacturer or wholesale distributor.

    ii. In determining whether the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the safety, identity, strength, quality, or purity of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, the full-service drug wholesale permittee shall consider, among other things, the conditions under which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated

chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.

e. For any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(1)(a) or (b), the full-service drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.

2. A nonprescription drug wholesale permittee shall ensure that the return of any nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.

a. Any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.

b. Any nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the nonprescription drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabanding or suspected misbranding, counterfeiting, or contrabanding within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the nonprescription drug, precursor chemical, or regulated chemical was acquired.

c. Any nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.

d. If the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the safety, identity, strength, quality, or purity of the nonprescription drug, precursor chemical, or regulated chemical, the nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to

the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(2)(d)(i).

i. If examination, testing, or other investigation proves that the nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, the nonprescription drug, precursor chemical, or regulated chemical does not need to be destroyed or returned to the manufacturer or wholesale distributor.

ii. In determining whether the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the safety, identity, strength, quality, or purity of the nonprescription drug, precursor chemical, or regulated chemical, the nonprescription drug wholesale permittee shall consider, among other things, the conditions under which the nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.

e. For any nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(2)(a) or (b), the nonprescription drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.

3. A full-service drug wholesale permittee and nonprescription drug wholesale permittee shall comply with the recordkeeping requirements of subsection (G) for all outdated, damaged, deteriorated, adulterated, misbranded, counterfeited and contraband narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.

J. Facility. A full-service or nonprescription drug wholesale permittee shall:

1. Ensure that the facility occupied by the full-service or nonprescription drug wholesale permittee is of adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary;
2. Ensure that the permittee's warehouse facility:
   a. Is secure from unauthorized entry; and
   b. Has an operational security system designed to provide protection against theft;
3. In a full-service drug wholesale facility, ensure that only authorized personnel may enter areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept;
4. In a nonprescription drug wholesale facility, ensure that only authorized personnel may enter areas where any nonprescription drug, precursor chemical, or regulated chemical is kept;
5. In a full-service drug wholesale facility, ensure that any thermolabile narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
6. In a nonprescription drug wholesale facility, ensure that any thermolabile nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;

7. Make the facility available for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) during regular business hours;
8. In a full-service drug wholesale facility, provide a quarantine area for storage of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container; and
9. In a nonprescription drug wholesale facility, provide a quarantine area for storage of any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container.

K. Quality controls.

1. A full-service drug wholesale permittee shall:
   a. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(1) is not sold, distributed, or delivered to any person for human or animal consumption;
   b. Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
   c. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
      i. Kept clean,
      ii. Protected from contamination and other deteriorating environmental factors, and
      iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
   d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored; and
   e. Develop and implement a program to ensure that:
      i. Any expiration-dated narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
      ii. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
      iii. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.

2. A nonprescription drug wholesale permittee shall:
    a. Ensure that any nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(2) is not sold, distributed, or delivered to any person for human or animal consumption;
    b. Ensure that a nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
    c. Ensure that any nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
        i. Kept clean,
        ii. Protected from contamination and other deteriorating environmental factors, and
        iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
    d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any nonprescription drug, precursor chemical, or regulated chemical is stored; and
    e. Develop and implement a program to ensure that:
        i. Any expiration-dated nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
        ii. Any nonprescription drug, precursor chemical, or regulated chemical that has fewer than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
        iii. Any quarantined nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.

L. Fingerprint clearance.

1. After receiving the state and federal criminal history record of a designated representative, the Board shall compare the record with the list of criminal offenses that preclude a designated representative from receiving a fingerprint clearance. If the designated representative's criminal history record does not contain any of the offenses listed in subsection (L)(2), the Board shall issue the designated representative a fingerprint clearance.
2. The Board shall not issue a fingerprint clearance to a designated representative who is awaiting trial for or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction:
    a. Unlawfully administering intoxicating liquors, controlled substances, dangerous drugs, or prescription-only drugs;
    b. Sale of peyote;
    c. Possession, use, or sale of marijuana, dangerous drugs, prescription-only drugs, or controlled substances;
    d. Manufacture or distribution of an imitation controlled substance;
    e. Manufacture or distribution of an imitation prescription-only drug;
    f. Possession or possession with intent to use an imitation controlled substance;
    g. Possession or possession with intent to use an imitation prescription-only drug; or

h. A felony offense involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana, dangerous drugs, prescription-only drugs, or controlled substances.

3. If the Board determines, after conducting a state and federal criminal history record check, that it is not authorized to issue a fingerprint clearance, the Board shall notify the full-service drug wholesale applicant or permittee that employs the designated representative that the Board is not authorized to issue a fingerprint clearance. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions under A.R.S. § 41-1750 and federal law.

Historical Note

Former Rules 6.5110, 6.5120, 6.5130, 6.5140, 6.5210, 6.5220, 6.5230, 6.5240, 6.5310, 6.5320, 6.5410, and 6.5420. Amended effective August 10, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsection (A) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective August 24, 1992 (Supp. 92-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service

A. Permit. A person shall not operate a pharmacy in Arizona without a current Board-issued pharmacy permit.

B. Application.

1. To obtain a permit to operate a pharmacy in Arizona, a person shall submit a completed application, on a form available from the Board, and the fee specified in R4-23-205.
2. Before issuing a pharmacy permit, the Board shall:
   a. Receive and approve a completed permit application; and
   b. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
3. Before issuing a pharmacy permit, the Board may interview the applicant and the pharmacist-in-charge, if different from the applicant, at a Board meeting based on the need for additional information.

C. Notification. A pharmacy permittee shall notify the Board office within 10 days of changes involving the type of pharmacy operated, telephone or fax number, e-mail or mailing address, business name, or staff pharmacist. A pharmacy permittee shall provide the Board office immediate notice of a change of the pharmacist-in-charge.

D. If any nonprescription drugs are sold outside the pharmacy area when the pharmacy area is closed, the pharmacy permittee shall ensure that the business has a current, Board-issued nonprescription drug permit as required in Section R4-23-603.

E. Change of ownership. A pharmacy permittee shall comply with R4-23-601(F).

F. Relocation or remodel.

1. No fewer than 30 days before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit, electronically or manually, a completed application for remodel or relocation using the form specified under subsection (B). A fee is not required with an application for remodel or relocation.
2. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.

G. Permit renewal. To renew a pharmacy permit, the permittee shall comply with R4-23-602(D).

Historical Note

Former Rules 6.6010, 6.6020, 6.6030, 6.6040, 6.6050, 6.6060, 6.6071, 6.6072, 6.6073, 6.6074, 6.6075, and 6.6076. Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (G) and (H) effective April 20, 1982 (Supp. 82-2). Amended subsection (L) effective July 2, 1982 (Supp. 82-4). Amended subsections (G) and (H) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Section heading amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-607. Nonresident Permits

A. Permit. A person that is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without possessing both:
1. A current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit; and
2. A current equivalent license or permit issued by the licensing authority in the jurisdiction where the person resides.

B. Application. To obtain a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permit, a person shall submit a completed application, on a form furnished by the Board, and the fee specified in R4-23-205.

C. Notification. A permittee shall submit notification of any change required in this subsection using the permittee's online profile or as a written notice by mail, fax, or e-mail to the Board office within 10 days of the change.
1. Nonresident pharmacy. A nonresident pharmacy permittee shall notify the Board of changes involving the type of pharmacy operated, address, telephone number, business name, or pharmacist-in-charge.
2. Nonresident manufacturer. A nonresident manufacturer permittee shall notify the Board of changes involving listed drugs, address, telephone number, business name, or manager, including manager's telephone number.
3. Nonresident drug wholesaler. A nonresident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the types of drugs sold or distributed, address, telephone number, business name, or manager or designated representative, including the manager's or designated representative's telephone number. For a change of designated representative, a nonresident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required with the application under subsection (B).

4. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall notify the Board of changes involving permit category, address, telephone number, business name, or manager, including manager's telephone number.

D. Change of ownership. A nonresident permittee shall comply with R4-23-601(F).

E. Drug sales.

1. Nonresident pharmacy. A nonresident pharmacy permittee shall:
   a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device to anyone in Arizona except:
      i. A pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board;
      ii. A medical practitioner currently licensed under A.R.S. Title 32; or
      iii. An Arizona resident upon receipt of a valid prescription order for the resident;
   b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except:
      i. A pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board;
      ii. A medical practitioner currently licensed under A.R.S. Title 32; or
      iii. An Arizona resident either upon receipt of a valid prescription order for the resident or in the original container packaged and labeled by the manufacturer;
   c. Except for a drug sale that results from the receipt and dispensing of a valid prescription order for an Arizona resident, maintain a copy of the current permit or license of each person in Arizona that buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
   d. Provide permit and license records upon request, if immediately available, or in no fewer than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.
2. Nonresident manufacturer. A nonresident manufacturer permittee shall:
   a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device to anyone in Arizona except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
   b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
   c. Maintain a copy of the current permit or license of each person in Arizona that buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
   d. Provide permit and license records upon request, if immediately available, or in no more than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.

3. Nonresident full-service drug wholesaler. In addition to complying with the distributions restrictions specified in A.R.S. § 32-1983, a nonresident full-service drug wholesale permittee shall:
    a. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    b. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    c. Provide track and trace documents required under the Drug Supply Chain and Security Act upon request, if immediately available, or in no more than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901;
    d. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, or full service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    e. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    f. Maintain a copy of the current permit or license of each person in Arizona that buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    g. Provide permit and license records upon request, if immediately available, or in no more than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.
4. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesale permittee shall:
    a. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    b. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    c. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    d. Maintain a copy of the current permit or license of each person in Arizona that buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and

e. Provide permit and license records upon request, if immediately available, or in no more than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901.

5. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
   a. Sell, distribute, give away, or dispose of a nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except in the original container packaged and labeled by the manufacturer;
   b. Package, repackage, label, or relabel any drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona; or
   c. Sell, distribute, give away, or dispose of any drug, precursor chemical, or regulated chemical to anyone in Arizona that exceeds its expiration date, is contaminated or deteriorated from excessive heat, cold, sunlight, moisture, or other factors, or does not comply with federal law.

F. When selling or distributing any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona, a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permittee shall comply with federal law, the permittee's resident state drug law, and this Section.

Historical Note

Former Rules 6.6110, 6.6120, and 6.6130; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective July 24, 1985 (Supp. 85-4). New Section adopted by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 223, effective March 14, 2020 (Supp. 20-1).

R4-23-608. Change of Personnel and Responsibility

A. A community, hospital, or limited-service pharmacy permittee shall give the Board:
1. Notice by mail, facsimile, or electronic mail within ten days of employing or terminating a pharmacist; and
2. Immediate notice of designating or terminating a pharmacist-in-charge.

B. Responsibility of ownership and management. The owner and management of a pharmacy shall:
1. Ensure that pharmacists, interns, and other pharmacy employees comply with state and federal laws and administrative rules; and
2. Not overrule a pharmacist in matters of pharmacy ethics and interpreting laws pertaining to the practice of pharmacy or the distribution of drugs and devices.

C. The Board may suspend or revoke a pharmacy permit if the owner or management of a pharmacy violates subsection (B).

Historical Note

Former Rules 6.6140 and 6.6150; Amended subsection (A) effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3).

R4-23-609. Pharmacy Area of Community Pharmacy

A. Minimum area of community pharmacy. The minimum area of a community pharmacy, the actual area primarily devoted to stocking drugs restricted to pharmacists, and to the compounding and dispensing of prescription medication, exclusive of office area or other support function area, shall not be less than 300 square feet. A maximum of three pharmacy personnel may practice or work simultaneously in the minimum area. The pharmacy permittee shall provide an additional 60 square feet of floor area for each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, pharmacy technician trainee, or support personnel who may practice or work simultaneously. All of the allotted square footage area, including adequate shelving, shall lend itself to efficient pharmaceutical practice and permit free movement and visual surveillance of personnel by the pharmacist.

B. Compounding and dispensing counter. On or after January 6, 2004, a pharmacy permit applicant or remodel or relocation applicant shall provide a compounding and dispensing counter that provides a minimum of three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. For each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee practicing simultaneously, there shall be an additional three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length. The Board shall determine a pharmacy's total required compounding and dispensing counter area by multiplying the maximum number of personnel allowed in the pharmacy area using the requirements specified in subsection (A) by three square feet per person. A pharmacy permittee or pharmacist-in-charge may operate the pharmacy with a total pharmacy counter working area specified in subsection (A) that is equal to the actual maximum number of pharmacists, graduate interns, pharmacy interns, pharmacy technicians, and pharmacy technician trainees, working simultaneously in the pharmacy area times three square feet per person.

C. Working area for compounding and dispensing counter. The aisle floor area used by the pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee at the compounding and dispensing counter shall extend the full length of the counter and be clear and continuous for a minimum of 36 inches from any counter, fixture, or structure.

D. Area for patient counseling. On or after April 1, 1995, a pharmacy permit applicant or remodel or relocation applicant shall provide a separate and distinct patient counseling area that provides patient privacy. This subsection does not apply to a pharmacy exempt from the requirements of R4-23-402(B).

E. Narcotic cabinet or safe. To prevent diversion, narcotics and other controlled substances may be:

1. Kept in a separate locked cabinet or safe, or
2. Dispersed throughout the pharmacy's prescription-only drug stock.

F. Building security standard of community pharmacy area. The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to structural ceiling or roof, with entry doors that can be securely locked. The barrier shall be designed so that only a pharmacist can access the area where prescription-only drugs, narcotics, and other controlled substances are stored, compounded and dispensed. The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or interstices of the material shall not be large enough to permit removal of items in the pharmacy area through the barrier. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be

readily or easily removed, penetrated, or bent. The pharmacy permittee shall submit plans and specifications of the permanent barrier to the Board for approval.

G. Drug storage and security.

1. The pharmacy permittee shall ensure that drugs and devices are stored in a dry, well-lit, ventilated, and clean and orderly area. The pharmacy permittee shall maintain the drug storage area at temperatures that ensure the integrity of the drugs before dispensing as stated in the official compendium defined in A.R.S. § 32-1901(55) or the manufacturer's or distributor's labeling.
2. If the pharmacy permittee needs additional storage area for drugs that are restricted to sale by a pharmacist, the pharmacy permittee shall ensure that the area is contained by a permanent barrier from floor or counter to structural ceiling or roof. The pharmacy permittee shall lock all doors and gates to the drug storage area. Only a pharmacist with a key is permitted to enter the storage area, except in an extreme emergency.

H. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy working counter area is protected from unauthorized access while the pharmacy is open for business by a barrier not less than 66 inches in height or another method approved by the Board or its designee.

Historical Note

Former Rules 6.6210, 6.6220, 6.6230, 6.6240, 6.6250, 6.6310, 6.6320, and 6.6330; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

R4-23-610. Community Pharmacy Personnel and Security Procedures

A. Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge."

1. The pharmacist-in-charge shall ensure the communication and compliance of Board directives to the management, other pharmacists, interns, and technicians of the pharmacy.
2. The pharmacist-in-charge shall:
   a. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are prepared, implemented, and complied with;
   b. Review biennially and, if necessary, revise all pharmacy policies and procedures required under 4 A.A.C. 23;
   c. Document the review required under subsection (A)(2)(b);
   d. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are assembled as a written or electronic manual; and
   e. Make all pharmacy policies and procedures required under 4 A.A.C. 23 available in the pharmacy for employee reference and inspection by the Board or its staff.

B. Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy interns, compliance officers, drug inspectors, peace officers acting in their official capacity, other persons authorized by law, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel shall be

permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency as defined in R4-23-110.

1. The pharmacist-in-charge shall comply with the minimum area requirements as described in R4-23-609 for a community pharmacy and for compounding and dispensing counter area.
2. A pharmacist employed by a pharmacy shall ensure that the pharmacy is physically secure while the pharmacist is on duty.

C. In a community pharmacy, a pharmacist shall ensure that the pharmacy area, and any additional storage area for drugs that is restricted to access only by a pharmacist is locked when a pharmacist is not present, except in an extreme emergency.

D. A pharmacist is the only person permitted by the Board to unlock the pharmacy area or any additional storage area for drugs restricted to access only by a pharmacist, except in an extreme emergency.

E. A pharmacy permittee or pharmacist-in-charge shall ensure that any prescription-only drugs and controlled substances received in an area outside the pharmacy area are immediately transferred unopened to the pharmacy area. The pharmacist-in-charge shall ensure that any prescription-only drug and controlled substance shipments are opened and marked by pharmacy personnel in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern.

F. A pharmacy permittee or pharmacist-in-charge may provide a small opening or slot through which a written prescription order or prescription medication container to be refilled may be left in the prescription area when the pharmacist is not present.

G. A pharmacist shall ensure that prescription medication is not left outside the prescription area or picked up by the patient when the pharmacist is not present by either:

1. Delivering the prescription medication to the patient, or
2. Securing the prescription medication inside the locked pharmacy, except when using an automated storage and distribution system that complies with the requirements of R4-23-614.

Historical Note

Former Rules 6.6410, 6.6420, 6.6430, 6.6440, 6.6450, 6.6460, 6.6470, 6.6480, and 6.6490; Amended subsection (F), deleted subsection (I) effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 2631, effective September 8, 2007 (Supp. 07-3).

R4-23-611. Pharmacy Facilities

A. Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:

1. A pharmacy's facilities are constructed according to state and local laws and ordinances;
2. A pharmacy facility's:
   a. Walls, ceilings, windows, floors, shelves, and equipment are clean and in good repair and order; and
   b. Counters, shelves, aisles, and open spaces are not cluttered;
3. Adequate trash receptacles are provided and emptied periodically during the day;
4. A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after February 1, 2014 provides access to toilet facilities either:

a. Within the pharmacy area, or
b. No further than a walking distance of 100 feet from the pharmacy area or an alternative distance approved by the Board or its designee;

5. The toilet facilities are maintained in a sanitary condition and in good repair;
6. All professional personnel and staff of the pharmacy keep themselves and their apparel clean while in the pharmacy area;
7. No animals, except licensed assistant animals and guard animals, are allowed in the pharmacy;
8. The pharmacy facility is kept free of insects and rodents; and
9. There is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for use in preparing drug products.

B. Supply of drugs and chemicals. A pharmacy permittee or pharmacist-in-charge shall ensure that:

1. A pharmacy maintains a stock of drugs and chemicals that:
   a. Are sufficient to meet the normal demands of the trading area or patient base the pharmacy serves; and
   b. Meet all standards of strength and purity as established by the official compendiums;
2. All stock, materials, drugs, and chemicals held for ultimate sale or supply to the consumer are not contaminated;
3. Policies and procedures are developed, implemented, and complied with to prevent the sale or use of a drug or chemical:
   a. That exceeds its expiration date;
   b. That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor, precipitation, or other change as determined by organoleptic examination or by other means;
   c. That is improperly labeled;
   d. Whose container is defective; or
   e. That does not comply with federal law; and
4. The policies and procedures described in subsection (B)(3):
   a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and
   b. Provide the following:
      i. Any expiration-dated drug or chemical is reviewed regularly;
      ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
      iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.

Historical Note

Former Rules 6.6510, 6.6520, 6.6530, 6.6540, 6.6550, 6.6560, 6.6570, 6.6580, 6.6600, 6.6610, 6.6620, 6.6630, 6.6640, 6.6650, and 6.6660; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

R4-23-612. Equipment

A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

1. Adequate refrigeration equipment dedicated to the storage of drugs and biologicals;
2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;
3. Graduates in assorted sizes;
4. One mortar and pestle, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
5. Spatulas of assorted sizes including one nonmetallic;
6. Prescription balance, Class A with weights or an electronic balance of equal or greater accuracy, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
7. One ointment tile or equivalent, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy
8. A current hard-copy or access to a current electronic-copy of the Arizona Pharmacy Act and administrative rules and Arizona Controlled Substance Act;
9. A professional reference library consisting of a minimum of one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
    a. Pharmacology or toxicology,
    b. Therapeutics,
    c. Drug compatibility, and
    d. Drug product equivalency;
10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;
11. A red C stamp as defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
12. Current antidote and drug interaction information; and
13. Regional poison control phone number prominently displayed in the pharmacy area.

Historical Note

Former Rule 6.6670; Former Section R4-23-612 repealed, new Section R4-23-612 adopted effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

R4-23-613. Procedure for Discontinuing a Pharmacy

A. A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least 14 days before discontinuing operation of the pharmacy. The notice shall contain the following information:

1. Name, address, pharmacy permit number, and D.E.A. registration number of the pharmacy discontinuing business;
2. Name, address, pharmacy permit number (if applicable), and D.E.A. registration number (if applicable) of the licensee, permittee, or registrant to whom any narcotic or other controlled

substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be sold or transferred;

3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be kept and the person responsible for the records. These records shall be kept for a minimum of three years from the date the pharmacy is discontinued;
4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of seven years from the date the last original or refill prescription was dispensed; and
5. The proposed date of discontinuing business operations.

B. The pharmacy permittee shall ensure that all pharmacy signs and symbols are removed from both the inside and outside of the premises.

C. The pharmacy permittee or pharmacist-in-charge shall ensure that all state permits and certificates of registration are returned to the Board office and that D.E.A. registration certificates and unused D.E.A. Schedule II order forms are returned to the D.E.A. Regional Office in Phoenix.

D. The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:

1. Only a pharmacist has access to the prescription-only drugs and controlled substances until they are transferred to the licensee, permittee, or registrant listed in subsection (A)(2);
2. All narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals are removed from the premises on or before the date the pharmacy is discontinued; and
3. All controlled substances are transferred as follows:
    a. Take an inventory of all controlled substances that are transferred using the procedures in R4-23-1003;
    b. Include a copy of the inventory with the controlled substances that are transferred;
    c. Keep the original of the inventory with the discontinued pharmacy's records of narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical purchase and disbursement for a minimum of three years from the date the pharmacy is discontinued;
    d. Use a D.E.A. form 222 to transfer any Schedule II controlled substances; and
    e. Transfer controlled substances that need destruction in the same manner as all other controlled substances.

E. Upon receipt of outdated or damaged controlled substances from a discontinued pharmacy, the licensee, permittee, or registrant described in subsection (A)(2) shall contact a D.E.A. registered reverse distributor for proper destruction of outdated or damaged controlled substances. If there are controlled substances a reverse distributor will not accept, the licensee, permittee, or registrant shall then contact the Board office and request an inspection for the purpose of drug destruction.

F. During the three-year record retention period specified in subsection (A)(3), the person described in subsection (A)(3) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.

G. During the seven-year record retention period specified in subsection (A)(4), the person described in subsection (A)(4) shall provide to the Board upon its request a discontinued pharmacy's records of prescription files and patient profiles.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

R4-23-614. Automated Storage and Distribution System

A. Before using an automated storage and distribution system, a pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that the automated storage and distribution system and the policies and procedures comply with subsection (B); and
2. Notify the Board in writing of the intent to use an automated storage and distribution system, including the type or name of the system.

B. A pharmacy permittee or pharmacist-in-charge shall establish policies and procedures for appropriate performance and use of the automated storage and distribution system that:
1. Ensure that the automated storage and distribution system is in good working order while maintaining appropriate recordkeeping and security safeguards;
2. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices by a patient:
   a. Only contains prescriptions that:
      i. Do not require oral consultation as specified in R4-23-402(B); and
      ii. Are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients;
   b. Allows a patient to choose whether or not to use the system;
   c. Is located either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against the wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal;
   d. Provides a method to identify the patient and only release that patient's prescriptions;
   e. Is secure from access and removal of drugs or devices by unauthorized individuals;
   f. Provides a method for a patient to obtain a consultation with a pharmacist if requested by the patient; and
   g. Does not allow the system to dispense refilled prescriptions if a pharmacist determines that the patient requires oral counseling as specified in R4-23-402(B);
3. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices only by authorized licensed personnel for the purposes of administration based on a valid prescription order or medication order:
   a. Provides for adequate security to prevent unauthorized individuals from accessing or obtaining drugs or devices; and
   b. Provides for the filling, stocking, or restocking of all drugs or devices in the system only by a Board licensee or other authorized licensed personnel; and

4. Implement an ongoing quality assurance program that monitors compliance with the established policies and procedures of the automated storage and distribution system and federal and state law.

C. A pharmacy permittee or pharmacist-in-charge shall:

1. Ensure that the policies and procedures required under subsection (B) are prepared, implemented, and complied with;
2. Review biennially and, if necessary, revise the policies and procedures required under subsection (B);
3. Document the review required under subsection (C)(2);
4. Assemble the policies and procedures as a written or electronic manual; and
5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside the pharmacy where the automated storage and distribution system is used.

D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated storage and distribution system if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form

A. A pharmacy permittee or pharmacist-in-charge shall ensure that a mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist complies with the following method to identify the contents of the device:

1. The drug name and strength are affixed to the front of each cell or cassette of the device;
2. A paper or electronic log is kept for each cell or cassette that contains:
   a. An identification of the cell or cassette by the drug name and strength or the number of the cell or cassette;
   b. The drug's manufacturer or National Drug Code (NDC) number;
   c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the cell or cassette. If multiple lot numbers of the same drug are added to a cell or cassette, each lot number and expiration date shall be documented, and the earliest expiration date shall become the expiration date of the mixed lot of drug in the cell or cassette;
   d. The date the cell or cassette is filled;
   e. Documentation of the identity of the licensee who placed the drug into the cell or cassette; and
   f. If the licensee who filled the cell or cassette is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee who filled the cell or cassette; and
3. The paper or electronic log is available in the pharmacy for inspection by the Board or its designee for not less than two years.

B. A pharmacy permittee or pharmacist-in-charge shall ensure that any drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy is not returned to the drug's cell, cassette, or stock bottle, unless the drug return method is

approved by the Board or its designee as specified in subsection (G). This subsection does not prevent a pharmacy permittee or pharmacist-in-charge from using a manual or mechanical counting device to count and dispense a previously counted drug that has not left the pharmacy if the previously counted drug is dispensed before its beyond-use-date.

C. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:

1. Training in the maintenance, calibration, and use of the mechanical storage and counting device for each employee who uses the mechanical storage and counting device;
2. Maintenance and calibration of the mechanical storage and counting device as recommended by the device's manufacturer; and
3. Routine quality assurance and accuracy validation testing for each mechanical storage and counting device.

D. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (C) is available for inspection by the Board or its designee.

E. A pharmacy permittee or pharmacist-in-charge shall:

1. Ensure that policies and procedures for the performance and use of a mechanical storage and counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
2. Review biennially and, if necessary, revise the policies and procedures required under subsection (E)(1);
3. Document the review required under subsection (E)(2);
4. Assemble the policies and procedures as a written or electronic manual; and
5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.

F. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical storage and counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), (C), (D), or (E).

G. Returning a drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy to the drug's cell or cassette.

1. Before returning a drug previously counted by a mechanical storage and counting device that has not left the pharmacy to the drug's cell or cassette, a pharmacy permittee or pharmacist-in-charge shall:
    a. Apply for approval from the Board or its designee for the drug return method to be used in returning the drug;
    b. Develop a drug return method that uses technology, such as bar coding, to prevent drug return errors;
    c. Provide documentation depicting the drug return method;
    d. Demonstrate the drug return method for a Board Compliance Officer; and
    e. Receive approval from the Board or its designee for the drug return method to be used in returning the drug.

2. Before approving a request to waive the drug return prohibition in subsection (B), the Board or its designee shall:
   a. Receive a request in writing from the pharmacy permittee or pharmacist-in-charge;
   b. Review the documentation of the drug return method; and
   c. Receive a satisfactory inspection report from a Board Compliance Officer that the drug return method uses technology to prevent drug return errors.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).
Amended by final rulemaking at 14 A.A.R. 3677, effective November 8, 2008 (Supp. 08-3).

R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form

A. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
   1. Training in the maintenance, calibration, and use of the mechanical counting device for each employee who uses the mechanical counting device;
   2. Maintenance and calibration of the mechanical counting device as recommended by the device's manufacturer; and
   3. Routine quality assurance and accuracy validation testing for each mechanical counting device.

B. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (A) is available for inspection by the Board or its designee.

C. A pharmacy permittee or pharmacist-in-charge shall:
   1. Ensure that policies and procedures for the performance and use of a mechanical counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
   2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
   3. Document the review required under subsection (C)(2);
   4. Assemble the policies and procedures as a written or electronic manual; and
   5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.

D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies

A. Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy or relocate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge of the temporary pharmacy facility or mobile pharmacy ensures that:

1. The pharmacy is under the control and management of the pharmacist-in-charge or a supervising pharmacist designated by the pharmacist-in-charge;
2. The pharmacy is located within or adjacent to the declared disaster area;
3. The Board is notified of the pharmacy's location;
4. The pharmacy is properly secured to prevent theft and diversion of drugs;
5. The pharmacy's records are maintained in accordance with Arizona statutes and rules; and
6. The pharmacy stops providing pharmacy services when the declared state of emergency ends, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.

B. The Board shall have the authority to approve or deny temporary pharmacy facilities, mobile pharmacies, and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis.

C. A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and have received a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931 by following the application process under R4-23-606.

D. A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

R4-23-620. Continuous Quality Assurance Program

A. Each pharmacy permittee shall implement or participate in a continuous quality assurance (CQA) program. A pharmacy permittee meets the requirements of this Section if it holds a current general, special or rural general hospital license from the Arizona Department of Health Services and is any of the following:
1. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare or Medicaid programs;
2. Accredited by the Joint Commission on the Accreditation of Healthcare Organizations; or
3. Accredited by the American Osteopathic Association.

B. A pharmacy permittee or the pharmacist-in-charge shall ensure that:
1. The pharmacy develops, implements, and utilizes a CQ program consistent with the requirements of this Section and A.R.S. § 32-1973;
2. The medication error data generated by the CQA program is utilized and reviewed on a regular basis, as required by subsection (D); and
3. Training records, policies and procedures, and other program records or documents, other than medication error data, are maintained for a minimum of two years in the pharmacy or in a readily retrievable manner.

C. A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that policies and procedures for the operation and management of the pharmacy's CQA program are prepared, implemented, and complied with;
2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
3. Document the review required under subsection (C)(2);

4. Assemble the policies and procedures as a written or electronic manual; and
5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.

D. The policies and procedures shall address a planned process to:
1. Train all pharmacy personnel in relevant phases of the CQA program;
2. Identify and document medication errors;
3. Record, measure, and analyze data collected to:
   a. Assess the causes and any contributing factors relating to medication errors, and
   b. Improve the quality of patient care;
4. Utilize the findings from subsections (D)(2) and (3) to develop pharmacy systems and workflow processes designed to prevent or reduce medication errors; and
5. Communicate periodically, and at least annually, with pharmacy personnel to review CQA program findings and inform pharmacy personnel of any changes made to pharmacy policies, procedures, systems, or processes as a result of CQA program findings.

E. The Board's regulatory oversight activities regarding a pharmacy's CQA program are limited to inspection of the pharmacy's CQA policies and procedures and enforcing the pharmacy's compliance with those policies and procedures.

F. A pharmacy's compliance with this Section shall be considered by the Board as a mitigating factor in the investigation and evaluation of a medication error.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4).

R4-23-621. Shared Services

A. Before participating in shared services, a pharmacy shall have either a current resident or non-resident pharmacy permit issued by the Board.

B. A pharmacy may provide or utilize shared services functions only if the pharmacies involved:
1. Have the same owner, or
2. Have a written contract or agreement that outlines the services provided and the shared responsibilities of each party in complying with federal and state pharmacy statutes and rules, and
3. Share a common electronic file or technology that allows access to information necessary or required to perform shared services in conformance with the pharmacy act and the Board's rules.

C. Notifications to patients.
1. Before using shared services provided by another pharmacy, a pharmacy permittee shall:
   a. Notify patients that their orders may be processed or filled by another pharmacy; and
   b. Provide the name of that pharmacy or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process or fill the order, notify the patient of this fact. The notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.
2. If an order is delivered directly to the patient by a filling pharmacy and not returned to the requesting pharmacy, the filling pharmacy permittee shall ensure that the following is placed on the prescription container or on a separate sheet delivered with the prescription container:
   a. The local, and if applicable, the toll-free telephone number of the pharmacy utilizing shared services that has access to the patient's records; and

b. A statement that conveys to the patient or patient's care-giver the following information: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the local and toll-free telephone numbers of the pharmacy utilizing shared services that has access to the patient's records)."

3. The provisions of subsection (C) do not apply to orders delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.

D. A pharmacy permittee engaged in shared services shall:

1. Maintain manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy;
2. Maintain manual or electronic records that identify, individually for each order filled or dispensed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the filling, dispensing, and counseling functions performed at that pharmacy;
3. Report to the Board as soon as practical the results of any disciplinary action taken by another state's pharmacy regulatory agency involving shared services;
4. Maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;
5. Provide for adequate security to protect the confidentiality and integrity of patient information; and
6. Provide for inspection of any required record or information within 72 hours of any request by the Board or its designee.

E. Each pharmacy permittee that provides or utilizes shared services shall develop, implement, review, revise, and comply with joint policies and procedures for shared services in the manner described in R4-23-610(A)(2). Each pharmacy permittee is required to maintain only those portions of the joint policies and procedures that relate to that pharmacy's operations. The policies and procedures shall:

1. Outline the responsibilities of each of the pharmacies;
2. Include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared services; and
3. Include policies and procedures for:
   a. Notifying patients that their orders may be processed or filled by another pharmacy and providing the name of that pharmacy;
   b. Protecting the confidentiality and integrity of patient information;
   c. Dispensing orders when the filled order is not received or the patient comes in before the order is received;
   d. Maintaining required manual or electronic records to identify the name, initials, or identification code and specific activity or activities of each pharmacist, graduate intern,

pharmacy intern, pharmacy technician, or pharmacy technician trainee who performed any shared services;

e. Complying with federal and state laws; and

f. Operating a continuous quality improvement program for shared services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

F. Nothing in this Section shall prohibit an individual pharmacist licensed in Arizona, who is an employee of or under contract with a pharmacy, or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee, working under the supervision of the pharmacist, from accessing that pharmacy's electronic database from inside or outside the pharmacy and performing the order processing functions permitted by the pharmacy act, if both of the following conditions are met:

1. The pharmacy establishes controls to protect the confidentiality and integrity of patient information; and
2. None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1).
Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

R4-23-651. Definitions

The following definitions apply to R4-23-651 through R4-23-659:

"Administration" means the giving of a dose of medication to a patient as a result of an order of a medical practitioner.

"Direct copy" means an electronic, facsimile or carbonized copy.

"Dispensing for hospital inpatients" means the interpreting, evaluating, and implementing a medication order including preparing for delivery a drug or device to an inpatient or inpatient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, an inpatient (hereafter referred to as "dispensing").

"Drug distribution" means the delivery of drugs other than "administering" or "dispensing."

"Emergency medical situation" means a condition of emergency in which immediate drug therapy is required for the preservation of health, life, or limb of a person or persons.

"Floor stock" means a supply of essential drugs not labeled for a specific patient and maintained and controlled by the pharmacy at a patient care area for the purpose of timely administration to a patient of the hospital.

"Formulary" means a continually revised compilation of pharmaceuticals (including ancillary information) that reflects the current clinical judgment of the medical staff.

"Hospital pharmacy" means a pharmacy, as defined in A.R.S. § 32-1901, that holds a current permit issued by the Board pursuant to A.R.S. § 32-1931, and is located in a hospital as defined in A.R.S. § 32-1901.

"Inpatient" means any patient who receives non-self-administered drugs from a hospital pharmacy for use while within a facility owned by the hospital.

"Intravenous admixture" means a sterile parenteral solution to which one or more additional drug products have been added.

"Medication order" means a written, electronic, or verbal order from a medical practitioner or a medical practitioner's authorized agent for administration of a drug or device.

"On-call" means a pharmacist is available to:

Consult or provide drug information regarding drug therapy or related issues; or

Dispense a medication order and review a patient's medication order for pharmaceutical and therapeutic feasibility under R4-23-653(E)(2) before any drug is administered to a patient, except as specified in R4-23-653(E)(1).

"Patient care area" means any area for the primary purpose of providing a physical environment that is owned by or operated in conjunction with a hospital, for a patient to obtain health care services, except those areas where a physician, dentist, veterinarian, osteopath, or other medical practitioner engages primarily in private practice.

"Repackaged drug" means a drug product that is transferred by pharmacy personnel from an original manufacturer's container to another container properly labeled for subsequent dispensing.

"Satellite pharmacy" means a work area in a hospital setting under the direction of a pharmacist that is a remote extension of a centrally licensed hospital pharmacy and owned by and dependent upon the centrally licensed hospital pharmacy for administrative control, staffing, and drug procurement.

"Single unit" means a package of medication that contains one discrete pharmaceutical dosage form.

"Supervision" means the process by which a pharmacist directs the activities of hospital pharmacy personnel to a sufficient degree to ensure that all activities are performed accurately, safely, and without risk of harm to patients.

Historical Note

Former Rules 6.7110, 6.7120, and 6.7130; Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) effective April 20, 1982 (Supp. 82-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-652. Hospital Pharmacy Permit

A. The following rules are applicable to all hospitals as defined by A.R.S. § 32-1901 and hospital pharmacies as defined by R4-23-651.

B. Before opening a hospital pharmacy, a person shall obtain a pharmacy permit as specified in R4-23-602 and R4-23-606.

C. Discontinued hospitals. If a hospital license is discontinued by the state Department of Health Services, the pharmacy permittee or pharmacist-in-charge shall follow the procedures described in R4-23-613 for discontinuing a pharmacy.

Historical Note

Former Rules 6.7210, 6.7220, 6.7230, 6.7231, 6.7232, and 6.7233. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-653. Personnel: Professional or Technician

A. Each hospital pharmacy shall be directed by a pharmacist who is licensed to engage in the practice of pharmacy in Arizona and is referred to as the Director of Pharmacy. The Director of Pharmacy shall be the pharmacist-in-charge, as defined in A.R.S. § 32-1901 or shall appoint a pharmacist-in-charge. The Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall:

1. Be responsible for all the activities of the hospital pharmacy and for meeting the requirements of the Arizona Pharmacy Act and these rules;
2. Ensure that the policies and procedures required by these rules are prepared, implemented, and complied with;
3. Review biennially and, if necessary, revise the policies and procedures required under these rules;
4. Document the review required under subsection (A)(3);
5. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
6. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its designee.

B. In all hospitals, a pharmacist shall be in the hospital during the time the pharmacy is open for pharmacy services, except for an extreme emergency as defined in R4-23-110. Pharmacy services shall be provided for a minimum of 40 hours per week, unless an exception for less than the minimum hours is made upon written request by the hospital and with express permission of the Board or its designee.

C. In a hospital where the pharmacy is not open 24 hours per day for pharmacy services, a pharmacist shall be "on-call" as defined in R4-23-651 when the pharmacy is closed.

D. The Director of Pharmacy may be assisted by other personnel approved by the Director of Pharmacy in order to operate the pharmacy competently, safely, and adequately to meet the needs of the hospital's patients.

E. Pharmacists. A pharmacist or a pharmacy intern or graduate intern under the supervision of a pharmacist shall perform the following professional practices:

1. Verify a patient's medication order before administration of a drug to the patient, except:
   a. In an emergency medical situation; or
   b. In a hospital where the pharmacy is open less than 24 hours a day for pharmacy services, a pharmacist shall verify a patient's medication order within four hours of the time the pharmacy opens for pharmacy services;
2. Verify a medication order's pharmaceutical and therapeutic feasibility based upon:
   a. The patient's medical condition,
   b. The patient's allergies,
   c. The pharmaceutical and therapeutic incompatibilities, and
   d. The recommended dosage limits;
3. Measure, count, pour, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician or pharmacy technician trainee may measure, count, pour, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
4. Compound, admix, combine, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician may compound, admix, combine, or otherwise prepare and package

a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;

5. Verify the accuracy, correct procedure, compounding, admixing, combining, measuring, counting, pouring, preparing, packaging, and safety of a drug prepared and packaged by a pharmacy technician or pharmacy technician trainee according to subsections (E)(3) and (4) and according to the policies and procedures in subsection (G);
6. Supervise drug repackaging and check the completed repackaged product as specified in R4-23-402(A);
7. Supervise training and education in aseptic technique and drug incompatibilities for all personnel involved in the admixture of parenteral products within the hospital pharmacy;
8. Consult with the medical practitioner regarding the patient's drug therapy or medical condition;
9. When requested by a medical practitioner, patient, patient's agent, or when the pharmacist deems it necessary, provide consultation with a patient regarding the medication order, patient's profile, or overall drug therapy;
10. Monitor a patient's drug therapy for safety and effectiveness;
11. Provide drug information to patients and health care professionals;
12. Manage the activities of pharmacy technicians, pharmacy technician trainees, other personnel, and systems to ensure that all activities are performed accurately, safely, and without risk of harm to patients;
13. Verify the accuracy of all aspects of the original, completed medication order; and
14. Ensure compliance by pharmacy personnel with a quality assurance program developed by the hospital.

F. Pharmacy technicians and pharmacy technician trainees. Before working as a pharmacy technician or pharmacy technician trainee, an individual shall meet the eligibility and licensure requirements prescribed in 4 A.A.C. 23, Article 11

G. Pharmacy technician policies and procedures. Before employing a pharmacy technician or pharmacy technician trainee, a Director of Pharmacy or pharmacist-in-charge shall develop the policies and procedures required under R4-23-1104.

H. Pharmacy technician training program.

1. A Director of Pharmacy or pharmacist-in-charge shall comply with the training program requirements of R4-23-1105 based on the needs of the hospital pharmacy;
2. A pharmacy technician or pharmacy technician trainee shall:
   a. Perform only those tasks for which training and competency have been demonstrated; and
   b. Not perform professional practices reserved for a pharmacist, graduate intern, or pharmacy intern in subsection (E), except as specified in subsections (E)(3) and (4).

I. Supervision. A hospital pharmacy's Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall supervise all of the activities and operations of a hospital pharmacy. A pharmacist shall supervise all functions and activities of pharmacy technicians, pharmacy technician trainees, and other hospital pharmacy personnel to ensure that all functions and activities are performed competently, safely, and without risk of harm to patients.

Historical Note

Former Rules 6.7310 and 6.7320; Amended effective August 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003

(Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-654. Absence of Pharmacist

A. If a pharmacist will not be on duty in the hospital, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have access to drugs in the remote drug storage area defined in R4-23-110 or in the hospital pharmacy if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient. A pharmacist shall be on-call during all absences.

B. If a pharmacist will not be on duty in the hospital pharmacy, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have telephone access to an on-call pharmacist.

C. The hospital pharmacy permittee shall ensure that the hospital pharmacy is not without a pharmacist on duty in the hospital for more than 72 consecutive hours.

D. Remote drug storage area. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital:

1. Develop and maintain an inventory listing of the drugs to be included in a remote drug storage area; and
2. Develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures that ensure proper storage, access, and accountability for drugs in a remote drug storage area.

E. Access to hospital pharmacy. If a drug is not available from a remote drug storage area and the drug is required to treat the immediate needs of a patient whose health may be compromised, the drug may be obtained from the hospital pharmacy according to the requirements of this subsection.

1. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures to ensure that access to the hospital pharmacy during the pharmacist's absence conforms to the following requirements:
   a. Access is delegated to only one supervisory nurse in each shift;
   b. The policy and name of supervisory nurse is communicated in writing to the medical staff of the hospital;
   c. Access is delegated only to a nurse who has received training from the Director of Pharmacy, pharmacist-in-charge, or Director's designee in the procedures required for proper access, drug removal, and recordkeeping; and
   d. Access is delegated by the supervisory nurse to another nurse only in an emergency.
2. If a nurse to whom authority is delegated to access the hospital pharmacy removes a drug from the hospital pharmacy, the nurse shall:
   a. Record the following information on a form or by another method approved by the Board or its designee:
      i. Patient's name;
      ii. Drug name, strength, and dosage form;
      iii. Quantity of drug removed; and
      iv. Date and time of removal;
   b. Sign or initial, if a corresponding signature is on file in the hospital pharmacy, the form recording the drug removal;

c. Attach the original or a direct copy of the medication order for the drug to the form recording the drug removal; and
d. Place the form recording the drug removal conspicuously in the hospital pharmacy.

3. Within four hours after a pharmacist returns from an absence, the pharmacist shall verify all records of drug removal that occurred during the pharmacist's absence according to R4-23-653(E).

Historical Note

Former Rules 6.7410, 6.7420, 6.7430, 6.7440, 6.7450, and 6.7460; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-655. Physical Facility

A. General. A hospital pharmacy permittee shall ensure that the hospital pharmacy has sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations.

B. Minimum area of hospital pharmacy. The minimum area of a hospital pharmacy depends on the type of hospital, the number of beds, and the pharmaceutical services provided. Any hospital pharmacy permit issued or hospital pharmacy remodeled after January 31, 2003 shall provide a minimum hospital pharmacy area, the actual area primarily devoted to drug dispensing and preparation functions, exclusive of bulk drug storage, satellite pharmacy, and office areas that is not less than 500 square feet. The minimum area requirement, not including unusable area, may be varied upon approval by the Board for out-of-the-ordinary conditions or for systems that require less space.

C. The Board may also require that a hospital pharmacy permittee or applicant provide:

1. More than the minimum area if equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice;
2. Additional dispensing, preparation, or storage areas because of the increased number of specific drugs prescribed per day, the increased use of intravenous and irrigating solutions, and the increased use of disposable and prepackaged products;
3. Additional dispensing, preparation, or storage areas to handle investigational drugs, emergency drug kits, chemotherapeutics, alcohol and other flammables, poisons, external preparations, and radioisotopes, and to accommodate quality control procedures; and
4. Additional office space to provide for an increased number of personnel, a drug information library, a poison information library, research support, teaching and conferences, and a waiting area.

D. Hospital pharmacy area. A hospital pharmacy permittee shall ensure that the hospital pharmacy area is enclosed by a permanent barrier or partition from floor to ceiling with entry doors that can be securely locked, constructed according to R4-23-609(F).

E. Hospital pharmacy storage areas. The hospital pharmacy permittee, Director of Pharmacy, or pharmacist-in-charge shall ensure that all undispensed or undistributed drugs are stored in designated areas within the hospital pharmacy or other locked areas under the control of a pharmacist that ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

Historical Note

Former Rules 6.7471, 6.7472, 6.7473, 6.7474, and 6.7490; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Table 1 ("spare feet" changed to "square feet") (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 462, effective March 5, 2005 (Supp. 05-1).

R4-23-656. Sanitation and Equipment

A hospital pharmacy permittee or Director of Pharmacy shall ensure that a hospital pharmacy:

1. Has a professional reference library consisting of hard-copy or electronic media appropriate for the scope of pharmacy services provided by the hospital;
2. Has a sink, other than a sink in a toilet facility, that:
   a. Has hot and cold running water;
   b. Is within the hospital pharmacy area for use in preparing drug products; and
   c. Is maintained in a sanitary condition and in good repair;
3. Maintains a room temperature within a range compatible with the proper storage of drugs;
4. Has a refrigerator and freezer with a temperature maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing; and
5. Has a designated area for a laminar air flow hood and other supplies required for the preparation of sterile products as specified in R4-23-670.

Historical Note

Former Rule 6.7480. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-657. Security

A. Personnel security standards. A Director of Pharmacy shall ensure that:

1. No one is permitted in the pharmacy unless a pharmacist is present except as provided in this Section and R4-23-654. If only one pharmacist is on duty in the pharmacy and that pharmacist must leave the pharmacy for an emergency or patient care duties, nonpharmacist personnel may remain in the pharmacy to perform duties as outlined in R4-23-653, provided that all C-II controlled substances are secured to prohibit access by other than a pharmacist, and that the pharmacist remains available in the hospital;
2. All hospital pharmacy areas are kept locked by key or programmable lock to prevent access by unauthorized personnel; and
3. Pharmacists, pharmacy or graduate interns, pharmacy technicians, pharmacy technician trainees, and other personnel working in the pharmacy wear identification badges, including name and position, whenever on duty.

B. Prescription blank security. The Director of Pharmacy shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for the safe distribution and control of prescription blanks bearing identification of the hospital.

Historical Note

Former Rule 6.7500; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective

R4-23-658. Drug Distribution and Control

A. General. The Director of Pharmacy or pharmacist-in-charge shall in consultation with the medical staff, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for the effective operation of a drug distribution system that optimizes patient safety.

B. Responsibility. The Director of Pharmacy is responsible for the safe and efficient procurement, dispensing, distribution, administration, and control of drugs, including the following:
1. In consultation with the appropriate department personnel and medical staff committee, develop a medication formulary for the hospital;
2. Proper handling, distribution, and recordkeeping of investigational drugs; and
3. Regular inspections of drug storage and preparation areas within the hospital.

C. Physician orders. A Director of Pharmacy or pharmacist-in-charge shall ensure that:
1. Drugs are dispensed from the hospital pharmacy only upon a written order, direct copy or facsimile of a written order, or verbal order of an authorized medical practitioner; and
2. A pharmacist reviews the original, direct or facsimile copy, or verbal order before an initial dose of medication is administered, except as specified in R4-23-653(E)(1).

D. Labeling. A Director of Pharmacy or pharmacist-in-charge shall ensure that all drugs distributed or dispensed by a hospital pharmacy are packaged in appropriate containers and labeled as follows:
1. For use inside the hospital.
   a. Labels for all single unit packages contain at a minimum, the following information:
      i. Drug name, strength, and dosage form;
      ii. Lot number and beyond-use-date; and
      iii. Appropriate auxiliary labels;
   b. Labels for repackaged preparations contain at a minimum the following information:
      i. Drug name, strength, and dosage form;
      ii. Lot number and beyond-use-date;
      iii. Appropriate auxiliary labels; and
      iv. Mechanism to identify pharmacist accountable for repackaging;
   c. Labels for all intravenous admixture preparations contain at a minimum the following information:
      i. Patient's name and location;
      ii. Name and quantity of the basic parenteral solution;
      iii. Name and amount of drug added;
      iv. Date of preparation;
      v. Beyond-use-date and time;
      vi. Guidelines for administration;
      vii. Appropriate auxiliary label or precautionary statement; and
      viii. Initials of pharmacist responsible for admixture preparation; and
2. For use outside the hospital. Any drug dispensed to a patient by a hospital pharmacy that is intended for self-administration outside of the hospital is labeled as specified in A.R.S. §§ 32-1963.01(C) and 32-1968(D) and A.A.C. R4-23-402.

E. Controlled substance accountability. A Director of Pharmacy or pharmacist-in-charge shall ensure that effective policies and procedures are developed, implemented, reviewed, and revised in the same

manner described in R4-23-653(A) and complied with regarding the use, accountability, and recordkeeping of controlled substances in the hospital, including the use of locked storage areas when controlled substances are stored in patient care areas.

F. Emergency services dispensing. If a hospital permits dispensing of drugs from the emergency services department when the pharmacy is unable to provide this service, the Director of Pharmacy, in consultation with the appropriate department personnel and medical staff committee shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for dispensing drugs for outpatient use from the hospital's emergency services department. The policies and procedures shall include the following requirements:

1. Drugs are dispensed only to patients who have been admitted to the emergency services department;
2. Drugs are dispensed only by an authorized medical practitioner, not a designee or agent;
3. The nature and type of drugs available for dispensing are designed to meet the immediate needs of the patients treated within the hospital;
4. Drugs are dispensed only in quantities sufficient to meet patient needs until outpatient pharmacy services are available;
5. Drugs are prepackaged by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist in suitable containers and appropriately prelabeled with the drug name, strength, dosage form, quantity, manufacturer, lot number, beyond-use-date, and any appropriate auxiliary labels;
6. Upon dispensing, the authorized medical practitioner completes the label on the prescription container that complies with the requirements of R4-23-658(D); and
7. The hospital pharmacy maintains a dispensing log, hard-copy prescription, or electronic record, approved by the Board or its designee and includes the patient name and address, drug name, strength, dosage form, quantity, directions for use, medical practitioner's signature or identification code, and DEA registration number, if applicable.

Historical Note

Former Rules 6.7610, 6.7620, and 6.7710; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to subsection (I)(5) ("unnecessary" changed to "necessary") (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-659. Administration of Drugs

A. Self-administration. A hospital shall not allow self-administration of medications by a patient unless the Director of Pharmacy or pharmacist-in-charge, in consultation with the appropriate department personnel and medical staff committee, develops, implements, reviews, and revises in the same manner described in R4-23-653(A) and complies with policies and procedures for self-administration of medications by a patient. The policies and procedures shall specify that self-administration of medications, if allowed, occurs only when:

1. Specifically ordered by a medical practitioner, and
2. The patient is educated and trained in the proper manner of self-administration.

B. Drugs brought in by a patient. If a hospital allows a patient to bring a drug into the hospital and before a patient brings a drug into the hospital, the Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate department personnel and medical staff committee, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for a patient-owned drug brought into the hospital. The policies and procedures shall specify the following criteria for a patient-owned drug brought into the hospital:

1. When policy allows the administration of a patient-owned drug, the drug is not administered to the patient unless:
    a. A pharmacist or medical practitioner identifies the drug, and
    b. A medical practitioner writes a medication order specifying administration of the identified patient-owned drug; and
2. If a patient-owned drug will not be used during the patient's hospitalization, the hospital pharmacy's personnel shall:
    a. Package, seal, and give the drug to the patient's agent for removal from the hospital; or
    b. Package, seal, and store the drug for return to the patient at the time of discharge from the hospital.

C. Drug samples. The Director of Pharmacy or pharmacist-in-charge is responsible for the receipt, storage, distribution, and accountability of drug samples within the hospital, including developing, implementing, reviewing, and revising in the same manner described in R4-23-653(A) and complying with specific policies and procedures regarding drug samples.

Historical Note

Former Rules 6.7720, 6.7730, 6.7740, 6.7760, 6.7770, 6.7780, 6.7800, 6.7810, 6.7820, 6.7830, 6.7840, 6.7850, 6.7871, 6.7872, and 6.7873; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Section heading ("rules" changed to "roles") (Supp. 91-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-660. Investigational Drugs

The Director of Pharmacy or pharmacist-in-charge shall ensure that:

1. The following information concerning an investigational drug is available for use by hospital personnel:
    a. Composition,
    b. Pharmacology,
    c. Adverse reactions,
    d. Administration guidelines, and
    e. All other available information concerning the drug, and
2. An investigational drug is:
    a. Properly stored in, labeled, and dispensed from the pharmacy, and
    b. Not dispensed before the drug is approved by the appropriate medical staff committee of the hospital.

Historical Note

Former Rules 6.7881, 6.7882, and 6.7883; Amended subsection (A) effective Aug. 9, 1983 (Supp.

83-4). Repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-670. Sterile Pharmaceutical Products

A. In addition to the minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall provide a minimum sterile pharmaceutical product compounding area that is not less than 100 square feet of contiguous floor area, except any pharmacy permit issued or pharmacy remodeled before November 1, 2006 may continue to use a sterile pharmaceutical product compounding area that is not less that 60 square feet of contiguous floor area, until a pharmacy ownership change occurs that requires issuance of a new permit or the pharmacy is remodeled. The pharmacy permittee or the pharmacist-in-charge shall ensure that the sterile pharmaceutical product compounding area:

1. Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
2. Is isolated from other pharmacy functions;
3. Restricts entry or access;
4. Is free from unnecessary disturbances in air flow;
5. Is made of non-porous and cleanable floor, wall, and ceiling material; and
6. Meets the minimum air cleanliness standards of an ISO Class 7 environment as defined in R4-23-110, except an ISO class 7 environment is not required if all sterile pharmaceutical product compounding occurs within an ISO class 5 environment isolator, such as a glove box, pharmaceutical isolator, barrier isolator, pharmacy isolator, or hospital pharmacy isolator.

B. In addition to the equipment requirements in R4-23-611 and R4-23-612 or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:

1. Environmental control devices capable of maintaining a compounding area environment equivalent to an “ISO class 5 environment” as defined in R4-23-110. Devices capable of meeting these standards include: laminar airflow hoods, hepa filtered zonal airflow devices, glove boxes, pharmaceutical isolators, barrier isolators, pharmacy isolators, hospital pharmacy isolators, and biological safety cabinets;
2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
3. Freezer storage units with thermostatic control and thermometer, if applicable;
4. Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
5. Infusion devices and accessories, if applicable; and
6. In addition to the reference library requirements of R4-23-612, a current reference pertinent to the preparation of sterile pharmaceutical products.

C. Before compounding a sterile pharmaceutical product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:

1. Prepare, implement, and comply with policies and procedures for compounding and dispensing sterile pharmaceutical products,

2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1),
3. Document the review required under subsection (C)(2),
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

D. The assembled policies and procedures shall include, where applicable, the following subjects:

1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
2. Clinical services and drug monitoring procedures for:
    a. Patient drug utilization reviews;
    b. Inventory audits;
    c. Patient outcome monitoring;
    d. Drug information; and
    e. Education of pharmacy and other health professionals;
3. Controlled substances;
4. Supervisory controls and verification procedures for:
    a. Cytotoxics handling, storage, and disposal;
    b. Disposal of unused supplies and pharmaceutical products; and
    c. Handling and disposal of infectious wastes;
5. Pharmaceutical product administration, including guidelines for the first dosing of a pharmaceutical product;
6. Drug and component procurement;
7. Pharmaceutical product compounding, dispensing, and storage;
8. Duties and qualifications of professional and support staff;
9. Equipment maintenance;
10. Infusion devices and pharmaceutical product delivery systems;
11. Investigational drugs and their protocols;
12. Patient profiles;
13. Patient education and safety;
14. Quality management procedures for:
    a. Adverse drug reactions;
    b. Drug recalls;
    c. Expired pharmaceutical products;
    d. Beyond-use-dating for both standard-risk and substantial-risk sterile pharmaceutical products consistent with the requirements of R4-23-410(B)(3)(d);
    e. Temperature and other environmental controls;
    f. Documented process and product validation testing; and
    g. Semi-annual certification of the laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment, including documentation of routine cleaning and maintenance for each laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment; and
15. Sterile pharmaceutical product delivery requirements for:

a. Shipment to the patient;
b. Security; and
c. Maintaining official compendial storage conditions.

E. Standard-risk sterile pharmaceutical product compounding. Before compounding a standard-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:

1. Compounding occurs only in an ISO class 5 environment within an ISO class 7 environment, and the ISO class 7 environment may have a specified prep area inside the environment;
2. Compounding sterile pharmaceutical products from sterile commercial drugs or sterile pharmaceutical otic or ophthalmic products from non-sterile ingredients occurs using procedures that involve only a few closed-system, basic, simple aseptic transfers and manipulations;
3. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
4. Each person who compounds completes an annual media-fill test to validate proper aseptic technique.

F. Substantial-risk sterile pharmaceutical product compounding. Before compounding a substantial-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:

1. Compounding parenteral or injectable sterile pharmaceutical products from non-sterile ingredients occurs only in an ISO class 5 environment within an ISO class 7 environment and the ISO class 7 environment shall not have a prep area inside the environment;
2. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
3. Each person who compounds completes a semi-annual media-fill test that simulates the most challenging or stressful conditions for compounding using dry non-sterile media to validate proper aseptic technique.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

R4-23-671. General Requirements for Limited-service Pharmacy

A. Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and R4-23-606.

B. The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:

1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge is present;

2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.

C. To obtain permission to deviate from the minimum area requirement set forth in R4-23-609, R4-23-673, or R4-23-682, a limited-service pharmacy permittee shall submit a written request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.

D. The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.

E. Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
1. Prepare, implement, and comply with written policies and procedures for pharmacy operations and drug dispensing and distribution,
2. Review biennially and if necessary revise the policies and procedures required under subsection (E)(1),
3. Document the review required under subsection (E)(2),
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-672. Limited-service Correctional Pharmacy

A. The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy complies with the standards for area, personnel, security, sanitation, equipment, drug distribution and control, administration of drugs, drug source, quality assurance, investigational drugs, and inspections as set forth in R4-23-608, R4-23-609(A) through (D) and (F) through (H), R4-23-610(A), R4-23-611, R4-23-612, R4-23-653(E), R4-23-658(B) through (E), R4-23-659, and R4-23-660.

B. The pharmacist-in-charge of a limited-service correctional pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers, and correctional officers acting in their official capacities, other persons authorized by law, support personnel, and other designated personnel to be in the limited-service correctional pharmacy.

C. When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have access to drugs in remote drug storage areas or, if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient, in the limited-service correctional pharmacy.

1. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that remote drug storage areas:
    a. Contain only properly labeled drugs that might reasonably be needed and can be administered safely during the pharmacist's absence,
    b. Contain drugs packaged only in amounts sufficient for immediate therapeutic requirements,
    c. Are accessible only with a physician's written order,
    d. Provide a written record of each drug withdrawn,
    e. Are inventoried at least once each week, and
    f. Are audited for compliance with the requirements of this rule at least once each month.
2. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that access to the limited-service correctional pharmacy when no pharmacist is on duty conforms to the following requirements:
    a. Is delegated to only one nurse, who is in a supervisory position;
    b. Is communicated in writing to medical staff of the correctional facility;
    c. Is delegated only to a nurse who has received training from the pharmacist-in-charge in proper methods of access, removal of drugs, and recordkeeping procedures; and
    d. Is delegated by the supervisory nurse to another nurse only in an emergency.
3. When a nurse to whom authority to access the limited-service correctional pharmacy is delegated removes a drug from the limited-service correctional pharmacy, the nurse shall:
    a. Record the following information on a form:
        i. Patient's name,
        ii. Name of the drug and its strength and dosage form,
        iii. Dose prescribed,
        iv. Amount of drug removed, and
        v. Date and time of removal;
    b. Sign the form recording the drug removal;
    c. Attach the original or a direct copy of a physician's written order for the drug to the form recording the drug removal; and
    d. Place the form recording the drug removal conspicuously in the limited-service correctional pharmacy.
4. Within four hours after a pharmacist in the limited-service correctional pharmacy returns to duty following an absence in which the limited-service correctional pharmacy was accessed by a nurse to whom authority had been delegated, the pharmacist shall verify all records of drug removal according to R4-23-402.

D. When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have telephone access to a pharmacist.

E. The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy is not without a pharmacist on duty for more than 96 consecutive hours.

F. In addition to the requirements of R4-23-671, the limited-service pharmacy permittee shall secure the limited-service correctional pharmacy as follows:

1. Permit no one to be in the limited-service correctional pharmacy unless a pharmacist is on duty except:
    a. As provided in subsection (C)(3) when a pharmacist is not on duty; or
    b. A pharmacy technician or pharmacy technician trainee may remain to perform duties in R4-23-1104(A), when a pharmacist is on duty and available in the correctional facility but temporarily absent from the pharmacy, provided:
        i. All controlled substances are secured in a manner that prohibits access by persons other than a pharmacist;
        ii. Activities performed by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent are verified by the pharmacist immediately upon returning to the pharmacy;
        iii. Any drug measured, counted, poured, or otherwise prepared and packaged by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent is verified by the pharmacist immediately upon returning to the pharmacy; and
        iv. Any drug that has not been verified by a pharmacist for accuracy is not dispensed, supplied, or distributed while the pharmacist is temporarily absent from the pharmacy; and
2. Provide keyed or programmable locks to all areas of the limited-service correctional pharmacy.

G. The pharmacist-in-charge of a limited-service correctional pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution within the correctional facility include the following:

1. Physicians' orders, prescription orders, or both;
2. Authorized abbreviations;
3. Formulary system;
4. Clinical services and drug utilization management including:
    a. Participation in drug selection,
    b. Drug utilization reviews,
    c. Inventory audits,
    d. Patient outcome monitoring,
    e. Committee participation,
    f. Drug information, and
    g. Education of pharmacy and other health professionals;
5. Duties and qualifications of professional and support staff;
6. Products of abuse and contraband medications;
7. Controlled substances;
8. Drug administration;
9. Drug product procurement;
10. Drug compounding, dispensing, and storage;
11. Stop orders;
12. Pass or discharge medications;
13. Investigational drugs and their protocols;
14. Patient profiles;

15. Quality management procedures for:
    a. Adverse drug reactions;
    b. Drug recalls;
    c. Expired and beyond-use-date drugs;
    d. Medication or dispensing errors;
    e. Drug storage; and
    f. Education of professional staff, support staff, and patients;
16. Recordkeeping;
17. Sanitation;
18. Security;
19. Access to remote drug storage areas by non-pharmacists; and
20. Access to limited-service correctional pharmacy by non-pharmacists.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

R4-23-673. Limited-service Mail-order Pharmacy

A. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A dispensing area devoted to stocking, compounding, and dispensing prescription medications, which is physically separate from a non-dispensing area devoted to non-dispensing pharmacy services;
2. A dispensing area of at least 300 square feet if three or fewer persons work in the dispensing area simultaneously;
3. A dispensing area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the dispensing area simultaneously;
4. Space in the dispensing area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist;
5. A non-dispensing area of at least 30 square feet for each person working simultaneously in the non-dispensing area; and
6. Space in the non-dispensing area permits free movement of personnel and visual surveillance by the pharmacist; or

B. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A contiguous area in which both dispensing and non-dispensing pharmacy services are provided;
2. A contiguous area of at least 300 square feet if three or fewer persons work in the area simultaneously;
3. A contiguous area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the area simultaneously; and
4. Space in the contiguous area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist.

C. The limited-service pharmacy permittee shall ensure that the limited-service mail-order pharmacy complies with the standards for area, personnel, security, sanitation, and equipment set forth in

R4-23-608, R4-23-609(B) through (H), R4-23-610 (A) and (C) through (F), R4-23-611, and R4-23-612.

D. The pharmacist-in-charge of a limited-service mail-order pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers acting in their official capacities, support personnel, other persons authorized by law, and other designated personnel to be in the limited-service mail-order pharmacy.

E. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.

F. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation but not less than five days and a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service mail-order pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container of drugs dispensed from the limited-service mail-order pharmacy.

G. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution include the following:

1. Prescription orders;
2. Clinical services and drug utilization management for:
    a. Drug utilization reviews,
    b. Inventory audits,
    c. Patient outcome monitoring,
    d. Drug information, and
    e. Education of pharmacy and other health professionals;
3. Duties and qualifications of professional and support staff;
4. Controlled substances;
5. Drug product procurement;
6. Drug compounding, dispensing, and storage;
7. Patient profiles;
8. Quality management procedures for:
    a. Adverse drug reactions,
    b. Drug recalls,
    c. Expired and beyond-use-date drugs,
    d. Medication or dispensing errors, and
    e. Education of professional and support staff;
9. Recordkeeping;
10. Sanitation;
11. Security;
12. Drug delivery requirements for:
    a. Transportation,
    b. Security,
    c. Temperature and other environmental controls,
    d. Emergency provisions, and
13. Patient education.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

R4-23-674. Limited-service Long-term Care Pharmacy

A. A limited-service pharmacy permittee shall ensure that the limited-service long-term care pharmacy complies with:
1. The general requirements of R4-23-671;
2. The professional practice standards of Article 4 and Article 11; and
3. The permits and drug distribution standards of R4-23-606 through R4-23-612, R4-23-670, and this Section.

B. If a limited-service long-term care pharmacy permittee contracts with a long-term care facility as a Provider Pharmacy, as defined in R4-23-110, the limited-service long-term care pharmacy permittee shall ensure that the long-term care consultant pharmacist and the pharmacist-in-charge of the limited-service long-term care pharmacy comply with R4-23-701, R4-23-701.01, R4-23-701.02, R4-23-701.03, R4-23-701.04, and this Section.

C. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that prescription medication is delivered to the patient's long-term care facility or locked in the dispensing area of the pharmacy when a pharmacist is not present in the pharmacy.

D. The pharmacist-in-charge of a limited-service long-term care pharmacy shall authorize only those individuals listed in R4-23-610(B) to be in the limited-service long-term care pharmacy.

E. In consultation with the long-term care facility's medical director and director of nursing, the long-term care consultant pharmacist and pharmacist-in-charge of the long-term care facility's provider pharmacy may develop, if necessary, a medication formulary for the long-term care facility that ensures the safe and efficient procurement, dispensing, distribution, administration, and control of drugs in the long-term care facility.

F. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that the written policies and procedures required in R4-23-671(E) include the following:
1. Clinical services and drug utilization management for:
   a. Drug utilization reviews,
   b. Inventory audits,
   c. Patient outcome monitoring,
   d. Drug information, and
   e. Education of pharmacy and other health professionals;
2. Controlled substances;
3. Drug compounding, dispensing, and storage;
4. Drug delivery requirements for:
   a. Transportation,
   b. Security,
   c. Temperature and other environmental controls, and
   d. Emergency provisions;
5. Drug product procurement;
6. Duties and qualifications of professional and support staff;
7. Emergency drug supply unit procedures;

8. Formulary, including development, review, modification, use, and documentation, if applicable;
9. Patient profiles;
10. Patient education;
11. Prescription orders, including:
    a. Approved abbreviations,
    b. Stop-order procedures, and
    c. Leave-of-absence and discharge prescription order procedures;
12. Quality management procedures for:
    a. Adverse drug reactions,
    b. Drug recalls,
    c. Expired and beyond-use-date drugs,
    d. Medication or dispensing errors, and
    e. Education of professional and support staff;
13. Recordkeeping;
14. Sanitation; and
15. Security.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy

A. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure that the limited-service sterile pharmaceutical products pharmacy complies with the standards for area, personnel, security, sanitation, equipment, sterile pharmaceutical products, and limited-service pharmacies established in R4-23-608, R4-23-609, R4-23-610, R4-23-611, R4-23-612, R4-23-670, and R4-23-671.

B. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall authorize only pharmacists, interns, compliance officers, peace officers acting in their official capacities, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel to be in the limited-service sterile pharmaceutical products pharmacy.

C. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.

D. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation, but not less than a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service sterile pharmaceutical products pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container dispensed from the limited-service sterile pharmaceutical products pharmacy.

E. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure development, implementation, review and revision in the same manner described in R4-23-671(E) and compliance with policies and procedures for pharmacy operations, including pharmaceutical product

compounding, dispensing, and distribution, that comply with the requirements of R4-23-402, R4-23-410, R4-23-670, and R4-23-671.

F. The non-dispensing roles of the pharmacist may include chart reviews, audits, drug therapy monitoring, committee participation, drug information, and in-service training of pharmacy and other health professionals.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). This Section was not amended as originally stated in the historical note published in Supp. 13-3; therefore the reference to the amendment has been removed (Supp. 18-2).

R4-23-676. Third-party Logistics Provider Permit

A. A person shall not provide logistics services, as described under A.R.S. § 32-1941(A), until the Board issues a third-party logistics provider permit for the facility.

B. A person that wants to provide logistics services shall obtain a Board-issued third-party logistics provider permit for each facility.

C. Application. To obtain a third-party logistics provider permit for a facility, a person shall submit a completed application, using a form available on the Board's website, and the fee specified in R4-23-205.

D. Change of ownership. A third-party logistics provider permittee shall comply with R4-23-601(F).

E. A third-party logistics provider permittee shall renew the permit as specified under R4-23-602(D).

F. The Board shall adhere to the time frames specified under R4-23-602(C) when processing an initial or renewal application for a third-party logistics provider permit.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-677. Automated Prescription-dispensing Kiosk Permit

A. General provisions.

1. Only a person issued a Board permit under A.R.S. § 32-1929 to operate a pharmacy in Arizona may apply to the Board under A.R.S. § 32-1930 for a permit to operate an automated prescription-dispensing kiosk.
2. A pharmacy permittee described under subsection (A)(1) shall apply for a separate permit for each automated prescription-dispensing kiosk to be operated.
3. To obtain an automated prescription-dispensing kiosk permit, a pharmacy permittee shall submit a completed application, using a form available on the Board's website, and the fee specified in R4-23-205.
4. A pharmacy permittee to which the Board issues an automated prescription-dispensing kiosk permit shall designate a pharmacist in charge of the automated prescription-dispensing kiosk.
5. A pharmacy permittee to which the Board issues an automated prescription-dispensing kiosk permit shall not place the automated prescription-dispensing kiosk in a gas station or convenience store.

B. Policies and procedures. A pharmacy permittee to which the Board issues an automated prescription-dispensing kiosk permit shall:

1. Ensure policies and procedures are established for the appropriate performance and use of the automated prescription-dispensing kiosk. The policies and procedures shall address:

a. Maintaining a record of each transaction in a manner that attaches the record to the permit number of the automated prescription-dispensing kiosk;
b. Controlling access to the automated prescription-dispensing kiosk;
c. Operating the automated prescription-dispensing kiosk;
d. Training personnel who use the automated prescription-dispensing kiosk;
e. Maintaining patient services when the automated prescription-dispensing kiosk is not operating or the prescribed drug or device is not available;
f. Securing the automated prescription-dispensing kiosk against unauthorized removal of the kiosk or access to or removal of drugs or devices from the kiosk;
g. Assuring a patient receives the pharmacy services necessary for appropriate pharmaceutical care including consultation with a pharmacist;
h. Maintaining integrity of information in the system and patient confidentiality;
i. Stocking and restocking the automated prescription-dispensing kiosk;
j. Ensuring compliance with packaging and labeling requirements; and
k. Removing drugs and devices from the automated prescription-dispensing kiosk without dispensing them and handling wasted or discarded drugs and devices;

2. Ensure the policies and procedures are implemented and complied with by all personnel using the automated prescription-dispensing kiosk;
3. Maintain the policies and procedures by:
   a. Reviewing the policies and procedures biennially and making needed revisions, if any;
   b. Documenting the review required under subsection (B)(3)(a);
   c. Assembling the policies and procedures as a written or electronic manual; and
   d. Making the policies and procedures available within the pharmacy permittee to which the Board issued an automated prescription-dispensing kiosk permit for reference by pharmacy personnel and inspection by the Board; and
4. Implement a quality assurance program to monitor compliance with the policies and procedures and all state and federal law.

C. Change of ownership. An automated prescription-dispensing kiosk permittee shall comply with R4-23-601(F).

D. An automated prescription-dispensing kiosk permittee shall renew the permit as specified under R4-23-602(D).

E. The Board shall adhere to the time frames specified under R4-23-602(C) when processing an initial or renewal application for an automated prescription-dispensing kiosk permit.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1012, effective June 1, 2019 (Supp. 19-2).

R4-23-681. General Requirements for Limited-service Nuclear Pharmacy

A. To be an authorized nuclear pharmacist, a pharmacist shall:
1. Hold a current pharmacist license issued by the Board; and
2. Be certified as a nuclear pharmacist by:
   a. The Board of Pharmaceutical Specialties, or
   b. A similar group recognized by the Arizona State Board of Pharmacy; or
3. Satisfy each of the following requirements:

a. Meet minimal standards of training for status as an authorized user of radioactive material, as specified by the Arizona Radiation Regulatory Agency and the United States Nuclear Regulatory Commission;
b. Submit certification of completion of a Board-approved nuclear pharmacy training program or other training program recognized by the Arizona Radiation Regulatory Agency, with 200 hours of didactic training in the following areas:
    i. Radiation physics and instrumentation,
    ii. Radiation protection,
    iii. Mathematics pertaining to the use and measurement of radioactivity,
    iv. Radiation biology, and
    v. Radiopharmaceutical chemistry;
c. Submit evidence of a minimum of 500 hours of clinical/practical nuclear pharmacy training under the supervision of an authorized nuclear pharmacist in the following areas:
    i. Procuring radioactive materials;
    ii. Compounding radiopharmaceuticals;
    iii. Performing routine quality control procedures;
    iv. Dispensing radiopharmaceuticals;
    v. Distributing radiopharmaceuticals;
    vi. Implementing basic radiation protection procedures; and
    vii. Consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public; and
d. Submit written certification, signed by a preceptor who is an authorized nuclear pharmacist, that the above training was satisfactorily completed.

B. Radiopharmaceuticals are prescription-only drugs that require specialized techniques in their handling and testing, to obtain optimum results and minimize hazards.

1. A person shall not sell, barter, or otherwise dispose of, or be in possession of any radiopharmaceutical except under the conditions detailed in A.R.S. § 32-1929.
2. A person shall not manufacture, compound, sell, or dispense any radiopharmaceutical unless the person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist in accordance with A.R.S. § 32-1961 and these rules, with the exception of the following, if the following are licensed by the Arizona Radiation Regulatory Agency to use radiopharmaceuticals in compliance with A.R.S. § 30-673;
    a. A medical practitioner who administers a radiopharmaceutical to the medical practitioner's patient as provided in A.R.S. § 32-1921(A),
    b. A hospital nuclear medicine department, and
    c. A medical practitioner's office.
3. The Board shall cooperate with the Arizona Radiation Regulatory Agency and other interested state and federal agencies, in the enforcement of these rules for the protection of the public. This cooperation may include exchange of licensing and other information, joint inspections, and other activities where indicated.

C. In addition to compliance with all the applicable federal and state laws and rules governing drugs, whether radioactive or not, a limited-service nuclear pharmacy permittee shall comply with all laws and rules of the Arizona Radiation Regulatory Agency and the U.S. Nuclear Regulatory Commission, including emergency and safety provisions.

D. A limited-service nuclear pharmacy permittee shall comply with the education, experience, and licensing requirements of the Arizona Radiation Regulatory Agency.

E. A limited-service nuclear pharmacy permittee shall ensure that radiopharmaceuticals are transferred only to a person or firm that holds a current Radioactive Materials License issued by the Arizona Radiation Regulatory Agency.

Historical Note

Adopted effective December 3, 1974 (Supp. 75-1). Amended subsections (A), (C) and (D) effective Aug. 12, 1988 (Supp. 88-3). Amended effective July 8, 1997 (Supp. 97-3).

R4-23-682. Limited-service Nuclear Pharmacy

A. Before operating a limited-service nuclear pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, and 32-1931, and R4-23-606.

B. A permit to operate a limited-service nuclear pharmacy shall be issued only to a person who is or employs an authorized nuclear pharmacist and holds a current Arizona Radiation Regulatory Agency Radioactive Materials License. A limited-service nuclear pharmacy permittee that fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License shall be immediately suspended pending revocation by the Board. A limited-service nuclear pharmacy permittee shall have copies of Arizona Radiation Regulatory Agency inspection reports available upon request for Board inspection.

1. A limited-service nuclear pharmacy permittee shall designate an authorized nuclear pharmacist as the pharmacist-in-charge. The pharmacist-in-charge shall be responsible to the Board:
   a. For the operations of the pharmacy related to the practice of pharmacy and distribution of drugs and devices;
   b. For communicating Board directives to the management, pharmacists, interns, and other personnel of the pharmacy; and
   c. For the pharmacy's compliance with all federal and state pharmacy laws and rules.
2. An authorized nuclear pharmacist shall directly supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs.
3. An authorized nuclear pharmacist shall be present whenever the limited-service nuclear pharmacy is open for business.

C. A limited-service nuclear pharmacy permittee shall ensure that the limited-service nuclear pharmacy complies with the standards for personnel, area, security, sanitation, and general requirements in R4-23-608, R4-23-609, R4-23-610, R4-23-611, and R4-23-671.

1. A limited-service nuclear pharmacy shall contain separate areas for:
   a. Preparing and dispensing radiopharmaceuticals,
   b. Receiving and shipping radiopharmaceuticals,
   c. Storing radiopharmaceuticals, and
   d. Decaying radioactive waste.
2. The Board may require more than the minimum area in instances where equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice.

D. The pharmacist-in-charge shall designate in writing, by title and specific area, the persons who may have access to particular pharmacy areas.

E. A limited-service nuclear pharmacy permittee shall maintain records of acquisition, inventory, and disposition of radiopharmaceuticals, other radioactive substances, and other drugs in accordance with federal and state statutes and rules.

1. A prescription order, in addition to the requirements in A.R.S. § 32-1968(C) and R4-23-407(A), shall contain:
    a. The date and time of calibration of the radiopharmaceutical,
    b. The name of the procedure for which the radiopharmaceutical is prescribed, and
    c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product.
2. The lead container used to store and transport a radio-pharmaceutical shall have a label that, in addition to the requirements in A.R.S. § 32-1968(D), includes:
    a. The date and time of calibration of the radiopharmaceutical,
    b. The name of the radiopharmaceutical,
    c. The molybdenum 99 content to USP limits,
    d. The name of the procedure for which the radiopharmaceutical is prescribed,
    e. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product,
    f. The words "Caution: Radioactive Material," and
    g. The standard radiation symbol.
3. The radiopharmaceutical container shall have a label that includes:
    a. The date and time of calibration of the radiopharmaceutical;
    b. The name of the patient, recorded before dispensing, if the radiopharmaceutical is therapeutic or for a blood product;
    c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product;
    d. The name of the radiopharmaceutical;
    e. The dose of radiopharmaceutical;
    f. The serial number;
    g. The words "Caution: Radioactive Material"; and
    h. The standard radiation symbol.

F. The following minimum requirements are in addition to the requirements of the Arizona Radiation Regulatory Agency, the applicable U.S. Nuclear Regulatory Commission regulations, and the applicable regulations of the federal Food and Drug Administration. A limited-service nuclear pharmacy permittee shall provide:

1. In addition to the minimum pharmacy area requirements in R4-23-609:
    a. An area for the storing, compounding, and dispensing of radiopharmaceuticals completely separate from pharmacy areas for nonradioactive drugs;
    b. A minimum of 80 sq. ft. for a hot lab and storage area; and
    c. A minimum of 300 sq. ft. of compounding and dispensing area;
2. The following equipment:
    a. Fume hood, approved by the Arizona Radiation Regulatory Agency;
    b. Laminar flow hood;
    c. Dose calibrator;
    d. Refrigerator;

e. Prescription balance, Class A, and weights or an electronic balance of equal or greater accuracy;
f. Well scintillation counter;
g. Incubator oven;
h. Microscope;
i. An assortment of labels, including prescription labels and cautionary and warning labels;
j. Glassware necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
k. Other equipment necessary for radiopharmaceutical quality control for products compounded or dispensed as required by the Arizona Radiation Regulatory Agency;
l. Current antidote and drug interaction information; and
m. Regional poison control phone number prominently displayed in the pharmacy area;

3. Supplies necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
4. A professional reference library consisting of a minimum of one current reference or text addressing each of the following subject areas:
   a. Therapeutics,
   b. Nuclear pharmacy practice, and
   c. Imaging;
5. Current editions and supplements of:
   a. A.R.S. §§ 30-651 through 30-696 pertaining to the Arizona Radiation Regulatory Agency,
   b. Rules of the Arizona Radiation Regulatory Agency,
   c. Regulations of the federal Food and Drug Administration pertaining to radioactive drugs,
   d. Arizona Pharmacy Act and rules,
   e. Arizona Uniform Controlled Substances Act, and
   f. Radiological Health Handbook.

G. The pharmacist-in-charge of a limited-service nuclear pharmacy shall prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for pharmacy operations and drug distribution.

H. The written policies and procedures of a limited-service nuclear pharmacy shall include the following:
1. Prescription orders;
2. Clinical services and drug utilization management including:
   a. Drug utilization reviews,
   b. Inventory audits,
   c. Patient outcome monitoring,
   d. Drug information, and
   e. Education of pharmacy and other health professionals;
3. Duties and qualifications of professional and support staff;
4. Radioactive material handling, storage, and disposal;
5. Drug product procurement;
6. Drug compounding, dispensing, and storage;
7. Investigational drugs and their protocols;
8. Patient profiles;

9. Quality management procedures for:
    a. Adverse drug reaction reports;
    b. Drug recall;
    c. Expired and beyond-use-date drugs;
    d. Medication or dispensing errors;
    e. Radiopharmaceutical quality assurance;
    f. Radiological health and safety;
    g. Drug storage and disposition; and
    h. Education of professional staff, support staff, and patients;
10. Recordkeeping;
11. Sanitation;
12. Security;
13. Drug delivery requirements for:
    a. Transportation,
    b. Security,
    c. Radiological health and safety procedures,
    d. Temperature and other environmental controls, and
    e. Emergency provisions; and
14. Patient education.

Historical note

Adopted effective July 8, 1997 (Supp. 97-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident

A. Permit.
1. A person shall not manufacture, process, transfill, package, or label a compressed medical gas in Arizona, or manufacture, process, transfill, package, or label a compressed medical gas outside Arizona and ship into Arizona without a current Board-issued resident or nonresident compressed medical gas distributor permit.
2. Before operating as a compressed medical gas distributor, a person shall register with the FDA as a medical gas manufacturer and comply with the drug listing requirements of the federal act.

B. Application. To obtain a resident or nonresident CMG distributor permit, a person shall submit to the Board a completed application form and the fee specified in R4-23-205.
1. A resident CMG distributor permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident CMG distributor permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

C. Notification. A resident or nonresident CMG distributor permittee shall submit using the permittee's online profile or provide written notice by mail, fax, or e-mail to the Board office within 10 days of changes involving the telephone or fax number, e-mail or mailing address, or business name.

D. Change of ownership. A resident or nonresident CMG distributor permittee shall comply with R4-23-601(F).

E. Relocation.

1. No fewer than 30 days before a resident CMG distributor permittee relocates, the permittee shall electronically or manually submit a completed application for relocation using a form furnished by the Board, and the documentation required in subsection (B). A fee is not required with an application for relocation.
2. A nonresident CMG distributor permittee shall provide written notice by mail, fax, or e-mail to the Board office no fewer than 10 days before relocating.

F. A resident or nonresident CMG distributor permittee is authorized to sell or distribute a compressed medical gas under a compressed medical gas order only to durable medical equipment and compressed medical gas suppliers and other entities that are registered, licensed, or permitted to use, administer, or distribute compressed medical gases.

G. Facility. A resident or nonresident CMG distributor permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access.

H. Current Good Manufacturing Practice: A resident or nonresident CMG distributor permittee is required under federal law to follow the good manufacturing practice requirements of 21 CFR parts 210 and 211.

I. Records: A resident or nonresident CMG distributor permittee shall:
1. Establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, returns, recalls, training of personnel, complaints, and any information required by federal or state law.
2. Retain the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 for not fewer than three years or one year after the expiration date of the compressed medical gas, whichever is longer.
3. Make the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 available for inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable, provide the records within four working days of a request by the Board or its compliance officer.

J. Inspection.
1. A resident CMG distributor permittee shall make the CMG distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within 10 days from the date of a request by the Board or its staff, a nonresident CMG distributor permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority or the FDA or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

K. Permit renewal. To renew a CMG distributor permit, the permittee shall comply with R4-23-602(D).

L. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health-care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

Historical Note

Adopted effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident

A. Permit. A person shall not sell, lease, or supply durable medical equipment or a compressed medical gas to a patient or consumer in Arizona for use in a home or residence without a current Board-issued resident or nonresident durable medical equipment and compressed medical gas supplier permit.

1. The permit requirements of this Section do not apply to the following unless there is a separate business entity engaged in the business of providing durable medical equipment or a compressed medical gas to a patient or consumer for use in a home or residence:
   a. A medical practitioner licensed under A.R.S. Title 32;
   b. A hospital, long-term care facility, hospice, or other health-care facility using durable medical equipment or a compressed medical gas in the normal course of treating a patient; and
   c. A pharmacy.
2. Nothing in this Section shall be construed to prohibit a person with a current Board-issued nonprescription drug permit from the retail sale of nonprescription drugs or devices.

B. Application. To obtain a resident or nonresident DME and CMG supplier permit, a person shall submit a completed application form and fee specified in R4-23-205.

1. A resident DME and CMG supplier permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident DME and CMG supplier permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

C. Notification. A resident or nonresident DME and CMG supplier permittee shall submit using the permittee's online profile or provide written notice by mail, fax, or e-mail to the Board office within 10 days of changes involving the telephone or fax number, email or mailing address, or business name.

D. Change of ownership. A resident or nonresident DME and CMG supplier permittee shall comply with R4-23-601(F).

E. Relocation.

1. No fewer than 30 days before a resident DME and CMG supplier permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B). A fee is not required with an application for relocation.
2. A nonresident DME and CMG supplier permittee shall provide written notice by mail, fax, or e-mail to the Board office no fewer than 10 days before relocating.

F. Orders. A resident or nonresident DME and CMG supplier shall sell, lease, or provide:

1. Durable medical equipment that is a prescription-only device, as defined in A.R.S. § 32-1901, only under a prescription or medication order from a medical practitioner; and
2. A compressed medical gas only under a compressed medical gas order from a medical practitioner.

G. Restriction. A DME and CMG supplier permit authorizes the permittee to procure, possess, and provide a prescription-only device or compressed medical gas to a patient or consumer as specified in subsection (F). A DME and CMG supplier permit does not authorize the permittee to procure, possess, or provide narcotics or other controlled substances, prescription-only drugs other than compressed medical gases, precursor chemicals, or regulated chemicals.

H. Facility. A resident or nonresident DME and CMG supplier permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access. A permittee shall maintain separate and identified storage areas in the facility and in delivery vehicles for clean, dirty, contaminated, or damaged durable medical equipment or compressed medical gases.

I. A resident or nonresident DME and CMG supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as stated in subsection (K).

J. Records. A resident or nonresident DME and CMG supplier permittee shall establish and implement written procedures for maintaining records about acquisition, distribution, returns, recalls, training of personnel, maintenance, cleaning, and complaints.

K. A permittee shall:

1. Ensure a prescription order, medication order, or compressed medical gas order is obtained as specified in subsection (F);
2. Ensure each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the permittee;
3. Ensure all appropriate warning labels are present on the durable medical equipment or compressed medical gas;
4. Retain the records required by Section R4-23-601 and this Section for not fewer than three years, or if supplying a compressed medical gas, one year after the expiration date of the compressed medical gas, whichever is longer; and
5. Make the records required by Section R4-23-601 and this Section available for inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable for inspection, provide the records within four working days of a request by the Board or its staff.

L. Inspection.

1. A resident DME and CMG supplier permittee shall make the DME and CMG supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within 10 days from the date of a request by the Board or its staff, a nonresident DME and CMG supplier permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

M. Permit renewal. To renew a resident or nonresident DME and CMG supplier permit, the permittee shall comply with in R4-23-602(D).

N. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health-care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

Historical Note

Adopted effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

ARTICLE 8. DRUG CLASSIFICATION

Article 8, consisting of Sections R4-23-801 and R4-23-802, recodified from Article 5 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

R4-23-802. Veterinary

Veterinary preparation: A veterinary drug manufacturer or supplier may distribute:

1. A prescription-only veterinary drug to:
   a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
   b. A full-service drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
   c. A pharmacy permitted under A.R.S. Title 32, Chapter 18, and
2. A nonprescription veterinary drug to:
   a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
   b. A nonprescription drug retailer permitted under A.R.S. Title 32, Chapter 18,
   c. A full-service or nonprescription drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
   d. A pharmacy permitted under A.R.S. Title 32, Chapter 18.

Historical Note

Former Rules 7.1210, 7.1220, and 7.1230. Repealed effective November 4, 1998 (Supp. 98-4).
Recodified from R4-23-502 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means directly applying a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.

2. "Advertisement" means all representations that are disseminated in any manner or by any means other than by labeling for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repeating the activities that led to the investigation may result in further board action against the licensee or permittee.

4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.

5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:

(a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.

(b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.

7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

8. "Certificate of composition" means a list of a product's ingredients.

9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.

10. "Color additive" means a material that either:

(a) Is any dye, pigment or other substance that is made by a process of synthesis or similar artifice or that is extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.

(b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.

11. "Compounding" means preparing, mixing, assembling, packaging or labeling a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes preparing drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and preparing drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include preparing commercially available products from bulk compounds or preparing drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.

12. "Compressed medical gas distributor" means a person that holds a current permit issued by the board to distribute compressed medical gases to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.

13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.

14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.

15. "Compressed medical gas supplier" means a person that holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.

16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2 or the rules adopted pursuant to title 36, chapter 27, article 2.

17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of the tissue by chemical action.

18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person that in fact manufactured, distributed or dispensed that drug.

19. "Dangerous drug" has the same meaning prescribed in section 13-3401.

20. "Day" means a business day.

21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.

22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.

23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.

24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means an instrument, apparatus or contrivance, including its components, parts and accessories, including all such items under the federal act, that is intended either:

(a) For use in diagnosing, curing, mitigating, treating or preventing disease in the human body or other animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means that the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling or compounding as necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles that are recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles that are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food that are intended to affect the structure or any function of the human body or other animals.

(d) Articles that are intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means producing, preparing, propagating or processing a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and promoting and marketing the same. Drug or device manufacturing does not include compounding.

34. "Durable medical equipment" means technologically sophisticated medical equipment as prescribed by the board in rule that a patient or consumer may use in a home or residence and that may be a prescription-only device.

35. "Durable medical equipment distributor":

(a) Means a person that stores or distributes durable medical equipment other than to the patient or consumer.

(b) Includes a virtual durable medical equipment distributor as prescribed in rule by the board.

36. "Durable medical equipment supplier":

(a) Means a person that sells, leases or supplies durable medical equipment to the patient or consumer.

(b) Includes a virtual durable medical equipment supplier as prescribed in rule by the board.

37. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in producing, storing or transporting raw agricultural commodities.

38. "Enteral feeding" means nourishment that is provided by means of a tube inserted into the stomach or intestine.

39. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

40. "Executive director" means the executive director of the board of pharmacy.

41. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

42. "Full-service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

43. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

44. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less. If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

45. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

46. "Intern" means a pharmacy intern.

47. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

48. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

49. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

50. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

51. "Labeling" means all labels and other written, printed or graphic matter that either:

(a) Is on any article or any of its containers or wrappers.

(b) Accompanies that article.

52. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

53. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

54. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

55. "Marijuana" has the same meaning prescribed in section 13-3401.

56. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist, veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices to treat sick and injured human beings or animals or to diagnose or prevent sickness in human beings or animals in this state or any state, territory or district of the United States.

57. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

58. "Narcotic drug" has the same meaning prescribed in section 13-3401.

59. "New drug" means either:

(a) Any drug of which the composition is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate

the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug of which the composition is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

60. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

61. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

62. "Notice" means personal service or the mailing of a copy of the notice by certified mail and email addressed either to the person at the person's latest address of record in the board office or to the person and the person's attorney using the most recent information provided to the board in the board's licensing database.

63. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

64. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

65. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

66. "Package" means a receptacle that is defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

67. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

68. "Parenteral nutrition" means intravenous feeding that provides an individual with fluids and essential nutrients the individual needs while the individual is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

69. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

70. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

71. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

72. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

73. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

74. "Pharmacy" means:

(a) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail or where prescription orders are dispensed by a licensed pharmacist.

(b) Any place that displays on or in the place or that displays a sign on the place the words "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries", any combination of these words, or any words of similar meaning in any language.

(c) Any place where the characteristic symbol of pharmacy or the characteristic prescription sign "Rx" is exhibited.

(d) Any building or other structure or portion of a building or other structure that is leased, used or controlled by a permittee to conduct the business authorized by the board at the address specified on the permit issued to the permittee.

(e) A remote dispensing site pharmacy.

(f) A remote hospital-site pharmacy.

(g) A satellite pharmacy.

75. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

76. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

77. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

78. "Poison" or "hazardous substance" includes any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or

hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

79. "Practice of pharmacy":

(a) Means furnishing the following health care services as a medical professional:

(i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.

(ii) Compounding drugs pursuant to or in anticipation of a prescription order.

(iii) Labeling drugs and devices in compliance with state and federal requirements.

(iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.

(v) Providing patient counseling necessary to provide pharmaceutical care.

(vi) Properly and safely storing drugs and devices in anticipation of dispensing.

(vii) Maintaining required records of drugs and devices.

(viii) Offering or performing acts, services, operations or transactions that are necessary to conduct, operate, manage and control a pharmacy.

(ix) Providing patient care services pursuant to a collaborative practice agreement with a provider as outlined in section 32-1970.

(x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.

(b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

80. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

81. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and who complies with section 32-1923.

82. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(b) Listed in section 13-3401, paragraph 26 or 27.

83. "Prescription" means either a prescription order or a prescription medication.

84. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

85. "Prescription-only device" includes:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

86. "Prescription-only drug" does not include a controlled substance but does include:

(a) 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.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug, other than a controlled substance, that is required by the federal act to bear on its label the legend "Rx only".

87. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices that is issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order that is transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription

orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

(c) An order that is initiated by a pharmacist pursuant to a collaborative practice agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

88. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

89. "Radioactive substance" means a substance that emits ionizing radiation.

90. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

91. "Remote hospital-site pharmacy" means a pharmacy located in a satellite facility that operates under the license issued by the department of health services to the hospital of which it is a satellite.

92. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

93. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

94. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

95. "Satellite facility" has the same meaning prescribed in section 36-422.

96. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy, that is owned by and dependent on the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

97. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

98. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for the following items, but that does not take ownership of the items, and that distributes those items as directed by a manufacturer, wholesaler, dispenser or durable medical equipment supplier that is permitted by the board:

(a) Narcotic drugs or other controlled substances.

(b) Dangerous drugs as defined in section 13-3401.

(c) Prescription-only drugs and devices.

(d) Nonprescription drugs and devices.

(e) Precursor chemicals.

(f) Regulated chemicals as defined in section 13-3401.

99. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

100. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history

information on which the denial was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board, Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

13. Open an investigation only if the identifying information regarding a complainant is provided or the information provided is sufficient to conduct an investigation.

14. Provide notice to an applicant, licensee or permittee using only the information provided to the board through the board's licensing database.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for modernization of pharmacy practice, experimentation or technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, email address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(b) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(c) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(d) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board may issue nondisciplinary civil penalties or delegate to the executive director the authority to issue nondisciplinary civil penalties. The nondisciplinary civil penalties shall be prescribed by the board in rule and issued using a board-approved form. If a licensee or permittee fails to pay a nondisciplinary civil penalty that the board has imposed on it, the board shall hold a hearing on the matter. In addition to any other nondisciplinary civil penalty adopted by the board, either of the following acts or omissions that is not an imminent threat to the public health and safety is subject to a nondisciplinary civil penalty:

1. An occurrence of either of the following:

(a) Failing to submit a remodel application before remodeling a permitted facility.

(b) Failing to notify the board of the relocation of a business.

2. The occurrence of any of the following violations or any of the violations adopted by the board in rule, with three or more violations being presented to the board as a complaint:

(a) The licensee or permittee fails to update the licensee's or permittee's online profile within ten days after a change in contact information, address, telephone number or email address.

(b) The licensee fails to update the licensee's online profile within ten days after a change in employment.

(c) The licensee fails to complete the required continuing education for a license renewal.

(d) The licensee fails to update the licensee's online profile to reflect a new pharmacist in charge within fourteen days after the position change.

(e) The permittee fails to update the permittee's online profile to reflect a new designated representative within ten days after the position change.

(f) The licensee or permittee fails to notify the board of a new criminal charge, arrest or conviction against the licensee or permittee in this state or any other jurisdiction.

(g) The licensee or permittee fails to notify the board of a disciplinary action taken against the licensee or permittee by another regulating agency in this state or any other jurisdiction.

(h) A licensee or permittee fails to renew a license or permit within sixty days after the license or permit expires. If more than sixty days have lapsed after the expiration of a license or permit, the licensee or permittee shall appear before the board.

(i) A new pharmacist in charge fails to conduct a controlled substance inventory within ten days after starting the position.

(j) A person fails to obtain a permit before shipping into this state anything that requires a permit pursuant to this chapter.

(k) Any other violations of statute or rule that the board or the board's designee deems appropriate for a nondisciplinary civil penalty.

E. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

F. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1910. Emergencies; continued provision of services

A. If a natural disaster or terrorist attack occurs and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor or by a county, city or town pursuant to its authority and the declared state of emergency results in individuals being unable to refill existing prescriptions, the board shall cooperate with this state and the county, city or town to ensure the provision of drugs, devices and professional services to the public.

B. If a natural disaster or terrorist attack occurs in another state and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor of that state and the declared state of emergency results in individuals being temporarily relocated to Arizona and unable to refill existing prescriptions, the board

shall cooperate with this state to ensure the provision of drugs, devices and professional services to the relocated individuals.

C. When a state of emergency has been declared pursuant to this section, a pharmacist may work in the affected county, city or town and may dispense a one-time emergency refill prescription of up to a thirty-day supply of a prescribed medication if both of the following apply:

1. In the pharmacist's professional opinion the medication is essential to the maintenance of life or to the continuation of therapy.

2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and then files and maintains the prescription as required by law.

D. If the state of emergency declared pursuant to this section continues for at least twenty-one days after the pharmacist dispenses an emergency prescription pursuant to subsection C, the pharmacist may dispense one additional emergency refill prescription of up to a thirty day supply of the prescribed medication.

E. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities or towns in this state during the time that a declared state of emergency exists pursuant to this section if both of the following apply:

1. The pharmacist has proof of licensure in another state.

2. The pharmacist is engaged in a legitimate relief effort during the period of time an emergency has been declared pursuant to this section.

F. The board may adopt rules for the provision of pharmaceutical care and drug and device delivery during a declared emergency that is the consequence of a natural disaster or terrorist attack, including the use of temporary or mobile pharmacy facilities and nonresident licensed pharmacy professionals.

G. A pharmacist's authority to dispense prescriptions pursuant to this section ends when the declared state of emergency is terminated.

32-1926. Notice of change of information required

A. Except as prescribed in subsection B of this section, a pharmacist, intern, pharmacy technician or pharmacy technician trainee, within ten days after a change in that person's employer, employer's address, home address or contact information, shall electronically update the person's online board profile or give written notice to the board office staff of the new information.

B. Pursuant to board rule, a pharmacist designated as the pharmacist in charge for a permit issued under this chapter shall give immediate notice to the board office staff of the initiation and termination of such responsibility. The pharmacist shall either electronically update the pharmacist's online board profile or give written notice to the board office staff of the new information.

32-1929. Biennial registration of pharmacies, wholesalers, third-party logistics providers, manufacturers and similar places; application

A. Except as provided in section 32-4301, the board shall require and provide for biennial registration of every pharmacy, wholesaler, third-party logistics provider and manufacturer and any other place in which or from which drugs are sold, compounded, dispensed, stocked, exposed, manufactured or offered for sale.

B. Any person desiring to operate, maintain, open or establish a pharmacy, wholesaling firm or manufacturing plant, or any other place in which or from which drugs are manufactured, compounded, dispensed, stocked, exposed, sold or offered for sale, shall apply to the board for a permit before engaging in any such activity.

C. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility in this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the pharmacist responsible to the board for the operation of a pharmacy or drug manufacturing facility, or other individual approved by and responsible to the board for the operation of wholesaling facilities, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

D. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility outside of this state that will dispense, sell, transfer or distribute drugs into this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the individual approved by and responsible to the board for the operation of the pharmacy, drug manufacturing facility or wholesaling facility, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

E. If it is desired to operate, maintain, open or establish more than one pharmacy, or any other place of business in which or from which drugs are sold, manufactured,

compounded, dispensed, stocked, exposed or offered for sale, a separate application shall be made and a separate permit shall be issued for each place, business or outlet.

32-1930. Types of permits; restrictions on permits; discontinuance of pharmacy permit

A. On application, the board may issue the following classes or kinds of permits:

1. If approved by the board, a pharmacy, limited service pharmacy, automated prescription-dispensing kiosk, full service wholesale drug, third-party logistics provider, nonprescription drug wholesale and drug manufacturer's permit.

2. Drug packager or drug prepackager permit to an individual or establishment that is currently listed by the United States food and drug administration and has met the requirements of that agency to purchase, repackage, relabel or otherwise alter the manufacturer's original package of an approved drug product with the intent of reselling these items to persons or businesses authorized to possess or resell the repackaged, prepackaged or relabeled drug.

3. A durable medical equipment distributor and compressed medical gas distributor permit and a durable medical equipment supplier and compressed medical gas supplier permit.

B. The board shall deny or revoke a pharmacy permit if a medical practitioner receives compensation, either directly or indirectly, from a pharmacy as a result of the practitioner's prescription orders. This does not include compensation to a medical practitioner who is the owner of a building where space is leased to a pharmacy at the prevailing rate, not resulting in a rebate to the medical practitioner.

C. If a pharmacy permanently discontinues operation, the permittee shall immediately surrender the permit to the executive director. The permittee shall remove all drug signs and symbols, either within or without the premises, and shall remove or destroy all drugs, devices, poisons and hazardous substances.

D. An automated prescription-dispensing kiosk may not contain or dispense a controlled substance as defined in section 36-2501 and the controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802).

32-1931. Permit fees; issuance; expiration; renewals; online profiles

A. The board shall assign the permit of all persons or firms issued under this chapter to one of two permit renewal groups. Except as provided in section 32-4301, a holder of a permit designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years after the last renewal date. Except as provided in

section 32-4301, a holder of a permit designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years after the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the permit. The board shall vacate a suspension when the permittee pays penalties of not to exceed $350 and all past due fees. The board may waive collection of a fee or penalty due after suspension under conditions established by a majority of the board.

B. Permit fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish the fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of the permit.

C. Applications for permits shall be accompanied by the following biennial fees as determined pursuant to subsection B of this section:

1. A drug manufacturer's permit, not more than $1,000.

2. A pharmacy permit, not more than $500.

3. A limited service pharmacy permit or an automated prescription-dispensing kiosk permit, not more than $500.

4. A full service wholesale drug permit or a third-party logistics provider permit, not more than $1,000.

5. A nonprescription drug wholesale permit, not more than $500.

6. A drug repackager's permit, not more than $1,000.

7. A durable medical equipment distributor and compressed medical gas distributor permit, not more than $200.

8. A durable medical equipment supplier and compressed medical gas supplier permit, not more than $100.

D. If an applicant is found to be satisfactory to the board, the executive director shall issue to the applicant a permit for each pharmacy, manufacturer, wholesaler or other place of business in which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale, for which application is made.

E. Permits issued under this section are not transferable.

F. If a permittee does not apply for renewal, the permit expires pursuant to subsection A of this section. A person may activate and renew an expired permit by filing the required application and fee. Renewal thirty days after the expiration date of a permit may be made only on payment of the required biennial renewal fee, all past due fees and a penalty of one-half of the amount of the applicable biennial renewal fee. The board may waive the collection of a fee or penalty due after suspension pursuant to conditions prescribed by the board.

G. A permittee shall create an online profile using the board's licensing software.

32-1934. Remote hospital-site pharmacy permittee; requirements

A. A remote hospital-site pharmacy permittee shall comply with all the provisions of this chapter requiring registration and regulation of pharmacies, with board rules and with applicable federal law.

B. A remote hospital-site pharmacy permittee shall ensure that:

1. The remote hospital-site pharmacy is supervised by a pharmacist who is located in this state and who is employed by the hospital.

2. The remote hospital-site pharmacy displays a sign visible to the public identifying the pharmacy as a remote hospital-site pharmacy and warning that the remote hospital-site pharmacy is under continuous video surveillance that is recorded and retained.

3. The remote hospital-site pharmacy uses an electronic recordkeeping system that is shared with and accessible by the pharmacy located in the hospital.

4. All drugs and devices furnished from the remote hospital-site pharmacy to patients of the satellite facility are verified by a pharmacist who is licensed in this state and who is employed by the hospital. If the satellite facility is an emergency department of the hospital, in the pharmacist's absence a registered nurse practitioner or professional nurse who is licensed pursuant to chapter 15 of this title, a physician who is licensed pursuant to chapter 13 or 17 of this title or a physician assistant who is licensed pursuant to chapter 25 of this title may obtain from the remote hospital-site pharmacy necessary drugs and devices that are ordered by a medical practitioner and that are needed by a patient in an emergency, according to policies approved by the hospital.

5. The pharmacist in charge develops and implements procedures regarding obtaining, storing and dispensing drugs for inpatient administration and devices and recordkeeping requirements.

6. If a noncontrolled substance single-patient use multidose medication was dispensed to a patient in a container for inpatient administration, the remote hospital-site pharmacy dispenses that medication for the patient on discharge, if needed.

C. A remote hospital-site pharmacy permittee shall:

1. Develop and maintain a policy and procedures manual and make the manual available to the board or its agent on request.

2. Maintain a perpetual inventory of controlled substances.

3. Ensure that there is continuous video surveillance of the remote hospital-site pharmacy and maintain recorded videos for at least sixty days.

4. Ensure that the pharmacist in charge from the pharmacy located in the hospital reconciles the inventory of controlled substances on a monthly basis.

D. A pharmacist may engage simultaneously in the practice of pharmacy at a reasonable number of remote hospital-site pharmacies as determined and approved by the hospital.

E. The board may adopt additional rules that are necessary to implement this section.

32-1941. Third-party logistics providers; permit required; designated representative; fingerprinting requirements

A. A third-party logistics provider that engages in logistics services into, within or from this state shall hold a third-party logistics provider permit in this state.

B. A third-party logistics provider shall comply with storage practices, including all of the following:

1. Maintain access to warehouse space of a suitable size to facilitate safe operations, including a suitable area to quarantine a suspect product.

2. Maintain adequate security.

3. Have written policies and procedures to:

(a) Address the receipt, security, storage, inventory, shipment and distribution of a product.

(b) Identify, record and report confirmed significant losses or thefts in the United States.

(c) Correct errors and inaccuracies in inventories.

(d) Provide support for manufacturer recalls.

(e) Prepare for, protect against and address any reasonably foreseeable crisis that affects a facility's security or operation, such as an employee strike, a fire or a flood.

(f) Ensure that any expired product is segregated from other products and returned to the manufacturer, repackager or agent of the manufacturer or repackager or is destroyed.

(g) Maintain records reflecting the receipt and distribution of products and supplies and records of inventories.

(h) Quarantine or destroy a suspect product if directed to do so by the respective manufacturer, wholesale distributor or dispenser or an authorized governmental agency.

C. A third-party logistics provider shall make its facility available to the board for inspection during regular business hours to ensure compliance with this section.

D. A third-party logistics provider shall have a designated representative at each facility who has not been convicted of any felony violation under any federal, state or local law relating to wholesale or retail prescription or over-the-counter dangerous drugs or dangerous devices distribution or the distribution of controlled substances.

E. A third-party logistics provider shall provide the board on the board's request with a list of all manufacturers, wholesale distributors, dispensers and durable medical equipment suppliers for whom the third-party logistics provider provides services at a facility.

F. A third-party logistics provider's designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1, which shall be submitted with the completed application. If the third-party logistics provider changes its designated representative, the new designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and submitted to the board before the change in representation is made.

32-1963. Liability of manager, proprietor or pharmacist in charge of a pharmacy; variances in quality of drugs or devices prohibited

A. The proprietor, manager, and pharmacist in charge of a pharmacy shall be responsible for the quality of drugs and devices sold or dispensed in the pharmacy, except those sold in original packages of the manufacturer.

B. No pharmacist or other person shall manufacture, compound, dispense, or offer for sale or cause to be manufactured, compounded, dispensed, or offered for sale any drug

or device under or by a name recognized in the official compendium or the federal act which differs from the standard of strength, purity and quality specified therein as official at the time of manufacture, compounding, dispensing, or offering for sale, nor shall a pharmacist or other person manufacture, compound, dispense, or offer for sale, or cause to be manufactured, compounded, dispensed, or offered for sale, any drug or device, the strength, purity or quality of which falls below the required strength, purity or quality under which it is sold.

C. Within four working days of receiving a request, the proprietor, manager or pharmacist in charge shall provide the following documents relating to the acquisition or disposal of prescription-only and controlled substance medication if this information is requested by an authorized board agent in the course of his official duties:

1. Invoices.

2. Stock transfer documents.

3. Merchandise return memos.

4. Other related documentation.

32-1973. Pharmacies; quality assurance

A. As prescribed by the board by rule, each pharmacy shall implement or participate in a continuous quality assurance program to review pharmacy procedures in order to identify methods for addressing pharmacy medication errors. The rules shall prescribe requirements to document compliance and any other provisions necessary for the administration of the program.

B. Records that are generated as a component of a pharmacy's ongoing quality assurance program and that are maintained for that program are peer review documents and are not subject to subpoena or discovery in an arbitration or civil proceeding. This subsection does not prohibit a patient from accessing the patient's prescription records or affect the discoverability of any records that are not generated only as a component of a pharmacy's ongoing quality assurance program and maintained only for that program.

C. A pharmacy meets the requirements of this section if it holds a current general, special or rural general hospital license from the department of health services and is any of the following:

1. Certified by the centers for medicare and medicaid services to participate in the medicare or medicaid programs.

2. Accredited by the joint commission on the accreditation of health care organizations.

3. Accredited by the American osteopathic association.

32-1981. Definitions

In this article, unless the context otherwise requires:

1. "Chain pharmacy warehouse" means a physical location for prescription-only drugs that acts as a central warehouse and that performs intracompany sales or transfers of the prescription-only drugs to a group of pharmacies that are under common ownership or control. A chain pharmacy warehouse is not limited to the distribution of prescription-only drugs under this article.

2. "Company under common ownership" has the same meaning as affiliated group as defined in 26 United States Code section 1504.

3. "Intracompany transaction" means any sale, transfer or trade between a division, subsidiary, parent or affiliated or related company under the common ownership of a person.

4. "Normal distribution channel" means the chain of custody for a prescription-only drug that begins with the delivery of the drug by a manufacturer to a wholesale distributor who then delivers the drug to a pharmacy or a practitioner for final receipt by a patient. Normal distribution channel includes the receipt of a prescription-only drug by a common carrier or other delivery service that delivers the drug at the direction of a manufacturer, full service wholesale permittee or pharmacy and that does not purchase, sell, trade or take title to any prescription-only drug.

5. "Wholesale distribution" means distribution of a drug to a person other than a consumer or patient. Wholesale distribution does not include:

(a) Any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity.

(b) Selling, purchasing, distributing, transferring or trading a drug or offering to sell, purchase, distribute, transfer or trade a drug for emergency medical reasons. For the purposes of this subdivision, "emergency medical reasons" includes transferring a prescription drug by a community pharmacy or hospital pharmacy to another community pharmacy or hospital pharmacy to alleviate a temporary shortage.

(c) Drug returns if conducted by a hospital, health care entity, retail pharmacy or charitable institution in accordance with 21 Code of Federal Regulations section 203.23.

(d) The sale of prescription drugs by a pharmacy, not to exceed five percent of the pharmacy's gross sales, to practitioners for office use.

(e) Dispensing by a retail pharmacy of prescription drugs to a patient or patient's agent pursuant to the lawful order of a practitioner.

(f) Distributing a drug sample by a manufacturer's representative.

(g) Selling, purchasing or trading blood or blood components intended for transfusion.

32-1982. Full-service wholesale permittees; bonds; designated representatives; fingerprinting requirements

A. A full-service wholesale permittee that engages in the wholesale distribution of prescription-only drugs into, within or from this state must maintain a bond as required by federal law and have a designated representative. If the full-service wholesale permittee changes its designated representative, the new designated representative must possess and submit a valid fingerprint clearance card before the change in representation is made.

B. The designated representative of a full-service wholesale permittee must:

1. Be at least twenty-one years of age.

2. Be employed by the full-service wholesale permittee in a managerial level position.

3. Be actively involved in the daily operation of the wholesale distribution of prescription-only drugs.

4. Be physically present at the full-service wholesale permittee facility during regular business hours unless the absence of the designated representative is authorized.

5. Serve as a designated representative for only one full-service wholesale permittee.

6. Not have any criminal convictions under any federal, state or local laws relating to wholesale or retail prescription-only drug distribution or distribution of controlled substances.

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

C. For the purposes of this article, a full-service wholesale permittee does not include a hospital, chain pharmacy warehouse or third-party logistics provider.

32-1983. Restrictions on transactions

A. A full service wholesale permittee may accept prescription-only drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms of an agreement between the full service wholesale permittee and the pharmacy or chain pharmacy warehouse. The full service wholesale permittee shall not accept as returns or exchanges from the pharmacy or chain pharmacy warehouse:

1. Adulterated or counterfeited prescription-only drugs.

2. An amount or quantity of a prescription-only drug that exceeds the amount or quantity that the full service wholesale permittee or another full service wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse.

B. A full service wholesale permittee may furnish prescription-only drugs only to a pharmacy or medical practitioner. The full service wholesale permittee must first verify that person holds a valid license or permit.

C. The full service wholesale permittee must deliver prescription-only drugs only to the premises listed on the license or permit. A full service wholesale permittee may furnish prescription-only drugs to an authorized person or agent of that premises if:

1. The full service wholesale permittee properly establishes the person's identity and authority.

2. Delivery to an authorized person or agent is used only to meet the immediate needs of a particular patient of the authorized person.

D. A full service wholesale permittee may furnish prescription-only drugs to a pharmacy receiving area if a pharmacist or authorized receiving personnel sign, at the time of delivery, a receipt showing the type and quantity of the prescription-only drug received. Any discrepancy between receipt and the type and quantity of the prescription-only drug actually received must be reported to the full service wholesale permittee by the next business day after the delivery to the pharmacy receiving area.

E. A full service wholesale permittee shall not accept payment for or allow the use of a person or entity's credit to establish an account for the purchase of prescription-only drugs from any person other than the owner of record, the chief executive officer or the chief financial officer listed on the license or permit of a person or entity legally authorized to receive prescription-only drugs. Any account established for the purchase of prescription-only drugs must bear the name of the licensee or permittee.

36-2523. Records of registrants; inspection; confidentiality

A. Persons registered to manufacture, distribute or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with

the record keeping and inventory requirements of federal law and title 32, chapter 18, and with any additional rules the board issues. Prescription orders must be filed as required by section 36-2525.

B. A person who holds a permit to operate a pharmacy issued under title 32, chapter 18 shall inventory schedule II, III, IV and V controlled substances as prescribed by federal law. The permit holder shall conduct this inventory on May 1 of each year or as directed by the Arizona state board of pharmacy. The permit holder shall also conduct this inventory if there is a change of ownership or discontinuance of business or within ten days of a change of a pharmacist in charge.

C. These records and inventories shall be open for inspection by peace officers in the performance of their duties. An officer shall not divulge information obtained pursuant to this subsection except in connection with a prosecution, investigation, judicial proceeding or administrative proceeding in which the person to whom the information relates is a party.

ARIZONA STATE LAND DEPARTMENT
Title 12, Chapter 5, Articles 1, 2, 4, 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2024

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

FROM: Council Staff

DATE: January 16, 2024

SUBJECT: **ARIZONA STATE LAND DEPARTMENT**
Title 12, Chapter 5, Articles 1, 2, 4, 5

Summary

At the December 6, 2022 Council Meeting, the Council voted to require the State Land Department (Department) to conduct a review of the rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5 outside the Five-Year Review Report (5YRR) process pursuant to A.R.S. § 41-1056(D) and directed the Department to submit its report by July 1, 2023. On May 22, 2023, Council staff received an extension request from the Department to submit the 5YRR for Title 12, Chapter 5, Articles 1, 2, 4, and 5 by November 1, 2023. At the June 6, 2023 Council Meeting, the Council voted to grant the extension. On October 27, 2023, the Department submitted the report which is now before the Council now for consideration.

This 5YRR from the Department relates to forty-six (46) rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5. Specifically, the Articles reviewed cover the following areas:

- Article 1 – General Provisions
- Article 2 – Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner
- Article 4 – Sales
- Article 5 – Leases

The Department indicates it partially completed its prior proposed course of action through a rulemaking which became effective January 5, 2021.

Proposed Action

In the current report, the Department is proposing to amend several rules and anticipates submitting the rulemaking to the Council by April 2024 and a separate rulemaking to the Council by March 2025.

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:

According to the Department, most rules under review have no net negative economic impact and do not have a previously estimated economic, small business, or consumer impact statement (EIS) available for comparison. For the rules for which a 2020 EIS is available, the Department reports beneficial impacts to the Department, political subdivisions of the State, and independent businesses primarily due to realized efficiencies.

The Department also provides the following: As of the end of Fiscal Year 2023, the Department held: 345 Agricultural Leases covering 157,439,161 acres of Trust Land which generated $4,339,836 in income; 1203 Grazing Leases and Permits covering 8,333,585,519 acres which generated $2,962,499 in income; 292 Commercial Leases covering 73,697,182 acres which generated $32,504,784 in income; 5,422 Right-of-Way Grants and Permits covering 87,970,595 acres which generated $11,308,524 in income; 773 Mineral Leases covering 409,210,731 acres of Trust Land which generated $14,317,086 in rental income; 43 auctions for sales of 4,760,441 acres of Land and generated revenue in the amount of 374,719,009 from those land sales.

The rental payments received from the above leases are deposited into the Trust's expendable fund and distributed directly to the beneficiaries annually. The payments received from the above land sales are deposited into the Trust's permanent fund, which is invested by the Treasurer, and proceeds therefrom are distributed to beneficiaries in accordance with formulas established in the Constitution. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provide opportunities for local economies via the labor force and the communities of homes, retail, and offices that are built thereon.

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 contends that the rules' probable benefits outweigh the probable costs, and the rules impose the least burden and costs to persons regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise, and understandable except for the following rules:

- **R12-5-102:** As currently written, the "computation of time" in subsection (A) is confusing and unnecessarily complex – it also lacks specificity as to what agency decisions, or processes this provision would apply.
- **R12-5-207:** The rule is concise and understandable, though it could benefit from elimination of the reference to "tapes" to improve clarity.
- **R12-5-214:** The rule is concise and understandable, although clarity could be improved by articulating that only the hearing officer may exercise judicial notice.
- **R12-5-402:** The rule is clear, concise, and understandable. Notably, however, Subsection (C) is reflective of A.R.S. § 37-233(C) in that the statute allows the Commissioner to require funds to be advanced for the purchase of state land under certain circumstances, while the rule requires it.
- **R12-5-404:** The rule needs clarification because it is not written in complete sentences. Also, the rule is not entirely concise because subsection (E) is redundant of statute.
- **R12-5-405:** Subsection (A) of the rule is clear, but the concept within subsection (B) of the rule is better elaborated in A.R.S. § 37-247, and the reference to R12-5-102(B) regarding computation of timeframes is not needed here.
- **R12-5-406:** The rule is mostly concise and understandable, but: 1) clarity could be gained by recognizing that, due to escrows, the release or a satisfaction of a lien or mortgage may come prior to the completion of the assignment and not at the time of application and 2) the elimination of subsection (C), which is redundant of A.R.S. 37-244(C) would improve conciseness.
- **R12-5-413:** The rule is concise and understandable, but the rule's clarity could be improved by differentiating brokers representing non-applicant bidders and those representing applicant bidders.
- **R12-5-508:** The rule is clear and understandable, but it is not concise because it partially reiterates what is articulated in A.A.C. R12-5-104.
- **R12-5-509:** The rule is not easily understood as it is verbose, outdated and is not organized well. The rule is not clear because the effective date of a lease is never the date of application upon open land, but rather the date both parties have signed the lease; the date of administrative approval differs depending on the type of lease. While all of these dates fall under the "or such other subsequent date as the Commissioner may prescribe," it is not clear what those dates are. The rule is not concise because mention of the Department seal being affixed to lease documents is redundant of A.R.S. § 37-103.

- **R12-5-524:** The rule is understandable, but the first paragraph is redundant of A.R.S. 37-255. Also, additional information could add clarity to the process of filing mortgages and liens with the Department.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- **R12-5-402:** Subsection (A) is inconsistent with agency operations because it limits an application to one section or subdivision of a section, and ASLD allows an application to cover more than one section or subdivision thereof for the sake of efficiency. Subsections (B) through (D) are consistent.
- **R12-5-408:** The rule is mostly consistent, except that Subsection (A)(1) references the filing fee in A.R.S. § 37-108(A)(9)(c) whereas A.A.C. R12-5-1201 prescribes Department filing fees.
- **R12-5-509:** This rule was created when the agency largely transacted and executed agreements with paper; reflected in several portions of this section. Also, the rule is inconsistent with agency operations, as receipts are not provided unless requested following execution of the lease or permit. Further, where it notes that the rental statement is sent with a copy of lease for execution by the lessee or permittee, in actuality the Department mostly sends a copy of the rental statement under separate cover prior to sending out the lease documents.
- **R12-5-513:** The rule is mostly consistent. It is inconsistent with agency operations in that the Department does not require a copy of the lease or permit to be provided at the time of application, and the Department does not allow for an assignment of an undivided interest.
- **R12-5-517:** The rule is mostly consistent, although it is inconsistent with agency operations in that grazing lease rentals are not fixed amounts (as they are based on a formula derived from an index and computed annually), and grazing and agricultural leases currently do not contain rental fee amounts in the lease documents (however, the Department is considering changing this practice).

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are generally effective in achieving their objectives except for the following rules:

- **R12-5-402:** Subsection (A) is not effective as it is inconsistent with agency operations as outlined above. Subsections (B) through (D) are effective.
- **R12-5-533:** The rule is effective, but misplaced within the Chapter, as it does not only apply to leases.

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:

- **R12-5-402:** Subsection (A) is not enforced as it is inconsistent with agency operations as outlined above. Subsections (B) through (D) are enforced.
- **R12-5-406:** The rule is mostly enforced except: per Subsection (B)(3), the Department does not require release or satisfaction of a lien of mortgage to be submitted at the time of application because most applicants assigning a CP will submit such documentation simultaneously at closing; and per Subsection (B)(4), as the Department does not citizenship-test its applicants.
- **R12-5-408:** The rule is enforced except that the requirement of the drawing size of the survey plat and the format of same mentioned in Subsection (A)(3) is only enforced when necessary.
- **R12-5-509:** The rule is mostly enforced, except that an application for reclassification does not serve as an effective date for a new lease.
- **R12-5-513:** The rule is mostly enforced, except where it is inconsistent with agency operations, as noted above.
- **R12-5-517:** The rule is enforced as written, except as to grazing leases as outlined 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?

Not applicable. The Department indicates there are no federal laws applicable to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

For those rules which were amended in 2021, the Department indicates the rules are in compliance with A.R.S. § 41-1037. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

The Council voted to require the Department to conduct a review of the rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5 outside the 5YRR process pursuant to A.R.S. § 41-1056(D). This 5YRR from the Department relates to forty-six (46) rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5. Specifically, the Articles reviewed cover the following areas: Article 1 – General Provisions; Article 2 – Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner; Article 4 – Sales; and Article 5 – Leases.

The Department has identified rules that are not clear, concise, understandable, consistent, effective, and enforced as written. The Department proposes to amend these rules in two separate rulemakings, the first of which will be submitted to the Council by April 2024 and the second by March 2025.

Council staff recommends approval of this report.

ARIZONA STATE LAND DEPARTMENT

"Serving Arizona's Schools and Public Institutions Since 1915"

A.R.S. § 41-1056(D) Rule Review Report

Submitted to

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

of

Arizona Administrative Code
TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department

Article 1 – General Provisions
Article 2 – Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner
Article 4 – Sales
Article 5 – Leases

Due November 1, 2023

Summary

A.R.S. § 41-1056(D) states: "The council may review rules outside of the five-year review process if requested by at least four council members." At a meeting of the Governor's Regulatory Review Council ("GRRC") on December 6, 2022, the Council voted to require the Arizona State Land Department ("Department") to review all of its rules in Title 12, Chapter 5 according to the following schedule: Articles 1-11 are due no later than July 1, 2023, and Articles 12-25 are due no later than November 1, 2023. At the meeting of the GRRC on June 6, 2023, the Council voted to extend the due date of the § 41-1056(D) Report of all Articles to November 1, 2023. The review of Articles 1, 2, 4 and 5 are contained herein. The review of Articles 7, 8, 9, and 11 are submitted separately to and simultaneously with this report as a revision to the 5-year rule report of those same Articles which was originally due July 31, 2022, and returned to the Department in November 2022.

The Department, while not a regulatory agency, is a public agency that should ensure that the public has clear understanding and consistent guidelines for State Trust land ("STL") transactions.. The Department serves as the trustee of the State's 9.2 million acres of STL and the appurtenant natural resources. The trust status of STL imposes obligations and constraints that would not apply if the State held the land outright. These obligations and constraints are outlined in the extensive and detailed provisions of Sections 24-30 of the State's Enabling Act, Article X of the Arizona Constitution, statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate), and a century of case law.

STL, managed for its highest and best use, while also preserving its finite natural resources, is supported by the laws of the Enabling Act, Constitution, and judiciary of this state. The Commissioner is granted broad statutory discretion in her decision-making powers and authorities; which are necessary for the management of a perpetual trust in a time of increasing demand for all types of land uses. The Department also has a public duty to ensure that its expectations for applicants, lessees and permittees are clear and consistent. To that end, the Department is proposing amendments to some of our rules within Title 12, Chapter 5 in order to conform with changes to statutes and internal processes and to clarify language and drafting nuances where necessary.

Under this Rule Review Report, the Department evaluated 46 rules broken down as follows: 9 rules within Article 1; 18 rules within Article 2; 7 rules within Article 4; and 12 rules within Article 5. The Department plans to amend many of these rules in a rulemaking that shall be initiated via submission to the Governor's Office no later than March 1, 2024.

The Department, under this new administration, will be creating a standardized framework for all future rule writing and reviews; which has been lost over the past few decades. The Department also recognizes that there is great opportunity for improvement to several internal

work flow processes; and has begun identifying areas of necessary improvements that will ensure agency transparency, accountability and efficiency in all surface and subsurface STL transactions. As the Department works through these improvements over the course of the next few years, it will return to GRRC with proposed conforming improvements to rule, providing greater clarity to customers and stakeholders.

Factors analyzed pursuant to A.A.C. R1-6-301(A)

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that 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. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

RULE ANALYSIS

Article 1 General Provisions

A.A.C. Rule 12-5-101 Definitions

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to define terms to help with legal interpretation of the rules.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts of the 2020 proposed rulemaking to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

ASLD proposed to amend this rule in the previous 5YRRR, and ASLD completed this action in its 2020/21 Rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because definitions serve to improve clarity and understandability of the rules without harming stakeholders, customers, or the Department.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

As part of ASLD's efforts to improve customer clarity and interface with the agency, ASLD intends to amend this rule to include definitions from other parts of the department's regulations, but it does not intend to amend the definitions subject to the current analysis. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-102 Computation of Extension of Time

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to inform stakeholders how the Department computes a time period prescribed or allowed under the rules. It also describes the Commissioner's authority to extend any time period.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
As currently written, the "computation of time" in subsection (A) is confusing and unnecessarily complex – it also lacks specificity as to what agency decisions, or processes this provision would apply.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule offers specificity

regarding the computation of time periods that is fair and balanced it its approach to affording customers adequate time to act without becoming unduly lengthy.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1137 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

ASLD intends to consider revisions to subsection (A) to clarify it in list form, as well as add revisions that would add a set amount of time to the time period calculation when service of process is given by certified mail. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-103 Records; Correction of Errors; Public Docket; Removal of Records

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objectives of the rule are to: establish standards in which documents submitted to the Department become part of the Department's records, establish guidelines for correcting clerical errors within documents, describe the process for a person to obtain a copy of a public docket, and prohibit the removal of documents from the Department.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

In the previous 5YRRR, the Department proposed to amend the rule to reflect acceptance of documents physically and electronically filed. The Department completed this action in its 2020/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from providing uniform guidance regarding filings, acceptance of records and correction of errors, without which a layperson would not have clear direction or ability to transact with the Department in an efficient and effective manner.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-104 Application Forms; Legal Status; Submission of Applications; Applications Confer NO Rights

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to inform customers how to file an application or other required documents with the Department, the information required, and the rights, if any, granted to an applicant.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

In the previous 5YRRR, the Department intended to amend Subsection (C) of this rule to reflect the Department's practice of receiving documents electronically. The Department completed this action, in addition to further changes to the rule.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from requiring applications to be uniform and contain certain information that allows the Department to consider proposed transactions in a fair and consistent manner, helping customers and the Department's objective.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD intends to amend this rule to include application information that is currently located elsewhere in the Chapter, as well as provide clarity to applicants of the Department's expectations following incomplete application filings. The Department has experienced some difficulties in follow-up from applicants who have submitted incomplete applications, which can unfairly suspend parcel(s) of land for other applicants/uses. Applications can sit in suspense for years as a result. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-105 Manner of Signing Documents Before the Department

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to describe signature requirements and limitations.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to amend this rule by deleting Subsection (C). It completed this amendment in the 2020/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from offering clarity on the execution of documents before the Department while costs are minimal given that all documents must be signed anyway to be effective per the Statute of Frauds.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

The Department intends to strike Subsection (B) of this rule and simultaneously incorporate reference to signing by authorized representatives into Subsection (A) in order to make the rule more concise, as well as consider an addition of a timeline requirement for executing documents sent out by the Department to avoid lengthy delays which have historically held up Department processes and encumbered land. The encumbrance inhibits other potential businesses/applicants from applying for those sections of parcels. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-106 Assignments; Subleases

1. Statutory Authority:
A.R.S. § 37-132: § 37-286

2. Objective:
The objective of the rule is to describe the requirements for assigning or subleasing a lease.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to amend the rule to add language to subsection (A)(2) that notes that Commissioner approval of an assignment or sublease in writing only applies if the assignment or sublease contract does not otherwise authorize same without Commissioner approval. The Department completed this action in its 2021/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derived from requiring assignors and sublessors of State Land to obtain approvals and meet certain criteria allows the Department to consider the implications of such transactions on the reversionary interest in the land, which outweighs the burden of allowing such transactions to occur without the Department's knowledge or consent.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

The Department intends to add to this rule to further delineate how the Department treats assignments, partial assignments, and subleases uniquely; to outline applicant requirements for and restrictions to assignments and subleases; and to articulate joint and several liability in a sublease scenario. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-107 Fees; Remittances

1. Statutory Authority:
A.R.S. § 37-132; § 37-288(C)

2. Objective:
The objective of the rule is to explain how fees and other remittances are paid to the Department.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to amend Subsection (A) of the rule to allow for filing fee to be paid by credit card. The Department completed this action in its 2020/21 rulemaking along with other amendments clarifying that receipt of payment would equate with the

postmarked date or electronic receipt of payment and removal of the requirement to hand deliver payments for them to be credited.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows for the most expansive forms of payment currently possible within Department operations.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-108 Predecision Administrative Hearing

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to describe the discretionary ability of the Commissioner to hold a pre-decision administrative hearing.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows the Department to use a hearing as an effort to gather the best information available before

making a decision, which benefits both customers and the Department in the execution of its fiduciary responsibilities.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-109 Rejection of Hearing

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to describe the Commissioner's authority to reject the request for a hearing.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows the Commissioner to decide if a subject matter is not applicable to a hearing, saving everyone time and resources and expediting the initiation of other remedies, if desired.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

Article 2 Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner

A.A.C. Rule 12-5-201 Applicability

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain the purpose of Article 2 rules, which is the process of protesting an auction.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

The Department proposed to change language to improve clarity. The Department completed this action in its 2020/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides clarity of purpose without providing any restrictive or regulatory activity.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-202 Appointment of a Hearing Officer

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain who may serve as a hearing officer.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from the ability to appoint a hearing officer, which has the potential to expedite a hearing in the absence of the Commissioner, while having no seemingly negative consequence to same.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-203 Ex Parte Communication

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain the prohibition on communication between parties and decision makers in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it restricts activity that

is similarly restricted in judicial proceedings to curtail actual and perceived bias during an impartial hearing.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-204 Failure to Appear

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain to potential stakeholders the powers of a hearing officer in the event a party fails to appear.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows the hearing

officer discretion to vacate or continue a hearing in lieu of alternatives such as rescheduling, which can be time- and resource-intensive.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-205 Representation

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to identify appropriate representation for different types of parties in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it ensures all parties are adequately represented depending on their legal status.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule to conform to Arizona Supreme Court 31.3(c)(5) by March, 2025.

A.A.C. Rule 12-5-206 Notice of Hearing

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain which information shall be included in a Notice of hearing and that an applicant for a sale or long-term lease which is the subject of a contested auction is a party to a hearing for hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
ASLD proposed to amend the rule to make minor spelling and grammatical changes for clarity. When ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking, it did not deem the edits sufficient to justify incorporation into the 2020/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it requires the

Department to issue a Notice of Hearing with certain information to provide clarity and consistency to interested parties, which is helpful, and it identifies applicants as parties which is important given the applicant's unique interest and position leading up to an auction.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-207 Hearing Record

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to establish the requirements of maintaining a hearing record for hearings held pursuant to A.R.S. § 37-301 and making those records available to the public thereafter.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is concise and understandable, though it could benefit from elimination of the reference to "tapes" to improve clarity.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows persons to obtain a hearing record easily and requires the Department to record hearings and produce them as requested, which is in line with Public Records laws.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule to clarify the way to obtain copies of the record and to eliminate the reference to "tapes" and other archaic references**.**
This rule will be amended in March, 2025.

A.A.C. Rule 12-5-208 Consolidation

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to explain that multiple protests of the same auction may be consolidated into one hearing.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because there is a substantial

time and resource benefit to the Department and all parties in the ability to consolidate protests without having a negative effect on either.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-209 Filing

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to provide requirements for making filings with the Department for hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides uniform

guidelines for hearing submissions, ensuring that any information can be useful for the process and fair to all parties involved.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

ASLD intends to amend the rule to accommodate electronic submissions of documents. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-210 Service; Proof of Service

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to describe the requirements of service of process for certain papers filed in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to amend this rule to make minor grammatical changes for clarity and to reflect a change in the Division of the Attorney General's office which shall receive service of a notice of hearing per subsection (D). The Department accomplished

the latter change, but no further changes were deemed necessary to justify incorporation into the 2020/21 rulemaking.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides a consistent process for service of process, benefitting all parties to a hearing subject to Article 2.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-211 Subpoenas

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to authorize the issuance of and establish procedures for subpoenas in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it amended (B)(3) to reference "if any" after "subpoenas".

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides a consistent and thoughtful method of subpoena useful for these Article 2 hearings.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not propose any remedial action on this rule.

A.A.C. Rule 12-5-212 Procedure at Hearing

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to describe the procedures for hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it made grammatical changes to the rule.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it outlines the method the Department employs in these hearings that allows for the participation of all parties.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

Since this rule relates to the procedure at a hearing, ASLD intends to amend the rule in subsection (C) by relocating the second sentence pertaining to the availability of the record of the hearing to R12-5-207 which pertains to the hearing record. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-213 Evidence

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to outline the rules of evidence for hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it affords a fair process

for presenting evidence to be used in a hearing in a way that allows for consistency and equality in the determination of all facts relevant to the decision.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:

ASLD intends to consider changes to this rule to accommodate the acceptance of electronic media as evidence, pending an assessment regarding whether the current rule's language can be construed to include electronic media and whether the Department can accommodate the preservation of all or certain electronic media in a hearing file. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-214 Judicial Notice; Technical facts

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to authorize a hearing officer to take judicial notice of certain facts in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is concise and understandable, although clarity could be improved by articulating that only the hearing officer may exercise judicial notice.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows a hearing

officer the power of judicial notice, which is an expeditious method of ascertaining facts also commonly utilized in court proceedings.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not propose any remedial action on this rule.

A.A.C. Rule 12-5-215 Stipulations

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to allow parties to agree to procedural or substantive matters in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it made a single, grammatical change to the rule.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it offers an expeditious means for parties to agree to certain facts or procedural method in these hearings and no burden is imposed.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

14. Course of Action Proposed:

ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-216 Recommended Decision

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to inform parties of the timeframe for recommendations made to the Commissioner by a hearing officer in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the date by which a

recommended decision must be given respects both the consideration needed from a hearing date and the upcoming auction date, which the hearing may affect.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-217 Decision

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to inform parties of the content requirements of Commissioner decisions made in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it requires the final

decision in these hearings to reflect the most information possible so that the parties to the hearing can understand the outcome.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

A.A.C. Rule 12-5-218 Rehearing of Decision

1. Statutory Authority:
A.R.S. § 37-132; § 37-301

2. Objective:
The objective of the rule is to establish conditions for which a rehearing of a decision may take place in hearings held pursuant to A.R.S. § 37-301.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because while it allows for a

rehearing to alleviate a perceived incorrect decision, it limits the reasons for such a rehearing to those things that would have substantive effect.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as this rule was adopted prior to July 30, 2010.

14. Course of Action Proposed:
ASLD does not intend to take any action on this rule at this time.

Article 4 Sales

A.A.C. Rule 12-5-402 Conditions for Filing Application

1. Statutory Authority:
A.R.S. § 37-132(A)(1); § 37-233

2. Objective:
The objective of this rule is to outline conditions for filing a purchase application for State Land.

3. Effectiveness:
Subsection (A) is not effective as it is inconsistent with agency operations. Subsections (B) through (D) are effective.

4. Consistency:
Subsection (A) is inconsistent with agency operations because it limits an application to one section or subdivision of a section, and ASLD allows an application to cover more than one section or subdivision thereof for the sake of efficiency. Subsections (B) through (D) are consistent.

5. Enforcement policy:
Subsection (A) is not enforced. Subsections (B) through (D) are enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable. Notably, however, Subsection (C) is reflective of A.R.S. § 37-233(C) in that the statute allows the Commissioner to require funds to be advanced for the purchase of state land under certain circumstances, while the rule requires it.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

The previous 5YRRR noted the following: "While subsection (A) of the rule is misleading in that it is inconsistent with agency operations, it is well known that the Department does not enforce this subsection which is to the advantage of both the Department and its purchase applicants. Nothing in this rule costs staff additional time and resources." Rules under Article 4 were considered for a rulemaking effort following a rulemaking to amend Articles 1 & 2. A rulemaking for Article 4 did not occur.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that the rules' probable benefits outweigh their probable costs and impose the least burden and costs to persons regulated by the rule (absent subsections (A) and (C) which are unnecessary) because it provides the Department with information that is necessary to consider an application, in the case of subsection (B), and it limits a party from withdrawing an application that the Department has agreed to take to auction by expending considerable resources, in the case of subsection (D), neither of which create an undue burden on a party seeking to purchase State Land.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule to eliminate subsections (A) and (C). This rule will be amended in March, 2025.

A.A.C. Rule 12-5-403 Restrictions Subsequent to Filing Application to Purchase

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of this rule is to restrict any state land Lessee from adversely impacting lands for which an application to purchase has been made by that same Lessee.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
Rules under Article 4 were to be considered for the Department's 2020 rulemaking effort. A rulemaking for this rule was not considered necessary and was not completed.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that the rules' benefits outweigh their costs because an applicant to purchase state land has no interest in the land due to the existence of the application; so if there is no interest to dispose of or encumber, there is no cost to the applicant. On the other hand, premature dispositions or encumbrances of state land prior to sale would devalue the land and therefore be costly to the Trust.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:
The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-404 Responsibility of the Purchaser

1. Statutory Authority:
A.R.S. § 37-132; § 37-244; § 37-246

2. Objective:
The objective of this rule is to inform purchasers of State Land of certain responsibilities post-auction.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule needs clarification because it is not written in complete sentences. Also, the rule is not entirely concise because subsection (E) is redundant of statute.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
Rules under Article 4 were to be considered for the Department's 2020 rulemaking effort. A rulemaking for this rule was not considered necessary and was not completed.

11. Cost v. Benefit and Least Burden Analyses:
While there are costs associated with a customer's compliance with this rule (e.g. recordation, payment of taxes, insurance, etc.), some of these costs are required of the Department to impose upon a purchaser as a conditions to a Certificate of Purchase, and all of these costs are standard in the real estate industry and essential to discharge of the

Department's fiduciary duty to the Trust which mandates protection of the Trust assets until a Patent has been issued.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department proposes to amend this rule to create complete sentences; to require a purchaser of state land to furnish a copy of the recorded CP to the Department; to require a holder of a CP to provide proof of payment of those items enumerated under subsection (B) (which is already a requirement under R12-5-405(A)); to eliminate subsection (E); and to eliminate the requirement of a CP holder to acquire the consent of the Department in situations when the Right-of-way would not survive the cancellation of the CP. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-405 Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of this rule is to cause a holder of a Certificate of Purchase to prove annually that taxes and assessments against any land subject to a Certificate of Purchase have been paid for the year.

3. Effectiveness:
The rule is partially effective. See below.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
Subsection (A) of the rule is clear, but the concept within subsection (B) of the rule is better elaborated in A.R.S. § 37-247, and the reference to R12-5-102(B) regarding computation of timeframes is not needed here.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
Rules under Article 4 were to be considered for a rulemaking effort following a rulemaking to amend Articles 1 & 2. A rulemaking for Article 4 did not occur.

11. Cost v. Benefit and Least Burden Analyses:

ASLD contends that the rules' benefits outweigh their costs because subsection (A) only requires production of a document, i.e. proof of a payment of taxes, therefore there is minimal costs to customers while the benefit to the Department to ensure there is no default of tax payments under a CP is substantial as it allows the Department to protect the trust.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to eliminate this rule after it relocates subsection (A) to R12-5-404(B). This rule will be amended in March, 2025.

A.A.C. Rule 12-5-406 Assignment of a Certificate of Purchase

1. Statutory Authority:
A.R.S. § 37-132; A.R.S. § 37-244

2. Objective:
The objective of this rule is to inform Certificate of Purchase holders who wish to assign their CP of the conditions that would prohibit assignment.

3. Effectiveness:
The rule is mostly effective.

4. Consistency:
The rule is mostly consistent, except for those parts not enforced as explained below.

5. Enforcement policy:
The rule is mostly enforced except: per Subsection (B)(3), the Department does not require release or satisfaction of a lien of mortgage to be submitted at the time of application because most applicants assigning a CP will submit such documentation simultaneously at closing; and per Subsection (B)(4), as the Department does not citizenship-test its applicants.

6. Clear, concise, and understandable:
The rule is mostly concise and understandable, but: 1) clarity could be gained by recognizing that, due to escrows, the release or a satisfaction of a lien or mortgage may come prior to the completion of the assignment and not at the time of application and 2) the elimination of subsection (C), which is redundant of A.R.S. 37-244(C) would improve conciseness.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.

11. Cost v. Benefit and Least Burden Analyses:

The benefit to the Trust of this rule far exceeds the costs to customers who are CP holders because allowing a transfer of a CP when there are potential defaults under the CP would adversely affect the Trust and the lands under the CP.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule to adopt grammatical changes, to clarify Subsection (B)(3), to amend (B)(4) to eliminate the reference to citizenship-testing of applicants, and to eliminate subsection (C). This rule will be amended in March, 2025.

A.A.C. Rule 12-5-408 Partial Patent

1. Statutory Authority:
A.R.S. § 37-132(A); § 37-251(B)

2. Objective:
The objective of this rule is to inform Certificate of Purchase holders of the conditions to receive a partial patent.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is mostly consistent, except that Subsection (A)(1) references the filing fee in A.R.S. § 37-108(A)(9)(c) whereas A.A.C. R12-5-1201 prescribes Department filing fees.

5. Enforcement policy:
The rule is enforced except that the requirement of the drawing size of the survey plat and the format of same mentioned in Subsection (A)(3) is only enforced when necessary.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.

11. Cost v. Benefit and Least Burden Analyses:
The benefit of this rule to the Department and its customers is primarily that it allows the Department to process an application more efficiently for a partial patent. While there are costs associated with the due diligence required, the Department needs this information to

comply with statute and to adequately protect the remainder of the lands under a CP and any surrounding state lands.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule to reference the correct rule providing for filing fees; to require the information required in (A)(3) to be provided in digital format; to make grammatical changes; and to consider elimination of Subsection (E) in exchange for a Department-wide approach to treating incomplete applications. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-413 Real Estate Broker Commissions

1. Statutory Authority:
A.R.S. § 37-132(A)(1); § 37-132(B)(2)

2. Objective:
The objective of this rule is to provide criteria by which private real estate brokers may assist the Department in marketing state land for sale and long-term lease auctions and by which those same brokers may be paid a commission for doing so.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is concise and understandable, but the rule's clarity could be improved by differentiating brokers representing non-applicant bidders and those representing applicant bidders.

7. Written criticisms:
There have been no written criticisms of this rule received in the previous five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.

11. Cost v. Benefit and Least Burden Analyses:
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the Department pays a

fee to real estate brokers who bring clients to purchase auctioned lands for sale or long-term lease, which is a benefit to the Department and the bidders.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend the rule as follows: to differentiate broker requirements for brokers representing applicant and non-applicant bidders; to require submission of broker forms via electronic means versus in person document filings at the Department's public counter; and to restrict payment to brokers representing themselves or state land beneficiaries. This rule will be incorporated as a new section through April, 2024 Rulemaking.

Article 5 Leases

A.A.C. Rule 12-5-505 Time for Filing Conflicting Applications

1. Statutory Authority:
A.R.S. § 37-132(A)(1); § 37-284

2. Objective:
The objective of the rule is to notify all stakeholders as to when the Department will not accept a conflicting application to use Trust land, to provide time frames for the acceptance of conflicting applications, and to define a conflicting application.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes or improvements were highlighted.

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it informs applicants of timelines and deadlines for processing conflicting applications without creating any burdensome actions for those same applicants.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-506 Procedure in Processing Conflicting Applications

1. Statutory Authority:
A.R.S. § 37-132(A)(1); § 37-284

2. Objective:
The objective of the rule is to articulate how the Department processes and awards a lease when there are conflicting applications.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes or improvements were highlighted.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it

provides an efficient and fair means to process and decide conflicting applications despite the inherent burden of conflicts on applicants which cannot be entirely circumvented.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-508 Application Confers No Right to Land

1. Statutory Authority:
A.R.S. § 37-132(A)(1); 37-294

2. Objective:
The objective of this rule is to articulate the rights which are and are not conferred in the land subject to a pending new or renewal application.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear and understandable, but it is not concise because it partially reiterates what is articulated in A.A.C. R12-5-104.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no rule changes were highlighted or proposed.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule. The rule only states what is helpful for applicants to know, but there is no situation in which allowing a

lessee any equitable rights in the land would be a good idea from a trust land management perspective.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department proposed to incorporate this rule into A.A.C. R12-5-104. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-509 Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit

1. Statutory Authority:
A.R.S. § 37-132; § 37-103; § 37-215; § 37-281

2. Objective:
The objective of this rule is to explain the requirements to finalize a STL lease or permit, including the requirements for signing, payment of rent or fees, timeframes, and deadlines. The rule describes how effective dates are determined and includes instructions on appealing an appraised rental value.

3. Effectiveness:
The rule is mostly effective.

4. Consistency:
This rule was created when the agency largely transacted and executed agreements with paper; reflected in several portions of this section. Also, the rule is inconsistent with agency operations, as receipts are not provided unless requested following execution of the lease or permit. Further, where it notes that the rental statement is sent with a copy of lease for execution by the lessee or permittee, in actuality the Department mostly sends a copy of the rental statement under separate cover prior to sending out the lease documents.

5. Enforcement policy:
The rule is mostly enforced, except that an application for reclassification does not serve as an effective date for a new lease.

6. Clear, concise, and understandable:
The rule is not easily understood as it is verbose, outdated and is not organized well. The rule is not clear because the effective date of a lease is never the date of application upon open land, but rather the date both parties have signed the lease; the date of administrative approval differs depending on the type of lease. While all of these dates fall under the "or such other subsequent date as the Commissioner may prescribe," it is not clear what those dates are. The rule is not concise because mention of the Department seal being affixed to lease documents is redundant of A.R.S. § 37-103

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. However, the economic impact of the rule is primarily to the Department staff and resources in processing applications and managing the applications through to execution or cancellation or withdrawal.

9. External Analysis of impact on business competitiveness:

There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:

The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted, "ASLD only in the past year implemented an electronic application process and is currently working toward an electronic signature process for executing documents. Until those processes are implemented fully and standardized, it is not clear what ASLD would propose in the new rule regarding the treatment of insert sheets and whether those will need additional execution or be incorporated by addendum into the ASLD contracts. Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019 and will be made in light of the operation changes that are ongoing. As to whether ASLD should resolve the inconsistency in the mailing of billing statements will depend on the extent to which electronic means continue to be developed and standardized at the Department. The reference to the seal and to reclassification and appeal should be amended once the entirety of the rule is ready for amendment."

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule, although it needs to be amended to be transparent of processes and even more helpful to customers.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department proposes to amend this rule to eliminate inconsistent and redundant provisions; to enumerate lease commencement dates for specific types of leases; and to add numbered formatting. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-512 Assignments

1. Statutory Authority:
A.R.S. § 37-132(A)(1); 37-286

2. Objective:
The objective of this rule is to notify assignors of leases or permits of the prerequisites for assigning a lease or permit.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
The estimated economic impact of the rule to assignment applicants would be the following year's rent payment required in advance of an assignment application made within 30 days of the rent's due date.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted, "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. The interchange of "Commissioner" and "Department" do not present a substantive or immediate issue, but should other issues necessitate a rulemaking, ASLD would likely propose to change some references to "Commissioner" to "Department"." These considerations were made, but no changes

were proposed or completed based on these considerations.

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because this burden of requiring payment prior to assignment is outweighed by the benefit that accrues to an assignee (in taking an assignment that would otherwise not be current on rent) and to the Department (in ensuring rent is paid timely).

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-513 Manner of Assignments

1. Statutory Authority:
A.R.S. § 37-132(A)(1); § 37-255(A); § 37-286(B)

2. Objective:
The objective of this rule is to notify assignors of leases or permits of the manner in which assignments are required to be done, including reference to forms, fees, map requirements, and lienholder consent.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is mostly consistent. It is inconsistent with agency operations in that the Department does not require a copy of the lease or permit to be provided at the time of application, and the Department does not allow for an assignment of an undivided interest.

5. Enforcement policy:
The rule is mostly enforced, except where it is inconsistent with agency operations, as noted above.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no estimated economic impact of the rule to assignment applicants.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted that "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. The other amendments referenced in the 2013 report may also be beneficial to make." The Department made these considerations and

decided against amending this rule accordingly.

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it provides a clear guideline pertaining to assignment, which allows the Department to assess ach assignment on its merits.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend this rule to address the inconsistencies with agency operations, specifically to remove the requirement of an applicant to provide a copy of a lease or permit at the time of application and the ability of an applicant to apply for an assignment of an undivided interest. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-517 Rentals

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to inform stakeholders of the nature and payment of rental amounts.

3. Effectiveness:
The rule is mostly effective.

4. Consistency:
The rule is mostly consistent, although it is inconsistent with agency operations in that grazing lease rentals are not fixed amounts (as they are based on a formula derived from an index and computed annually), and grazing and agricultural leases currently do not contain rental fee amounts in the lease documents (however, the Department is considering changing this practice).

5. Enforcement policy:
The rule is enforced as written, except as to grazing leases.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no estimated economic impact of the rule to lessees.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted that "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. Specifically, the Department has most recently litigated an issue regarding the treatments of rights-of-way by ASLD. That litigation is

still pending, and the resolution of that litigation, along with other legal considerations of the treatments of rights-of-way, may bring clarity to whether ASLD will include the reference to rights-of-way and right-of-way grantees in certain rules pertaining to Leases." The litigation mentioned has culminated, and the change in practice associated with this litigation would not be addressed here but rather in Article 8. The other considerations were made by the Department, which then decided against amending this rule.

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it outlines the very important requirement that all rentals be paid annually in advance, while leaving leeway for the Commissioner to alter this requirement on a case-by-case basis, which is done so mostly for the Federal government.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-518 Rental Notices

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to explain how the Department notifies lessees that rent is due or is changing and when rent is due.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no estimated economic impact of the rule to the Department's customers.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department mentioned replacing "Commissioner" with "Department" if other updates necessitated a rulemaking; the Department determined that such non-substantive changes were not necessary.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it provides information on rental notices and reasonable due dates of payments.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:
The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-521 Modification or Amendment of Existing Lease or Permit

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to explain a limitation on the modification of an existing lease or permit term.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no estimated economic impact of the rule to stakeholders.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, like in other rules in this article, the Department noted considering whether to add mention of rights-of-way to this rule. The Department decided against this course of action and did not amend the rule.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it outlines in a regulation that which is already contractually stipulated.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:
The Department does not intend to amend this rule at this time.

A.A.C. Rule 12-5-524 Sale, Mortgage or Lien on Interest of Holder of Lease or Permit

1. Statutory Authority:
A.R.S. § 37-132; § 37-255

2. Objective:
The objective of the rule is to explain the responsibilities of lessees, the Department, and lienholders with respect to liens filed, foreclosure, lien balance, and notices of certain actions to parties to a lien.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is understandable, but the first paragraph is redundant of A.R.S. 37-255. Also, additional information could add clarity to the process of filing mortgages and liens with the Department.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is a potential economic impact to stakeholders, i.e. lienholders in this instance, if they do not follow the rule and the liens are not recorded and the Department defaults or cancels a lease due to non-payment. But, if the lienholders do not file notice with the Department, the Department is unable to notify them of an adverse event. This rule benefits lienholders because it allows them a process by which to have their liens recognized.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.

11. Cost v. Benefit and Least Burden Analyses:

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it affords a formal process to have liens recognized and lienholders notified in the event of a default.

12. Comparison with Federal Law:

There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department intends to amend this rule to remove the first paragraph and to add clarity to the remaining provisions regarding both the process for lienholder filings and the limitations of such filings. This rule will be amended in March, 2025.

A.A.C. Rule 12-5-533 Trespass on State Land

1. Statutory Authority:
A.R.S. § 37-132; § 37-501; § 37-502

2. Objective:
The objective of the rule is to explain a trespass action and legal off-highway vehicle ("OHV") use, as well as designate authorized uses and prescribe penalties for trespass. The rule also defines terms used.

3. Effectiveness:
The rule is effective, but misplaced within the Chapter, as it does not only apply to leases.

4. Consistency:
This rule is consistent with statute.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is concise and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
There is no estimated economic impact to stakeholders.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:

This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:

The Department proposes no action at this time.

A.A.C. Rule 12-5-534 Closing Land to Recreational Use

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of the rule is to describe when the Commissioner may close lands to recreational use.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule is enforced.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

7. Written criticisms:
The Department has not received any written criticisms of this rule in the past five years.

8. Economic impact:
The objective of the rule is to describe when the Commissioner may close lands to recreational use.

9. External Analysis of impact on business competitiveness:
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

10. Previous 5yRR Report Course of Action:
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.

11. Cost v. Benefit and Least Burden Analyses:
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule. The ability of the Commissioner to close lands in the best interests of the trust supersedes any interest in recreation.

12. Comparison with Federal Law:
There are no federal laws with which to compare this rule.

13. A.R.S. § 41-1037 Compliance:
This factor does not apply as the rules were adopted prior to July 30, 2010.

14. Course of Action Proposed:
The Department intends to relocate this rule to Article 1.

Economic Impact Statement

As of the end of Fiscal Year 2023, the Department held: 345 Agricultural Leases covering 157,439,161 acres of Trust Land which generated $4,339,836 in income; 1203 Grazing Leases and Permits covering 8,333,585,519 acres which generated $2,962,499 in income; 292 Commercial Leases covering 73,697,182 acres which generated $32,504,784 in income; 5,422 Right-of-Way Grants and Permits covering 87,970,595 acres which generated $11,308,524 in income; and 773 Mineral Leases covering 409,210,731 acres of Trust Land which generated $14,317,086 in rental income.

Additionally, in Fiscal Year 2023, the Department held 43 auctions for sales of 4,760,441 acres of land and generated revenue in the amount of 374,719,009 from those land sales.

The rental payments received from the above leases are deposited into the Trust's expendable fund and distributed directly to the beneficiaries annually. The payments received from the above land sales are deposited into the Trust's permanent fund, which is invested by the Treasurer, and proceeds therefrom are distributed to beneficiaries in accordance with formulas established in the Constitution. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provide opportunities for local economies via the labor force and the communities of homes, retail, and offices that are built thereon.

Arizona Administrative CODE

12 A.A.C. 5 Supp. 20-4

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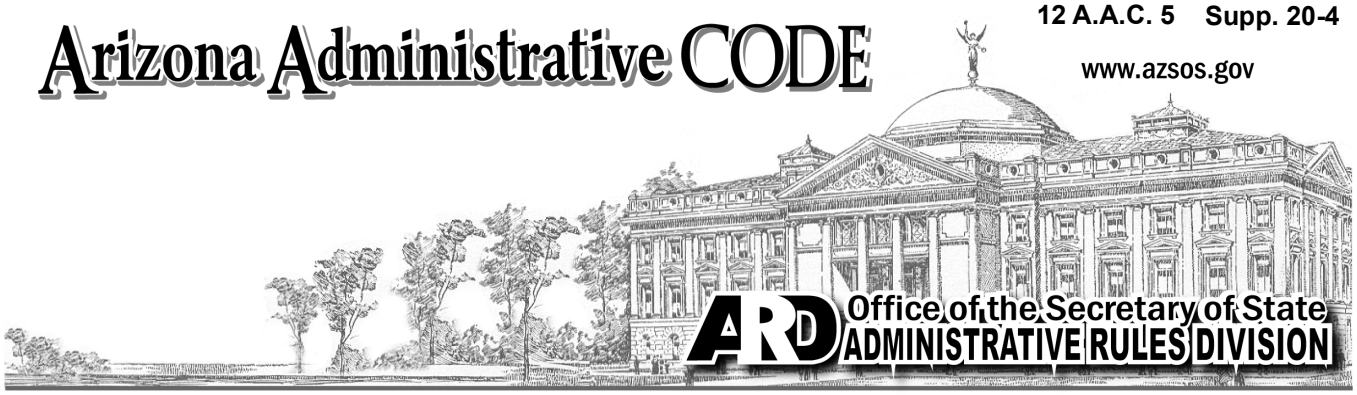

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

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.

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of October 1, 2020 through December 31, 2020.

Questions about these rules? Contact:

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The release of this Chapter in Supp. 20-4 replaces Supp. 20-1, 1-52 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.

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

Authority: A.R.S. § 37-102 et seq.

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: The proposed summary action repealing R12-5-901 through R12-5-920 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 98-3).

Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 297, § 6. Exemption from A.R.S. Title 41, Chapter 6 means that the Land Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; the Land Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Title 12, Chapter 5, Articles 1 thru Article 23, were renumbered to bring the Chapter numbering into compliance with current format. For the old and new Section numbers, please refer to the introductory notes at the beginning of each Article in the table of contents or in the historical notes for the specific Sections.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R12-5-10, adopted effective August 2, 1994 (Supp. 94-3).

Article 1, consisting of Sections R12-5-101 thru R12-5-103, repealed effective August 2, 1994 (Supp. 94-3).

Article 1, consisting of Sections R12-5-01 thru R12-5-03, renumbered to Article 1, Sections R12-5-101 thru R12-5-103 (Supp. 93-3).

Section

ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER

Article 2, consisting of Sections R12-5-201 thru R12-5-218, made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

Article 2, consisting of Sections R12-5-201 thru R12-5-222, repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

Article 2, consisting of Sections R12-5-201 thru R12-5-222, adopted effective August 2, 1994 (Supp. 94-3).

Section

ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS

Article 2, consisting of Section R12-5-50, renumbered to Article 3, Section R12-5-301 (Supp. 93-3).

Section

ARTICLE 4. SALES

Article 4, consisting of Sections R12-5-71 thru R12-5-82, renumbered to Article 4, Sections R12-5-401 thru R12-5-412 (Supp. 93-3).

Section

ARTICLE 5. LEASES

Article 5, consisting of Sections R12-5-100 thru R12-5-134, renumbered to Article 5, Sections R12-5-501 thru R12-5-535 (Supp. 93-3).

ARTICLE 6. IMPROVEMENTS (RESERVED)

ARTICLE 7. SPECIAL LEASING PROVISIONS

Article 7, consisting of Sections R12-5-150 thru R12-5-155, renumbered to Article 7, Sections R12-5-701 thru R12-5-706 (Supp. 93-3).

ARTICLE 8. RIGHTS-OF-WAY

Article 8, consisting of Sections R12-5-165 thru R12-5-167, renumbered to Article 8, Sections R12-5-801 thru R12-5-803 (Supp. 93-3).

ARTICLE 9. EXCHANGES

Article 9, consisting of Sections R12-5-179 thru R12-5-199, renumbered to Article 9, Sections R12-5-901 thru R12-5-921 (Supp. 93-3).

ARTICLE 10. EXPIRED

Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).

Article 10, consisting of Sections R12-5-200 thru R12-5-211, renumbered to Article 10, Sections R12-5-1001 thru R12-5-1022 (Supp. 93-3).

ARTICLE 11. SPECIAL USE PERMITS

Article 11, consisting of Section R12-5-241, renumbered to Article 11, Section R12-5-1101 (Supp. 93-3).

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 12. FEES

Article 12, consisting of Section R12-5-1201, made by exempt rulemaking at 17 A.A.R. 813, effective April 22, 2011 (Supp. 11-2).

Article 12, consisting of Section R12-5-1201, adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996, now the permanent effective date (Supp. 96-4).

Article 12, consisting of Section R12-5-1201, repealed by summary action with an interim effective date of August 30, 1996; filed with the Office of the Secretary of State August 8, 1996 (Supp. 96-3).

Article 12, consisting of Section R12-5-301, renumbered to Article 12, Section R12-5-1201 (Supp. 93-3).

Section

ARTICLE 13. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, renumbered from Article 5, Sections R12-5-501 and R12-5-502 (Supp. 93-3).

Section

ARTICLE 14. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).

The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

ARTICLE 15. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

ARTICLE 16. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

Article 16, consisting of Sections R12-5-1601 thru R12-5-1612, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 16, consisting of Sections R12-5-560 thru R12-5-564, renumbered to Article 16, Sections R12-5-1601 thru R12-5-1605; Sections R12-5-1605 thru R12-5-1612 renumbered from Article 16, Sections R12-5-570 thru R12-5-576 (Supp. 93-3).

Section

ARTICLE 16.1. RENUMBERED

Article 16.1, consisting of Sections R12-5-570 thru R12-5-576, renumbered to Article 16, Sections R12-5-1606 thru R12-5-1612 (Supp. 93-3).

ARTICLE 17. REPEALED AND EXPIRED

Section

ARTICLE 18. MINERAL LEASES

Article 18, consisting of Sections R12-5-701 thru R12-5-707, renumbered to Article 18, Sections R12-5-1801 thru R12-5-1807 (Supp. 93-3).

Section

ARTICLE 19. PROSPECTING PERMITS

Article 19, consisting of Sections R12-5-731 thru R12-5-735, renumbered to Article 19, Sections R12-5-1901 thru R12-5-1905 (Supp. 93-3).

Section

ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS

Article 20, consisting of Sections R12-5-771 thru R12-5-779, renumbered to Article 20, Sections R12-5-2001 thru R12-5-2009 (Supp. 93-3).

ARTICLE 21. OIL AND GAS LEASES

Article 21, consisting of Sections R12-5-781 thru R12-5-802, renumbered to Article 21, Sections R12-5-2101 thru R12-5-2122 (Supp. 93-3).

ARTICLE 22. GEOTHERMAL RESOURCES

Article 22, consisting of Sections R12-5-850 thru R12-5-873, renumbered to Article 22, Sections R12-5-2201 thru R12-5-2224 (Supp. 93-3).

ARTICLE 23. BOARD OF APPEALS

(Authority: A.R.S. § 37-213 et seq.)

Article 23, consisting of Section R12-5-901 renumbered to Article 23, Section R12-5-2301 (Supp. 93-3).

ARTICLE 24. EXPIRED

Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

Article 25, consisting of Sections R12-5-2501 thru R12-5-2503, adopted effective March 5, 1998 (Supp. 98-1).

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

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" 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. "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. "Lease" means any validly executed document that entitles the lessee to surface or subsurface use or occupancy of State land excluding an assignment for the purposes of granting a security interest.
6. "Lessee" means the holder of a lease excluding an assignment for the purpose of granting a security interest.
7. "Lessor" means the Department.
8. "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 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. "Non-conflicted application" means an application for the use of State 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.
10. "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.
11. "Permit" means any Department-issued document that entitles the permittee to surface or subsurface use or occupancy of State land, excluding an assignment for the purposes of granting a security interest.
12. "Permittee" means the holder of a permit excluding an assignment for the purpose of granting a security interest.
13. "Person" has the same meaning as prescribed in A.R.S. § 1-215.
14. "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. "Right-of-way" means a right of use and passage over, through, or beneath the surface of State land, for an express purpose or to travel to a specific location.
16. "Special Land Use Permit" means a Department-issued document that entitles a permittee to occupy or use State lands for an express purpose, not otherwise expressly provided for by law, and for a specific duration.
17. "Sublease" means an agreement approved by the Commissioner, except when it is not expressly required in a Lease to be preapproved, between a lessee and a third person to lease the property where the lessee retains an interest in the lease.

Historical Note

Original rule, Ch. I (Supp. 76-4). Section R12-5-101 renumbered from Section R12-5-01 (Supp. 93-3). Section repealed, new Section adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

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 exclude the day from which the designated time period begins to run. The computation of time includes intermediate Saturdays, Sundays, and legal holidays. 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. When the time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays.

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.

Historical Note

Original rule, Subchapter A, Ch. II (Supp. 76-4). Section R12-5-102 renumbered from Section R12-5-02 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records

A. Record. The Department shall stamp every document and other object physically filed in the Department to record date and time of receipt. When a document is electronically filed, the electronic record shall serve to record the date and time of receipt. A filed document or other object constitutes a part of the record and is available for public inspection, except as prohibited by statute, at any time during the office hours of the Department.

B. Correction of errors. On the Commissioner's own initiative or upon request by a party, the Commissioner may correct a manifest typographical or clerical error in a decision, order, instrument, or other record of the Department resulting from oversight or omission. The Commissioner shall provide notice of any correction in the form the Commissioner deems appropriate.

C. Public docket. A person may obtain a copy of a public docket, maintained by the Department pursuant to A.R.S. § 37-102(F), listing the matters pending before the Department by requesting a copy in person at the Phoenix Office or by mail or e-mail. The Department shall charge to cover the costs of copying a public docket in accordance with A.R.S. § 39-121.01.

D. Removal of papers. A person shall not remove an instrument, document, or other paper or object on file with the Department from the Department, except as authorized by the Commissioner, the Commissioner's duly appointed deputy or employee or by order of a court of competent jurisdiction.

Historical Note

Adopted effective May 13, 1977 (Supp. 77-3). Correction, omission from subsection (A) in Supp. 77-3 (Supp.

77-6). Section R12-5-103 renumbered from Section R12-5-03 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No 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. 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 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 lands or any interest in State lands shall state in its application that it is authorized to conduct business in this state.

C. Submission of application, report, document, or other instrument. A person shall submit an application, report, document, or other instrument electronically or otherwise to the Department along with payment of any required fee.

D. Application confers no rights. A pending application to lease, purchase, or use State 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 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.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-105. Manner of Signing Documents before the Department

A. A person shall sign a document 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.

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.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-106. Assignments; Subleases

A. A person shall not assign or sublease any right, entitlement, or interest, in whole or in part, in State land, or possession, occupancy, or right to remove anything, in whole or in part, from State land unless:

1. The person has made application for the assignment or sublease; and
2. The Commissioner has approved the assignment or sublease in writing, unless a lease expressly permits otherwise.

B. 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 may determine are 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. The Department may cancel a lease if a sublessee violates a provision of a lease.

D. 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.

E. The Department shall not approve a sublease of a sublease for State land.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-107. Fees; Remittances

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.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-108. Predecision Administrative Hearing

The Commissioner may initiate a predecision administrative hearing to investigate an issue, gather information, or review facts to assist the Commissioner in the decision-making process before issuing a decision on any matter pending before the Department.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-109. Rejection of Hearing Request
The Commissioner shall reject any request for a hearing under A.R.S. Title 41, Chapter 6 that the Commissioner determines not to be subject to A.R.S. Title 41, Chapter 6.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER

R12-5-201. Applicability
This Article applies to a hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301, hereinafter referred to in this Article as "a hearing."

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-202. Appointment of Hearing Officer
A. The Commissioner may serve as the hearing officer or may appoint a hearing officer to conduct a hearing under A.R.S. § 37-301.
B. If a hearing officer, for any reason, cannot continue to preside at the hearing, the Commissioner shall appoint a new hearing officer.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-203. Ex Parte Communications
A party shall not communicate on matters substantive to the hearing, either directly or indirectly, with the hearing officer, the Commissioner, the Deputy Commissioner, or any member of the Commissioner's staff involved in the decision-making process unless:
1. All parties are present; or
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice under R12-5-210.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-204. Failure to Appear
If a party fails to appear at a hearing, the hearing officer may vacate the hearing or allow the appearing party to present evidence.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-205. Representation
A party may participate in a hearing in person or through an attorney, except that a corporation shall be represented by an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a political subdivision or unit of a political subdivision may appear through an employee.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-206. Notice of Hearing
A. Upon determination by the Commissioner that a hearing will be held, the Department shall issue a notice of hearing that contains:
1. A caption referencing the Department's case number, a brief description of the matter to be heard, the name or names of the parties and their status, or both;
2. The date, time, and place of the hearing;
3. A reference to the particular sections of the statutes and rules under which the hearing is to be held;
4. A short, plain statement of the matter to be heard;
5. The name, mailing address, and telephone number of the hearing officer;
6. The names and mailing addresses of persons to whom notice is being given; and
7. Any other information required by statute or rule.

B. An applicant for sale or long-term lease of State Trust land is a party to an administrative hearing conducted under A.R.S. § 37-301.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-207. Hearing Record
A. After the notice of hearing is issued, the hearing file shall be available for inspection at the Department's Public Records Office, Phoenix, during regular business hours.
B. Hearings shall be electronically recorded or stenographically reported by the Department. The hearing officer shall designate the official record of the proceedings. If a hearing is recorded electronically, the tapes shall be available for review in the Department's Public Records Office, Phoenix, during regular business hours. The cost for copies of tapes shall be paid by the person requesting them. The Department shall maintain the original transcript of the official record of the proceeding, if available, as part of the hearing file.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-208. Consolidation
When multiple protests of the same auction are pending before the Department, the Department may consolidate the protests into a single hearing.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-209. Filing
All papers filed with the Department in a hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches, include the name and address of the party or individual filing the paper, be properly captioned and designate the title and case number, state the name and address of each party served with a copy, and be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the

best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not filed for delay.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-210. Service; Proof of Service

A. After a notice of hearing is issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the hearing, or the party's counsel if the party is represented, at the same time the paper is filed. Service is complete at the time of personal service or on the date mailed if served by certified or regular mail addressed to the last address of record in the hearing file.

B. The following is evidence that service is complete:
1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of service;
2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
3. If served by regular mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.

C. The Department shall serve the notice of hearing decision and final order, either by personal service or by certified mail. The Department or a party shall serve all other papers by regular or certified mail or by personal service.

D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Department, or, if no Assistant Attorney General is named, on the Attorney General, State Government Division, Chief Counsel, Natural Resources Section.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-211. Subpoenas

A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or to produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.

B. A request for a hearing subpoena shall be in writing, filed with the hearing officer, and served on each party at least seven days before the date set for hearing and state:
1. The caption of the hearing, the case number, and the date, time, and place where the witness is expected to appear and testify;
2. The name and address of the witness or custodian of records subpoenaed; and
3. The documents subpoenaed, if any.

C. The hearing officer shall grant the request if the hearing officer determines there is reasonable need, such as relevant facts expected to be established by the person or document subpoenaed, and the production of documents is not unduly repetitious or burdensome.

D. A party or person subpoenaed may file an objection to the subpoena with the hearing officer. The party or person shall file the objection within five days after service of the subpoena, or on the first day of the hearing, whichever is earlier.

E. The party requesting the subpoena shall prepare the subpoena and cause it to be served upon the person to whom the subpoena is directed. A 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 hearing officer a certified statement of the date and manner of service and the name of the person served.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-212. Procedure at Hearing

A. The hearing officer shall preside over the hearing and shall give all parties the opportunity to testify, respond, present evidence, argument, and witnesses, conduct examination and cross-examination, and submit rebuttal evidence. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite questioning to the extent consistent with the disclosure of all relevant testimony and information.

B. If all parties agree and if each party has an opportunity to participate in the entire proceeding, the hearing officer may conduct all or part of the hearing by telephone or other electronic means.

C. A hearing is open to the public, except if the hearing is required to be closed according to an express provision of law. The Department shall make a hearing conducted by telephone or other electronic means available to the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.

D. The hearing officer may exclude from participation or observation a person whose conduct at the hearing is disruptive or shows contempt for the proceedings.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-213. Evidence

A. All witnesses shall testify under oath or affirmation. All parties shall have the right to present oral or documentary evidence and to conduct cross-examination as required for a full and true disclosure of the facts. The hearing officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing officer determines to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of evidence on which reasonably prudent people would rely, even if the evidence would be inadmissible in a civil court trial.

B. Unless otherwise ordered by the hearing officer, a party shall not present documentary evidence larger than 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and shall furnish a copy of each exhibit to each party present. If evidence offered by a

party appears in a larger work that contains other information, the party shall plainly designate the portion offered. If the evidence offered is in a volume of a length that would unnecessarily encumber the record, the hearing officer shall not receive the book, paper, or document in evidence but the evidence may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered is subject to appropriate and timely objection.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-214. Judicial Notice; Technical Facts
When conducting a hearing, the hearing officer may take notice of judicially cognizable facts as permitted under the Arizona Rules of Evidence. The Commissioner or the hearing officer may take judicial notice of generally recognized technical or scientific facts within the Commissioner's, the hearing officer's, or the Department's specialized knowledge. The Commissioner or the hearing officer may use experience, technical competence, and specialized knowledge in the evaluation of any information and evidence submitted in a hearing.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-215. Stipulations
Parties to a hearing may agree, in writing, to any issue addressed in the hearing, including matters of procedure, subject to the approval of the hearing officer. If approved by the hearing officer, an agreement on matters of procedure or substance is binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts. No agreement by the parties on substantive matters is binding upon the Department unless incorporated into the decision of the Commissioner.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

R12-5-216. Recommended Decision
If a hearing officer other than the Commissioner presides at a hearing, the hearing officer shall prepare a recommended decision for the Commissioner within 10 days of the close of the hearing, or no later than eight days before the auction date, whichever is earlier.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-217. Decision
The Commissioner's decision shall include separate findings of fact and conclusions of law. The Commissioner's decision shall also include policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reason for the remedy ordered.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-218. Rehearing of Decision
A. As specified A.R.S. § 37-301(C), a request for rehearing shall be filed with the State Land Commissioner, State Land Department, Phoenix, and shall specify the particular grounds for rehearing. A rehearing of the decision may be granted for any of the following reasons materially affecting the requesting party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the requesting party of a fair hearing;
2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient remedies;
6. Error in the admission or rejection of evidence or other errors of law; or
7. The decision is not justified by the evidence or is contrary to law.

B. On review of the request for rehearing, the Commissioner may affirm the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-219. Repealed

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-220. Repealed

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-221. Repealed

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

R12-5-222. Repealed

Historical Note
Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS

R12-5-301. Expired

Historical Note
Original rule, Subchapter D, Ch. II (Supp. 76-4). Section R12-5-301 renumbered from Section R12-5-50 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

ARTICLE 4. SALES

R12-5-401. Expired

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-401 renumbered from Section R12-5-71 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-402. Conditions for Filing Application

A. An application shall cover only one section or subdivision thereof.

B. When the application is made by one claiming a right to reimbursement for improvements placed upon state land, the applicant shall attach a list of the improvements placed or made upon said lands.

C. The applicant to purchase state land shall deposit an amount of money sufficient to pay the expense incidental to bringing a parcel of land to sale when the Department determines that the benefit to be derived from the sale is less than the expense involved.

D. An application to purchase state land cannot be withdrawn without the approval of the Commissioner.

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-402 renumbered from Section R12-5-72 (Supp. 93-3).

R12-5-403. Restrictions Subsequent to Filing Application to Purchase

No lessee may file any transfer, assignment, mortgage or application affecting the lands covered in their application to purchase.

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-403 renumbered from Section R12-5-73 (Supp. 93-3).

R12-5-404. Responsibility of the Purchaser

A. The recording of a Certificate of Purchase and/or Patent with the County Recorder of the County in which the lands are located.

B. Payment of the taxes, water assessments and other charges which may be assessed against the land.

C. Protection of the lands against any loss or waste to or upon the lands.

D. To maintain any right to the use of water appurtenant to the land against forfeiture or abandonment of the right.

E. File a report with the State Land Commissioner of the sale of any sand, gravel, stone or other natural product from the land.

F. Acquire the consent of the Department prior to granting a right- of-way on the land.

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-404 renumbered from Section R12-5-74 (Supp. 93-3).

R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

A. A holder of a Certificate of Purchase shall include, with the annual payments of principal and interest for the certificate of purchase, proof that taxes and any other assessments have been paid for the current year.

B. An extension of time to pay an annual installment of principal or interest shall be made in accordance with R12-5-102(B).

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-405 renumbered from Section R12-5-75 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4197, effective January 5, 2008 (Supp. 07-4).

R12-5-406. Assignment of a Certificate of Purchase

A. The transfer of a Certificate of Purchase will be made only upon the filing of an "Application to Assign and Assumption of Certificate of Purchase" form which will be supplied by this Department.

B. An application to assign and assumption of a Certificate of Purchase will not be approved:
1. When the annual payments are found to be in arrears.
2. When taxes are found to be in arrears.
3. When the release or satisfaction of a lien or mortgage filed with the Department has not been submitted with said application.
4. When affidavit of citizenship in the United States and/or statement of authorization to do business in the state of Arizona has not been submitted with said application.

C. No portion, less than all of the lands covered in a Certificate of Purchase, can be assigned.

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-406 renumbered from Section R12-5-76 (Supp. 93-3).

R12-5-407. Expired

Historical Note
Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-407 renumbered from Section R12-5-77 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-408. Partial Patent

A. As used in this Section, a "partial patent" means a patent for less than the entire tract covered under a Certificate of Purchase. The holder of a Certificate of Purchase applying to the Department for a partial patent of lands under a Certificate of Purchase, shall provide to the Department the following at the time of application:
1. Appropriate filing fee as required under A.R.S. § 37-108(A)(9)(c).
2. A copy of a receipt from the County Treasurer for the county where the land under application for partial patent is located, showing that the taxes are currently paid on both the parcel of land under application for partial patent and any lands remaining under the Certificate of Purchase.
3. A written land legal description and a survey plat (drawing size 17" x 26") issued by a land surveyor, registered in Arizona, of the lands covered by the Certificate of Purchase, including the lands described in the application for partial patent. The written land legal description and the survey plat shall be provided in paper format and a digital format specified in the application.
4. A proposed development plan showing the lands, including lands under the proposed partial patent, covered by the Certificate of Purchase and information as to how the proposed development plan will be implemented in compliance with City or County ordinances and regulations.

The development plan shall contain proposed densities, unit breakdown, and approved or proposed zoning district classifications.

B. If the Commissioner deems it necessary, the Department shall require a tentative plat with a proposed development overlay, including the topography, infrastructure improvements, and existing structures of the lands under the Certificate of Purchase, including the lands under application for partial patent, as well as of those lands contiguous to all boundaries of the lands covered by the Certificate of Purchase.

C. The Department shall not accept an application that relates to a Certificate of Purchase for which the purchaser has failed to pay applicable fees or is in default as to payment of principal or interest, or in arrears on taxes.

D. Before issuing a partial patent, the Department shall determine that the remaining lands are of greater value than the unpaid balance of the Certificate of Purchase and that the remaining lands have development potential independent of the acreage that is sought to be patented. If the Commissioner determines that it is necessary to establish the value of the remaining lands, or the parcel sought to be patented, or both, the applicant shall provide, at the applicant's expense, the following:

1. An appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as referenced in A.A.C. R4-46-401 or an economic analysis by the Department's appraisal staff or by a state-approved appraiser of the parcel sought to be patented or the lands remaining under the Certificate of Purchase, or both.
2. An infrastructure assessment detailing service, capacity, and cost information for the remaining lands; and
3. Any additional information the Department considers necessary to determine the adequacy of the value of the remaining lands as security for the balance of all remaining payments required to be made under the Certificate of Purchase after the partial patent is issued.

E. If the application or any of its attachments does not contain the information required by this Section, the Commissioner shall immediately provide written notice of the deficiency to the applicant. The Department shall allow 20 days, from the date on the written notice from the Commissioner, 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. If the deficiency is not remedied in the time allowed, the application shall be deemed withdrawn.

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-408 renumbered from Section R12-5-78 (Supp. 93-3). Amended by final rulemaking at 14 A.A.R. 4524, effective January 31, 2009 (Supp. 08-4).

R12-5-409. Expired

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-409 renumbered from Section R12-5-79 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-410. Expired

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-410 renumbered from Section R12-5-80 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-411. Expired

Historical Note

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-411 renumbered from Section R12-5-81 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

R12-5-412. Expired

Historical Note

Adopted effective March 6, 1979 (Supp. 79-2). Section R12-5-412 renumbered from Section R12-5-82 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

Editor's Note: The following Section was amended by emergency rulemaking effective December 20, 2002 to November 18, 2003. The State Land Department filed a rulemaking package for the permanent Section October 8, 2003, without requesting an immediate effective date. The effective date of the permanent rule would have been December 7, 2003, creating a three-week "window" during which neither the emergency rule nor the amended permanent rule would have been in effect. To avoid this, the Department refiled the permanent rule with the Governor's Regulatory Review Council, this time requesting an immediate effective date. G.R.R.C. approved the refiled rule and filed it with the Secretary of State November 4, 2003, thereby resolving the issue (Supp. 03-4).

R12-5-413. Real Estate Broker Commissions

A. The Commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the Commissioner shall 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. If a commission is offered for the sale or long-term commercial lease of state land at public auction, the Department shall pay the commission from the fees collected under A.R.S. § 37-108(A)(10)(a).

C. 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 land and the amount and terms of the commission offered, if any, in the public notice of the auction.

D. 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 the successful purchaser or lessee at public auction. A broker shall register himself or herself and the potential purchaser or lessee 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 broker and any real estate salesperson 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 or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.

E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter, Phoenix, Arizona 85007. The Department deems registration received on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
1. A potential purchaser or lessee who is registered with another broker for the same auction, or
2. A governmental agency.

F. 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.

G. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this Section.

H. For the purpose of this Section, the following definitions apply:
1. "Long-term commercial lease" means a lease granted on state land for commercial purposes to the highest and best bidder at public auction for a term in excess of 10 years, but not more than 99 years.
2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

Historical Note
Adopted effective February 9, 1996 (Supp. 96-1). Section R12-5-413 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5151, effective December 20, 2002 for a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1963, effective May 23, 2003 for a period of 180 days (Supp. 03-2). Emergency rule repealed under A.R.S. § 41-1026(E); replaced by permanent Section R12-5-413 amended by final rulemaking at 9 A.A.R. 5038, effective November 4, 2003. For more information, see the Editor's Note preceding this Section (Supp. 03-4).

ARTICLE 5. LEASES

R12-5-501. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-501 renumbered from Section R12-5-100 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-502. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-502 renumbered from Section R12-5-101 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-503. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-503 renumbered from Section R12-5-102 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-504. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-504 renumbered from Section R12-5-103 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-505. Time for Filing Conflicting Applications

A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.

B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.

C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.

D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-505 renumbered from Section R12-5-104 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-506. Procedure in Processing Conflicting Applications

A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.

B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).

C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.

D. In conducting an investigation and review, the Department shall consider the following factors:
1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;

2. Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
3. The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
4. The applicant's willingness to reimburse the owner of reimbursable non-removable improvements;
5. The applicant's previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;
6. The applicant's experience associated with the proposed use of land;
7. Impact of the proposed use on future utility and income potential of the land;
8. Impact to surrounding state land;
9. Recommendations of the Department's staff; and
10. Any other considerations in the best interest of the Trust.

E. After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
3. Award the lease or permit to an applicant;
4. Reject all applications; or
5. Proceed to bid according to A.R.S. § 37-284.

F. The bid process is as follows:
1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.
5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:
   a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.
   b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.
6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.

G. Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-507. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-507 renumbered from Section R12-5-106 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-508. Application Confers No Right to Land
An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner 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.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).

R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit
All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner's decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, being signed, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner, the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisement 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 lease or permit.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-509 renumbered from Section R12-5-108 (Supp. 93-3).

R12-5-510. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-510 renumbered from Section R12-5-109 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-511. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-511 renumbered from Section R12-5-110 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-512. Assignments

A. A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.
1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.

B. An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year's advance rentals have been made.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

R12-5-513. Manner of Assignments

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and application for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands being transferred must be 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 Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee's or permittee's interest in said lease or permit.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).

R12-5-514. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-514 renumbered from Section R12-5-113 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-515. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Amended effective October 4, 1978 (Supp. 78-5). Section R12-5-515 renumbered from Section R12-5-114 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-516. Repealed

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-516 renumbered from Section R12-5-115 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

R12-5-517. Rentals

Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).

R12-5-518. Rental Notices

If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner's records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner.
In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date whichever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-518 renumbered from Section R12-5-117 (Supp. 93-3).

R12-5-519. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-519 renumbered from Section R12-5-118 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-520. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-520 renumbered from Section R12-5-119 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-521. Modification or Amendment of Existing Lease or Permit
No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-521 renumbered from Section R12-5-120 (Supp. 93-3).

R12-5-522. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-522 renumbered from Section R12-5-121 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-523. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-523 renumbered from Section R12-5-122 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit
The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien. Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-524 renumbered from Section R12-5-123 (Supp. 93-3).

R12-5-525. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-525 renumbered from Section R12-5-124 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-526. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-526 renumbered from Section R12-5-125 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-527. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-527 renumbered from Section R12-5-126 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-528. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-528 renumbered from Section R12-5-127 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-529. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-529 renumbered from Section R12-5-128 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-530. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-530 renumbered from Section R12-5-129 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-531. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-531 renumbered from Section R12-5-130 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-532. Expired

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-532 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

R12-5-533. Trespass on State Land

A. Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.

B. Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.

C. All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.

D. It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:
1. By the general public using public roads and highways that cross state trust lands;
2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and
3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:
   a. On existing roads; or
   b. For cross-country travel without damaging croplands, improvements, or cultural or historic sites to pick up legally killed big game animals.

E. For the purpose of this Section, the following definitions apply:
1. "Cross-country travel" means travel over the countryside other than on existing roads.
2. "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.
3. "Motorized vehicle" means any vehicle deriving motive power from any source other than muscle or wind.
4. "Public roads and highways" means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

Historical Note
Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-533 renumbered from Section R12-5-132 (Supp. 93-3). Amended effective May 20, 1994 (Supp. 94-2).

R12-5-534. Closing Land to Recreational Use

A. The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:
1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;
2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;
3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or
4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.

B. The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.

C. The Department shall post the order of Trust land closure to recreation in the Department's Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department's District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department's records.

D. For the purpose of this Section, the following definitions apply:
1. "Dust abatement" means to minimize the amount of particulate matter entrained into the air by requiring mea-

sures to prevent or mitigate particulate matter creation or emissions.

2. "Environmental hazard" means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.
3. "Remediation" means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-534 renumbered from Section R12-5-133 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3). New Section made by final rulemaking at 12 A.A.R. 481, effective April 8, 2006 (Supp. 06-1).

R12-5-535. Expired

Historical Note

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-535 renumbered from Section R12-5-134 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

ARTICLE 6. IMPROVEMENTS (RESERVED)

ARTICLE 7. SPECIAL LEASING PROVISIONS

R12-5-701. Repealed

Historical Note

Adopted effective May 28, 1981 (Supp. 81-3). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-701 renumbered from Section R12-5-150 (Supp. 93-3). Section repealed by summary action with an interim effective date of February 4, 2000; filed in the Office of the Secretary of State January 11, 2000 (Supp. 00-1). Interim effective date of February 4, 2000 now the permanent effective date; filed in the Office of the Secretary of State August 1, 2000 (Supp. 00-3).

R12-5-702. Agricultural Leases

A. Land subject to agricultural lease; term of lease
1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.
   a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.

B. Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.

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 lands.
   a. Each application shall be limited to the lands in one section or part thereof.

D. Rental rates; appraisal
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 lands 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. Sequence of development and improvement of lands under agricultural development lease
1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.
2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved 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. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner 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 may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.

H. Application for renewal; right of renewal; developmental 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 lands.
   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 preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not

37-103. Seal of state land department

The state land department shall have a seal, and it shall be affixed with the signature of the state land commissioner to all instruments of conveyance, leases, certificates and other official acts. The signature of the commissioner and seal of the department upon the original or copy of any paper, plat, map or document from the state land department shall impart verity thereto.

37-132. Powers and duties

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to section 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10 and, except as provided in section 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by this state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by this state, but any such lease for a term longer than ten years for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4 and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to section 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under section 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20 and that provides the purchaser or lessee at auction. The

purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required may not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required may not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to section 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to section 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to section 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department may not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

37-215. Appeal from decision of commissioner or board of appeals

A. An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeals shall be taken by giving notice in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post office address of the appellant by the commissioner.

B. As a condition for filing an appeal of an order regarding an appraisal conducted under section 37-285 or a reappraisal required by the terms of a lease, the appellant, with the notice of appeal, shall pay to the department all amounts of the billed rental during the pendency of the appeal. The disputed amount shall be held by the state treasurer in an impound fund to be invested subject to the final disposition of the appeal, and the undisputed amount shall be credited to the appropriate trust. If the appellant fails to pay any amount before the deadline for filing notice of the appeal and fails to provide proof of payment of the amount with the notice of appeal, any notice of appeal to the board of appeals or to superior court shall not be accepted for filing and the decision of the commissioner is final. If billed rental becomes due during the pendency of an appeal and is not paid on or before the due date, the appeal shall be dismissed and the decision of the commissioner is final. If the commissioner's decision is upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be paid to the appropriate trust. If the commissioner's decision is not upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be credited first to the accrued rent determined to be due and the remainder shall be paid to the appellant.

C. The board of appeals, within one hundred twenty days from the date of the notice of appeal, shall conduct a hearing in the county in which the major portion of the land involved in the appeal is located, unless otherwise stipulated by the parties to the appeal. The board shall render its decision upon the hearing within sixty days from the date of the hearing unless the parties to the appeal otherwise stipulate. The board shall make its findings and decision in writing and shall furnish a copy to all parties to the appeal. A majority of a quorum of the board may render the decision.

D. All records of the board of appeals shall be kept in the offices of the state land department. The department shall provide clerical assistants to the board as necessary to perform its duties.

E. Except as provided in section 41-1092.08, subsection H, the commissioner or any person adversely affected by a final decision of the board of appeals may seek judicial review pursuant to title 12, chapter 7, article 6.

F. Any person adversely affected by a final decision of the commissioner not relating to the classification or appraisal of lands or improvements is entitled to a hearing pursuant to title 41, chapter 6, article 10.

G. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, is final and conclusive.

37-233. Sale of state lands; restriction on sale of timber land; expense of sale

A. On receiving an application, or on the commissioner's initiative, the state land department, under the rules of the department, may cause state lands to be sold if the sale of them is not prohibited by law.

B. Land containing timber of a value which in the opinion of the commissioner should be sold separately from the land shall not be subject to sale until after the timber is sold.

C. When an application is filed with the department for selection or sale of land under the laws of this state, and the department determines that the benefit to be derived from the selection or sale is less than the expense involved, the commissioner may accept from the applicant an amount of money sufficient to pay the expense incidental to the selection or sale. If the applicant fails to secure a lease after selection of land, or fails to purchase land after bidding for it, the successful lessee or purchaser shall reimburse the original applicant for all funds so advanced.

37-244. Certificate of purchase; conditions

A. Upon compliance by a purchaser of state lands with the requirements of this article, the department shall make and deliver to the purchaser a certificate of purchase, which shall set forth:

1. The name of the purchaser.

2. A description of the entire tract of land purchased.

3. The amount paid.

4. The amount paid for improvements, if any.

5. The amount remaining due.

6. The date when each of the deferred payments falls due, the amount of each deferred payment and the rate of interest on the first deferred payment.

7. An agreement by the purchaser that he will pay taxes, water assessments and other charges which may be assessed against the land.

B. Each certificate of purchase shall be signed by the commissioner or his deputy and by the purchaser, and shall contain the following covenants in addition to any others imposed pursuant to section 37-132:

1. That the purchaser will not permit any loss or commit any waste to or upon the lands.

2. That any right to the use of water appurtenant to the lands shall be maintained to prevent the forfeiture or abandonment of the right.

3. That all taxes levied against the land and all construction and maintenance charges of a United States reclamation project from which the lands may receive water will be promptly paid.

4. That all things will be done to insure the acquisition and maintenance of the rights and the use of the water, except if the successful irrigation of lands susceptible to irrigation from works constructed or controlled by the United States government is not dependent upon the irrigation works it shall not be necessary to acquire and maintain water rights on such lands.

C. After sale of state land and issuance of a certificate of purchase, the department shall not issue a certificate of purchase that covers only a part of the entire tract of land sold for the purposes of obtaining a patent to part of the land.

37-246. Sale of natural products of lands by purchaser under certificate of purchase; disposition of proceeds; violation; classification

A. If a purchaser of state land under a certificate of purchase sells or contracts to sell directly or indirectly any sand, gravel, stone or other natural product from the land described in the certificate, he shall file with the department within ten days after the sale or making the contract, a statement under oath on a form furnished by the department, of the kind and quantity of natural product sold, the terms of the sale, and the amount received or to be received therefor.

B. Upon receipt of any money from a sale or contract described in subsection A, the holder of the certificate shall promptly pay the money to the department. The money shall be applied by the department first to payment of the interest accrued under the certificate, and the remainder, if any, to payment of the principal amount owing on the land described in the certificate. If the payment is sufficient to discharge the total debt owing under the certificate, with accrued interest thereon, the department shall issue a patent to the purchaser as provided in this article.

C. The department shall cancel the certificate of purchase of a purchaser of state land who fails or refuses to make or knowingly makes any false statement in any statement required by subsection A, or who fails or refuses to pay to the department any money required to be paid by subsection B. The land described in the certificate, together with all improvements thereon, shall revert to the state, and all amounts theretofore paid for the land by the purchaser shall be forfeited to the state.

D. A person who violates a provision of this section is guilty of a class 2 misdemeanor.

37-251. Issuance of patents for state lands

A. On filing the certificate of purchase, together with evidence of full payment of principal and interest, for the entire tract of land sold, and evidence that all terms and conditions of the certificate of purchase have been satisfied, the department shall issue to the purchaser a patent under the seal of this state, signed by the governor and countersigned by the secretary of state.

B. On application by the purchaser, a patent for less than the entire tract may be issued to the purchaser if the commissioner finds that it is in the best interest of the applicable trust, subject to the following:

1. The parcel to be patented may consist of one or more pieces of land, described either by metes and bounds or by legal subdivision.

2. Before any parcel less than the entire tract is patented, the department shall determine that the remaining lands are of greater value than the unpaid balance of the certificate of purchase and that the remaining lands have development potential independent of the acreage that is being patented. Before patenting, the commissioner shall require to be paid an amount, on the lands to be patented, in excess of the purchase price per acre of the entire tract until the total price of the entire tract has been paid. In establishing the amount to be paid for the partial patent, the commissioner shall take into account the amount of the down payment made on the entire tract. This paragraph does not affect certificates of purchase issued before September 30, 1988.

3. When paid, the partial purchase price shall be credited on the total purchase price stated in the certificate of purchase. The department may issue a supplement to the certificate of purchase deleting the land patented and reducing the amount of each of the remaining annual installments to that amount which, when all installments are paid in full, will discharge the entire unpaid balance due on the original certificate of purchase.

C. Any land patented under this section is subject to existing valid rights-of-way.

D. If the purchaser has died and the land described has been sold and confirmed by order of court, the patent shall be issued to the purchaser to whom confirmation of sale was made. If the estate of the deceased person is distributed by order of the court, the patent shall be issued to the heirs of the deceased person, or to the person to whom the lands are distributed. Patents issued to a deceased person shall inure to the benefit of the heirs or assigns of the deceased person.

E. If an assignment of the certificate of purchase has been filed with and approved by the department, the patent shall be issued to the assignee, and if proper evidence of a transfer of the certificate by operation of law is filed with the department, the patent shall be issued to the transferee.

F. A record of all patents issued shall be kept in the records of the department.

37-255. Sale of or mortgage or other lien on interest of lessee or holder of certificate of purchase

A. The interest of the holder of any certificate of purchase of state land, or any lease or permit on state land, shall be subject to sale, mortgage or other lien to the same extent as patented land, without prejudice to the state. A contract of sale, mortgage or other lien affecting any certificate of purchase, lease or permit on state land shall not become effective unless a copy of the document is filed with the state land department. When filed, no assignment of the certificate of purchase, lease or permit affected shall be made without notice to and the consent of all parties.

B. Upon foreclosure of a contract of sale, mortgage or other lien filed with the department as provided in subsection A of this section, the department shall assign the instrument in question to the party entitled to the instrument, if all taxes, rent and assessment payments are current.

C. If a cancellation or assignment order is issued pursuant to section 37-247, 37-281.04 or 37-289, the cancellation or assignment order shall not become final until any foreclosure action by a party registered with the department as a mortgagee or other lienholder of the purchaser's interest or the lessee's interest is finally resolved, if the mortgagee or lienholder does both of the following:

1. Within thirty days of the date of issuance of a notice of default, files written notice with the department of its intent to proceed with a foreclosure action.

2. Within one hundred twenty days of the date of issuance of a notice of default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided the department with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

D. If a default notice has been sent to a purchaser pursuant to section 37-247, subsection A or to a lessee pursuant to section 37-289, subsection A, and the purchaser or lessee thereafter applies to assign the certificate of purchase or lease to a mortgagee or lienholder registered with the department, before the date a cancellation or assignment order becomes final and conclusive, the department shall approve the assignment if all taxes, purchase payments, rent and assessment payments are current and subject to the written consent of any other mortgagees or lienholders of record.

E. On proof that a lessee or purchaser has rejected a lease or certificate of purchase in a bankruptcy proceeding, the department shall issue a lease or certificate of purchase to the registered mortgagee or other lienholder in order of priority on application by the mortgagee or other lienholder within thirty days after the rejection if all taxes, purchase payments, rent and assessment payments are current. Any lease or certificate of purchase that is issued pursuant to this subsection shall be for the remaining term and on the same conditions and priority as the rejected lease or certificate of purchase.

37-281. Lease of state lands for certain purposes without advertising; terms and conditions

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

37-284. Conflicting short-term lease applications; preference rights

A. A conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. The conflicting application must be accompanied by a list of nonremovable improvements on the leased lands on file with the department, including fences. The conflicting applicant must post a surety bond or other form of security in the amount of two thousand five hundred dollars or twenty per cent of the rental payments over the term of the current lease, whichever is greater. The department shall calculate the amount of the security within thirty days after receiving the conflicting application, and the conflicting applicant must post the security within thirty days after the department determines the amount. If the conflicting applicant is unsuccessful or withdraws the application, the department shall return the security to the applicant. If the conflicting applicant is successful, the security shall be applied against the value of the nonremovable improvements.

B. When the department receives a conflicting application, the department shall give the existing lessee thirty days' notice to file an application for renewal pursuant to this section.

C. If two or more applicants apply to lease the same land for a term of not more than ten years, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department, at a stated time and after due notice to all applicants, may receive bids submitted in accordance with rules of the department. If one of the competing applicants is the existing lessee who has a preferred right of renewal pursuant to section 37-291, the department shall extend the preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid. The department shall approve the application of the bidder who in all respects is eligible to receive a lease upon the land and will pay the highest annual rental, or the department may reject all bids.

D. Before the department issues a lease to the successful bidder, the successful bidder shall pay one full year of rent and, unless all parties agree to an extended payment schedule, the appraised value of any nonremovable improvements pursuant to section 37-322.01. If the successful bidder does not pay one full year of rent or the value of any nonremovable improvements within thirty days after the department requests payment, the department may offer the lease to the next best bidder. A lease that is issued pursuant to this section shall require the lessee to pay annual rent that is equal to the amount of annual rent bid, unless a reappraisal or rental adjustment requires a higher amount.

E. Any person residing upon contiguous land for which the person has an allowed United States homestead entry or for which the person has received a patent from the United States upon a homestead entry, upon application, shall have a preferred right to lease the amount of contiguous state land necessary for personal use.

F. Any person lawfully occupying any lands, the title to which is acquired by the state by operation of law, shall have a preference right to lease the occupied land provided application to do so is made within thirty days from and after written notice by the department to such occupant of the acquisition of title.

37-286. Execution of leases by land department; covenants; assignment of lease by lessee

A. Leases shall be signed by the commissioner and sealed with the seal of the state land department, and shall contain covenants that the lessee will not permit any loss, cause any waste in or upon the land, or cut, waste or allow to be cut or wasted, any timber or standing trees thereon without written consent of the department, except for fuel for domestic uses, or for necessary improvements on the land, and that the lessee will surrender peaceable possession of the lands at the expiration of the lease. Nothing in this section shall be construed to permit the cutting of saw timber for any purpose without the written consent of the department.

B. A lessee of state lands who is not in default in rent, and who has kept and performed all the conditions of his lease, may, with the written consent of the department, assign the lease, but a lessee who assigns a holding lease shall pay to the department one-half of the consideration received for the assignment.

37-288. Default on short-term lease; forfeiture and cancellation of lease; extension of time for payment; penalty and interest on delinquent rental; automatic termination for arrearage

A. If a lessee of a lease of ten years or less defaults in a payment of rent, as provided in the lease, or fails to comply with a condition, covenant or requirement of the lease, the lease and the lessee's rights under the lease are subject to forfeiture and cancellation as provided by this section and section 37-289.

B. If the lessee of a lease of ten years or less fails to pay the rent when due, the department may extend the time for payment an additional period not to exceed ninety days. The department shall not extend the period for payment of rental more than three times in one lease year and in no event for more than two hundred seventy days.

C. There shall be added to the delinquent rental a penalty and delinquent interest. The rate of interest on delinquent rent shall be set by the state treasurer. The penalty shall be the greater of a minimum processing cost as determined by the commissioner or five per cent. The delinquent rent, penalty and interest shall be a lien on the improvements, crops and property on the land.

D. If, on a lease of ten years or less, the annual rental at any time is one calendar year in arrears from the date the rental payment was due, the lease shall automatically terminate and the department shall proceed to cancel it on the records of the department.

37-294. Recovery of lands unlawfully held

A. Nothing in this article shall confer any rights upon occupants or lessees of lands who have not executed and received a lease under the provisions of this article.

B. The state land department shall examine into the rights of all persons in possession of state lands, or improvements thereon, or claiming compensation for improvements on the lands. If it is determined that any person is unlawfully in possession of such lands, or is unlawfully claiming compensation for improvements, the department shall bring an action to recover possession of the lands and improvements, or otherwise establish the rights of the state.

37-301. Procedure for protesting auctions

A. Any person who desires to protest any of the terms of a proposed auction for the sale of state land, the lease of state land, or the sale of natural products of state land shall file a written protest with the department within thirty days after the first day of publication of the terms of the proposed auction. All protests shall state specifically the term or terms of the auction to which objection is made and state specifically the reasons for each objection. An objection not specifically stated or timely made is deemed to be waived.

B. At his discretion, the commissioner, on ten days' notice, may order a hearing on any protest. Whether or not a hearing is held, the commissioner, not less than seven days before the auction date, shall enter a final order determining the validity of the protests. If the commissioner determines that a protest is correct, the pending auction shall be cancelled. If the commissioner determines that the grounds of protest are incorrect, the auction shall proceed at the time and place for which it was noticed.

C. Notwithstanding section 37-133, the commissioner's order granting or denying a protest is subject to review only through a special action to the court of appeals or supreme court, served on the department within twenty days after the commissioner's order is entered. Notwithstanding any law or rule applicable to other orders of the commissioner, no motion for rehearing is required before seeking review of an order of the commissioner rejecting a protest to the terms of an auction. Any rehearing motion shall be filed within ten days of the entry of the commissioner's order. Unless otherwise ordered by the commissioner, the filing of a motion for rehearing does not extend the time for seeking review of the commissioner's order granting or denying a protest. Unless the commissioner orders a rehearing within five days after the rehearing motion is filed, the rehearing motion is deemed denied. If a special action review is not sought within twenty days after the commissioner enters his order granting or denying a protest, or if the commissioner's order is sustained on special action review and the decision becomes final, no further action contesting the legality of the terms of the auction may be brought.

37-501. Trespass on state lands; classification

A person is guilty of a class 2 misdemeanor who:

1. Knowingly commits a trespass upon state lands, either by cutting down or destroying timber or wood standing or growing thereon, by carrying away timber or wood therefrom, by mowing, cutting, or removing hay or grass thereon or therefrom, or by grazing livestock thereon, unless he has a lease or sublease approved by the department for the area being grazed.

2. Knowingly extracts or removes oil, gas, coal, mineral, earth, rock, fertilizer or fossils of any kind or description therefrom.

3. Knowingly without right injures or removes any building, fence or improvements on state lands, or unlawfully occupies, plows or cultivates any of the lands.

4. With criminal negligence exposes growing trees, shrubs or undergrowth standing on state lands to danger or destruction by fire.

37-502. Damages in civil action for trespass on state lands; seizure of products; report of trespasses

A. Whoever commits any trespass upon state lands as defined by section 37-501 is also liable in a civil action brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by the trespass, if the trespass was wilful, but for single damages only if casual or involuntary.

B. When unfenced state land is included within a fenced range, it is prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the person has a lease or sublease approved by the department for the area being grazed.

C. The damage provided for in this section is the rate per acre as determined for the year for the appraised carrying capacity of the lands.

D. The state land department may also, without legal process, seize and take any product or property unlawfully severed from the land, whether it has been removed from the land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of products of state lands.

E. The county officers of the several counties shall report to the department any trespass upon state lands which comes to their knowledge.

ARIZONA STATE LAND DEPARTMENT
Title 12, Chapter 5, Articles 7-9, 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 6, 2022; June 6, 2023; February 6, 2024

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

FROM: Council Staff

DATE: January 16, 2024

SUBJECT: **STATE LAND DEPARTMENT**
Title 12, Chapter 5, Articles 7-9, 11

Summary

As a reminder, the State Land Department (Department) originally submitted this Five-Year Review Report (5YRR) for Title 12, Chapter 5, Articles 7-9 and 11 on July 29, 2022. Therein, the Department identified rules that were inconsistent, not clear, concise, and understandable, not enforced as written, and overly burdensome. However, the Department did not put forth a proposed course of action to address the problematic rules. At the November 1, 2022 Council Meeting, the Council voted to return the 5YRR for the rules in Title 12, Chapter 5, Articles 7-9 and 11 in whole pursuant to A.R.S. § 41-1056(C) for its lack of a proposed course of action to address issues identified in the report under A.R.S. § 41-1056(A). At the December 6, 2022 Council Meeting, the Council voted to direct the Department to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 with an updated proposed course of action by July 1, 2023.

On May 22, 2023, Council staff received an extension request from the Department to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 by November 1, 2023. At the June 6, 2023 Council Meeting, the Council voted to grant the extension to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 by November 1, 2023. On October 27, 2023, the Department resubmitted the revised report which is before the Council now for consideration.

This 5YRR relates to eleven (11) rules in Title 12, Chapter 5, Articles 7-9 and 11. These articles cover the following topics:

- **Article 7** governing Special Leasing Provisions contains three rules: agricultural leases-(R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705)
- **Article 8** governing Right-of-way contains two rules: one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802).
- **Article 9** governing Exchanges contains five rules pertaining to scope of rules (R12-5-901), definitions (R12-5-902), application (R12-5-904), maps and photographs (R12-5-910), and controversy as to title or leasehold rights (R12-5-918).
- **Article 11** governing Special Use Permits (also known as Special Land Use Permits) contains one rule (R12-5-1101 Policy; Use of Lands).

The Department's previous review of these rules, which was approved by the Council in January 2018, stated, at that time, that many of the rules should be amended. Specifically, the Department stated that it recognized the flaws within the rules and planned to amend them to strike language that is inconsistent with statute, agency operations, or the Arizona Constitution. Also, the Department stated in the previous report that language should also be added and modified to improve clarity and conciseness. The Department indicated in the previous report that it intended to begin the rulemaking process to amend the rules by March 2019. The Department indicates the prior proposed course of action was not completed.

Proposed Action

In the current report, the Department indicates it intends to amend the rules to eliminate inconsistencies and redundancies and to articulate the Department's operations. The Department indicates the rules will be amended in April 2024.

Council staff notes, the Council previously voted, pursuant to A.R.S. § 41-1056(E), to require the Department to propose amendments to the rules in Title 12, Chapter 5, Articles 7-9 and 11 that the Department's analysis in its 5YRR demonstrated were materially flawed by being not authorized by statute, inconsistent with other statutes, rules, or agency enforcement policies, not clear, concise, and understandable, and not imposing the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule. The Department's current deadline to submit that rulemaking is April 30, 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 there is no current Economic Impact Statement (EIS) to compare with a previous EIS, but offers the following statistics and analysis:

As of Fiscal Year 2021, the Department held: 348 Agricultural Leases covering 157,920 acres of Trust Land which generated $4,265,005 in income; 1,196 Grazing Leases covering 8,344,576 acres which generated $2,749,775 in income; 273 Commercial Leases covering 70,274 acres which generated $31,888,877 in income; 7,818 Right-of-Way Grants covering 128,567 acres which generated $9,614,946 in income; and 652 Use Permits covering 600,900 which generated $4,419,661 in income.

The rental payments from all of the above leases are deposited into funds managed by the State Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and goods directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community 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, while the rules need improvement to conform with updated Department operations, their general applicability and existence are necessary to provide transparency in their respective areas and articulate the land disposition types and programs that the Department executes.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received any written criticisms of the rules over the last five years and since the last 5YRR was submitted to the Council.

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:

- **R12-5-702:** The Department indicates this rule has redundancies. Specifically, subsection (C)(1) is consistent with yet redundant of A.R.S. § 37-281(B); subsection (F)

is consistent with, yet redundant of, A.R.S. § 37-285; and subsection (H)(1) is consistent with, yet redundant of, statute.

- **R12-5-703:** The Department indicates subsection (A) is not concise because it is unnecessary; subsection (B) is not concise because the first portion is addressed in statute; and subsection (C) is not concise because it is redundant of the Enabling Act.
- **R12-5-705:** The Department indicates the rule is not clear, concise, or understandable as it is redundant or inconsistent with statute, and conflicts with the Department's standard work and lease instruments. Specifically, the Department notes R12-5-705(C) is inconsistent in that it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201.
- **R12-5-801:** The Department indicates subsections (A)(1) and (A)(2) are redundant of statute and subsection (B) is not concise in that sub-subsection (1) is unnecessary and sub-subsection (2) would best be served by being relocated to subsection (C). Also, subsection (C)(l)(a) is not concise in that some of the language is overly restrictive. The Department indicates much of Subsection (C)(3) is not concise or clear; subsection (C)(5)(a) is not clear in that it does not refer to the regulation that promulgates Department-wide fees; and proposed changes to subsections not mentioned above may benefit from style or language changes to aid clarity and conciseness.
- **R12-5-802:** The Department indicates subsection (D) is partially not concise, as it could be combined with subsection (C) to address initial and renewal applications at the same time; subsection (E) is not clear and could benefit from a redrafting; and subsection (I) is not clear nor concise and could benefit from redrafting.
- **R12-5-902:** The Department indicates the rule is clear and understandable, but it is not concise as three definitions - Commissioner, Department, and Selection Board - are redundant of statute and one definition - private owner - does not need to be defined as a legal term of art.
- **R12-5-1101:** The Department indicates the rule is not clear, concise, and understandable because the preamble publishes policy, which is improper; the preamble contains language which is redundant of language elsewhere within the rule; subsections (6) and (8) are unnecessary; subsection (9) is not clear not concise and should be redrafted; subsection (10) is partially not concise where "advertising display" is defined, and should be stricken, while the remainder of the subsection can be transferred to within subsection (9), except for (10)(f); and subsection (11) is unnecessary and redundant.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the rules are consistent with other rules and statutes except for the following rules:

- **R12-5-702:** Subsection (B) is inconsistent with statute as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the Trust and of the

State); Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection (N.B. Fees are charged on a per section basis in accordance with A.A.C. R12-5-1201 despite the use of one application form.); Subsection D is inconsistent with itself and with statute: Sub-subsections (1) and (2) may possibly conflict with each other, as (D)(1) applies a minimum of $1.00 per acre per year while (D)(2) applies a minimum rental of $10.00 a year to each section or portion of a section. So, for example, under (D)(1), leasing 639 acres within a single section equals $639.00 ($1 x 639 acres, while under (D)(2), it amounts to $10.00 ($10.00 per section). Further, A.R.S. § 37-132(A)(5) authorizes the Commissioner to appraise state lands for leasing; A.R.S. § 37-285(A) requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of $0.05 per acre per year; and A.R.S. § 37-282.01(G) allows the Commissioner to conduct mass appraisals at their discretion – given market conditions, and other variable conditions that may warrant mass appraisal without a specified timeframe; (H)(1)(a) is inconsistent with agency operations, as it requires a separate renewal application to be submitted for each section, or portion thereof, of land, whereas currently only one application form, and (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201.

- **R12-5-703:** Subsection (B) is not inconsistent because it conflicts with the Department's mandate to determine the highest and best use of the land held in trust; Subsection (D) is inconsistent with agency operations because the Department does not receive applications to petition for reclassification of lands, but rather reclassifies the lands *sua sponte*; Subsection (H) is inconsistent with agency operations; and Subsection (M) is, in part, inconsistent with agency operations and inaccurate.
- **R12-5-705:** Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants; Subsection (C) is inconsistent in that: 1) it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to Rl2-5-1201; 2) it requires the use of forms, i.e., Land Division forms, that no longer exist; and 3) it indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department then completion of detailed questions concerning holdings on the application form are not required to be filled out, when in actuality, the applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease; Subsection (E) is inconsistent with statute and agency operations in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands (see A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the trust and of the state); Commissioner based on the recommendation of the grazing land valuation commission (See A.R.S. § 37-285); Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the common anniversary date practice which the Department follows without exception (i.e.

all Grazing Lease rents are due in March); Subsection (H) is inconsistent with agency operations because the Land Division and it corresponding forms no longer exist; Subsection (K) is inconsistent with A.R.S. § 37-283(A) and the provisions of Department Grazing Leases; Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease; Subsection (N) is inconsistent with agency operations as to the prescribed form which no longer exists, but the intent is consistent; and Subsection (O) is partially inconsistent with agency operations, as Grazing Leases are limited to grazing purposes.

- **R12-5-801:** Subsection (C)(2)(b) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome for the applicant and for the agency to implement; Subsection (C)(3)(xi) is inconsistent with agency operations and conflicts with (C)(4)(a); Subsection (C)(8)(c) in inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction; Subsection (C)(8)(c) in inconsistent with agency operations; Subsection (D)(7)(a) is inconsistent with agency operations as the Department does not require this; and Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees.
- **R12-5-802:** Subsection (B) is inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction – it is fifty years; Subsection (C) in inconsistent with agency operations, and overly burdensome to the applicant. The agency has a standardized process for notifying surface and subsurface lessees of applications in queue, thereby avoiding confrontational interactions with existing and prospective users; Subsection (D) is partially inconsistent with agency operations, as non-use is not addressed in the way iterated, and the lease instruments don't authorize uses/purposes outside the scope/lease type; Subsection (F) is not consistent with agency operations and within itself, as the application of it could amount to two separate findings; and Subsection (H) is inconsistent with agency operations in that the Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the ROW grant.
- **R12-5-902:** The rule is inconsistent with statute. The statute creating the Selection Board and referenced within this rule, A.R.S. 37-202, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. This rule, however, has the Land Commissioner in place of the State Treasurer.
- **R12-5-904:** The rule is mostly consistent with statute, except for the age and residence requirements mentioned, which was removed from§ 37-604(B)(l)(a).
- **R12-5-1101:** Subsection (l) is not consistent with agency operations as the Department does not age test or citizen-test its applicants; Subsection (2) is inconsistent with agency operations as the Department no longer has a "Land Division form," though it does provide application forms; Subsection (5) is inconsistent with the minimum fee charged by the Department; Subsection (l0)(f) is inconsistent with agency operations because these types of signs are not permitted without application and a subsequent permit; Subsection (12)(a) is inconsistent with agency operations because it conflicts with A.A.C. R12-5-1201; Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and Subsection

(16) is inconsistent with agency operations because the Department does not legalize a sign installed and maintained in trespass.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates some rules are ineffective in achieving the Department's objectives when they are inconsistent with statute and with the Department's operations as outlined above. Furthemore, the Department indicates R12-5-801 is not effective in that subsections (C)(5)(c)(iii) and (D)(8) articulate overly burdensome payment methods for customers, specifically, municipalities and other government entities.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are enforced when not inconsistent with statute or other rules. However, if the rule is inconsistent with statute, statutes are followed. For example, rule R12-5-802, where site leases in excess of fifty (50) years are required to be advertised and sold at public auction, rather than the current rule language which states ten (10) years. If the rule is inconsistent with other rules, the newer rule is followed, such as is the case with filing fees. For example, rules indicating fees charged are superseded by fees outlined in rule R12-5-1201.

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 are no federal laws applicable to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules reviewed pursuant to this report were adopted before July 29, 2010.

11. Conclusion

This 5YRR from the Department was previously considered by the Council, returned in whole, and scheduled for resubmission, which is now before the Council. As indicated above, the Department has identified rules that are not clear, concise, understandable, consistent, effective, or enforced as written. The Department indicates it intends to amend the rules to eliminate inconsistencies and redundancies and to articulate the Department's operations. The Department indicates the rules will be amended in April 2024. The Council has also previously voted, pursuant to A.R.S. § 41-1056(E), to require the Department to propose amendments to the rules in Title 12, Chapter 5, Articles 7-9 and 11 by April 30, 2024.

Council staff recommends approval of this report.

Douglas A. Ducey
Governor

Lisa A. Atkins
Commissioner

Arizona State Land Department

1110 West Washington, Phoenix, AZ 85007
(602) 542-4631

July 29, 2022

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 5 Year Rule Review; A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, & 11

Dear Chairperson Sornsin:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, and 11. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that it is in compliance with the requirements of A.R.S. § 41-1091.

Should you have any questions, please do not hesitate to contact Angela Calabrasi, Administrative Counsel, at (602) 542-2632 or acalabrasi@azland.gov.

Sincerely,

Paul Peterson

Paul Peterson
Senior Administrative Counsel

Enclosures

c: Angela Calabrasi, Administrative Counsel

FIVE-YEAR RULE REVIEW REPORT

Submitted to

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

ARIZONA STATE LAND DEPARTMENT

"Serving Arizona's Schools and Public Institutions Since 1915"

TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department

Article 7 – Special Leasing Provisions
Article 8 – Right-of-way
Article 9 – Exchanges
Article 11 – Special Use Permits

Originally Submitted July 29, 2022
Revised and resubmitted November 1, 2023

Abstract of Rules Analyses

The Administrative Procedures Act ("APA") mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor's Regulatory Review Council (the "Council") for review. The Arizona State Land Department's (the "Department") rules are published in the Arizona Administrative Code ("A.A.C.") Title 12, Chapter 5, Articles 1 through 25 and can be found on the Arizona Secretary of State's website. The Department was scheduled to file a review of its rules under Title 12, Chapter 5, Articles 7, 8, 9 and 11 with the Council by the end of July 2022. The Department completed this report, which was subsequently rejected by the Council and returned to the Department. The Department has amended this report in light of the comments and concerns reflected by the Council.

The Department while not a regulatory agency, is a public agency that should ensure that the public has clear understanding and consistent guidelines for State Trust land ("STL") transactions. The Department serves as the trustee of the State's 9.2 million acres of STL and the appurtenant natural resources. The trust status of STL imposes obligations and constraints that would not apply if the State held the land outright. These obligations and constraints are outlined in the extensive and detailed provisions of Sections 24-30 of the State's Enabling Act, Article X of the Arizona Constitution, statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate), and a century of case law.

STL, managed for its highest and best use while also preserving its finite natural resources, is governed by the laws of the Enabling Act, Constitution, and judiciary of this state. The Commissioner is granted broad statutory discretion in her decision-making powers and authorities, which are necessary for the management of a perpetual trust in a time of increasing demand for all types of land uses. The Department also has a public duty to ensure that its expectations for applicants, lessees and permittees are clear and consistent. To that end, the Department is proposing amendments to some of our rules within Title 12, Chapter 5 in order to conform with changes to statutes and internal processes and to clarify language and drafting nuances where necessary.

Within this report, the Department evaluated 11 separate rules relating to Articles 7, 8, 9 and 11. Article 7 governing Special Leasing Provisions contains three rules: agricultural leases (R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705). Article 8 governing Right-of-way contains two rules: one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802). Article 9 governing Exchanges contains five rules pertaining to scope of rules (R12-5-901), definitions (R12-5-902), application (R12-5-904), maps and photographs (R12-5-910), and controversy as to title or leasehold rights (R12-5-918). Article 11 governing Special Use Permits (also known as Special Land Use Permits) contains one rule (R12-5-1101 Policy; Use of Lands).

Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A)

Each rule required to be reviewed in this report has been analyzed according to the following factors:

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that 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. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

Identical Information for All the Rules

Pursuant to A.A.C. R1-6-301(B), rules reviewed within the same report that render identical answers for any factor or factors delineated above shall have those identical answers provided only once. The rules contained in this report are identical in the following ways:

7. Written Criticisms:

No written criticisms of the rules reviewed herein were received in the last five years and since the last 5YRRR was submitted to GRRC.

8. Economic impact comparison:

There is no current EIS to compare with a previous EIS. However, specific revenues and general economic impacts of activities that are governed by these rules are included in the economic impact analysis at the end of this report.

9. External Analysis of impact of State's business competitiveness:

The Department has not received any external analysis of the rules' impact on Arizona's business competitive position.

10. Previous 5yRR Report Course of Action:

The Department previously submitted a review of the rules in Articles 7, 8, 9, & 11 in 2017 and stated, at that time, that many of the rules should be amended. The Department intended to begin that process by March 2019. The Department did not complete this course of action.

11. Cost v. Benefit and Least Burden Analysis:

Whiles the rules need improvement to conform with updated Department operations, as outlined in the analyses herein, their general applicability and existence are necessary to provide transparency in their respective areas and articulate the land disposition types and programs that the Department executes.

12. Comparison with Federal Law:

There are no federal laws that apply to these rules.

13. A.R.S. § 41-1037 Compliance:

The rules reviewed herein were adopted prior to July 29, 2010, so this factor was not analyzed for § 41-1037 Compliance.

ANALYSES OF RULES

Article 7. Special Leasing Provisions

A.A.C. Rule 12-5-702 Agricultural Leases

1. Statutory Authority:

Enabling Act, § 28; A.R.S. §§ 37-101, 37-211, 37-281, & 37-285

2. Objective:

The objectives of the rule are to clarify and direct the application process for agricultural leasing and agricultural leasing requirements, including development and improvement requirements.

3. Effectiveness:

Some subsections of the rule are ineffective where there are inconsistencies with agency operations.

4. Consistency:

The rule's subsections are inconsistent in the following ways:

Subsection (B) is inconsistent with statute as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the Trust and of the State);

Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection (N.B. Fees are charged on a per section basis in accordance with A.A.C. R12-5-1201 despite the use of one application form.);

Subsection D is inconsistent with itself and with statute: Sub-subsections (1) and (2) may possibly conflict with each other, as (D)(1) applies a minimum of $1.00 per acre per year while (D)(2) applies a minimum rental of $10.00 a year to each section or portion of a section. So, for example, under (D)(1), leasing 639 acres within a single section equals $639.00 ($1 x 639 acres, while under (D)(2), it amounts to $10.00 ($10.00 per section). Further, A.R.S. § 37-132(A)(5) authorizes the Commissioner to appraise state lands for leasing; A.R.S. § 37-285(A) requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of $0.05 per acre per year; and A.R.S. § 37-282.01(G) allows the Commissioner to conduct mass

appraisals at their discretion – given market conditions, and other variable conditions that may warrant mass appraisal without a specified timeframe;

(H)(1)(a) is inconsistent with agency operations, as it requires a separate renewal application to be submitted for each section, or portion thereof, of land, whereas currently only one application form, and (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201.

5. Enforcement policy:

The rule is enforced when it is not inconsistent with statute or other rules. If inconsistent with statute, statutes are followed. If inconsistent with other rules, the newer rule is followed, such as is the case with filing fees.

6. Clear, concise, and understandable:

The rule is generally not clear, concise, and understandable because of redundancies and drafting style, specifically:

Subsection (C)(1) is consistent with yet redundant of A.R.S. § 37-281(B);

Subsection (F) is consistent with, yet redundant of, A.R.S. § 37-285; and

Subsection (H)(1) is consistent with, yet redundant of, statute.

14. Proposed Course of Action:

The Department intends to amend the rule to eliminate inconsistencies and redundancies and to articulate the Department's operations. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-703 Commercial Leases

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objectives of the rule are to direct the application process for commercial leases and to clarify commercial lease requirements and restrictions.

3. Effectiveness:
The rule is not entirely effective as it exhibits inconsistencies and lacks transparencies.

4. Consistency:
The rule is inconsistent in the following ways:

Subsection (B) is not inconsistent because it conflicts with the Department's mandate to determine the highest and best use of the land held in trust;

Subsection (D) is inconsistent with agency operations because the Department does not receive applications to petition for reclassification of lands, but rather reclassifies the lands sua sponte;

Subsection (H) is inconsistent with agency operations; and

Subsection (M) is, in part, inconsistent with agency operations and inaccurate.

5. Enforcement policy:
The rule is enforced where is not inconsistent with other laws, and the conditions and rights of lessees are further articulated in lease contracts.

6. Clear, concise, and understandable:
Subsection (A) is not concise because it is unnecessary;

Subsection (B) is not concise because the first portion is addressed in statute; and

Subsection (C) is not concise because it is redundant of the Enabling Act;

14. Proposed Course of Action:
The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-705 Grazing Leases

1. Statutory Authority:
A.R.S. §§ 37-132, 37-283, & 37-285

2. Objective:
The objectives of the rule are to clarify and direct the application process for grazing leases and to clarify grazing lease requirements and restrictions.

3. Effectiveness:
The rule is mostly effective in articulating grazing lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

4. Consistency:
The rule is inconsistent in the following ways:

Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants;

Subsection (C) is inconsistent in that: 1) it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to Rl2-5-1201; 2) it requires the use of forms, i.e., Land Division forms, that no longer exist; and 3) it indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department then completion of detailed questions concerning holdings on the application form are not required to be filled out, when in actuality, the applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease;

Subsection (E) is inconsistent with statute and agency operations in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands (see A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the trust and of the state);

Commissioner based on the recommendation of the grazing land valuation commission (See A.R.S. § 37-285);

Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the

common anniversary date practice which the Department follows without exception (i.e. all Grazing Lease rents are due in March);

Subsection (H) is inconsistent with agency operations because the Land Division and it corresponding forms no longer exist;

Subsection (K) is inconsistent with A.R.S. § 37-283(A) and the provisions of Department Grazing Leases;

Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease;

Subsection (N) is inconsistent with agency operations as to the prescribed form which no longer exists, but the intent is consistent; and

Subsection (O) is partially inconsistent with agency operations, as Grazing Leases are limited to grazing purposes.

5. Enforcement policy:

The rule is enforced when it is not no inconsistent with statute or updated agency operations.

6. Clear, concise, and understandable:

The rule is not clear, concise, and understandable.

Several subsections are outdated, redundant or inconsistent with statute, and conflict with the Department's standard work and lease instruments.

Some of the provisions have been incorporated into a different article.

14. Proposed Course of Action:

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. This rule will be amended in April, 2024.

Article 8. Right-of-way

A.A.C. Rule 12-5-801 Right-of-way

1. Statutory Authority:

A.R.S. §§ 37-107, 37-132, 37-287 & 37-461

2. Objective:

The objective of this rule is to inform Right-of-way applicants of the application process and Right-of-way grantees of the uses and restrictions pertaining to Right-of-way instruments on State Land.

3. Effectiveness:

Some provisions of this rule are ineffective in articulating its objective, as noted below. Some of provisions are verbose and conflicting with law which reduce the effectiveness of the rule. Further, subsections (C)(5)(c)(iii) and (D)(8) articulate overly burdensome payment methods for customers, specifically, municipalities and other government entities.

4. Consistency:

The rule is inconsistent in the following ways:

Subsection (C)(2)(b) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome for the applicant and for the agency to implement;

Subsection (C)(3)(xi) is inconsistent with agency operations and conflicts with (C)(4)(a);

Subsection (C)(8)(c) in inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction;

Subsection (C)(8)(c) in inconsistent with agency operations;

Subsection (D)(7)(a) is inconsistent with agency operations as the Department does not require this; and

Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees.

5. Enforcement policy:

The rule is enforced when it is not inconsistent with statutes or updated agency operations.

6. Clear, concise, and understandable:

The rule is not clear, concise, and understandable.

Subsections (A)(1) and (A)(2) are redundant of statute; and

Subsection (B) is not concise in that sub-subsection (1) is unnecessary and sub-subsection (2) would best be served by being relocated to subsection (C);

Subsection (C)(l)(a) is not concise in that some of the language is overly restrictive;

Much of Subsection (C)(3) is not concise or clear;

Subsection (C)(5)(a) is not clear in that it does not refer to the regulation that promulgates Department-wide fees; and

Proposed changes to subsections not mentioned above may benefit from style or language changes to aid clarity and conciseness.

14. Proposed Course of Action:

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent, conflicting, and redundant subsections. This rule will be amended in April, 2024.

A.A.C. Rule 12-5-802 Reservoir Dams and Other Sites

1. Statutory Authority:
A.R.S. §§ 37-132 & 37-461

2. Objective:
The objective of this rule is to notify reservoir, dam, and other site lease applicants and lessees, as well as the public, of the Department's requirements for a reservoir, dam, and site lease application, i.e. Non-linear Rights-of-way, as well as the rights and obligations of such lessees.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent in part, yet inconsistent in the following ways:

Subsection (B) is inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction – it is fifty years;

Subsection (C) in inconsistent with agency operations, and overly burdensome to the applicant. The agency has a standardized process for notifying surface and subsurface lessees of applications in queue, thereby avoiding confrontational interactions with existing and prospective users;

Subsection (D) is partially inconsistent with agency operations, as non-use is not addressed in the way iterated, and the lease instruments don't authorize uses/purposes outside the scope/lease type;

Subsection (F) is not consistent with agency operations and within itself, as the application of it could amount to two separate findings; and

Subsection (H) is inconsistent with agency operations in that the Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the ROW grant.

5. Enforcement policy:
The rule is enforced except as to auctions of site leases for terms over 10 years but not over 50 years.

6. Clear, concise, and understandable:
On the whole, the rule could benefit from general style improvements, and conformance with agency practice and contractual law. Specifically:

Subsection (D) is partially not concise, as it could be combined with subsection (C) to address initial and renewal applications at the same time;

Subsection (E) is not clear and could benefit from a redrafting; and

Subsection (I) is not clear nor concise and could benefit from redrafting.

14. Proposed Course of Action:

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. The Department also intends to amend some of the provisions to provide clarity to ensure the public has clearer guidance on the agency's expectations on issuance and non-use of non-linear ROWs. This rule will be amended in April, 2024.

Article 9. Exchanges

A.A.C. Rule 12-5-901 Scope of Rules

1. Statutory Authority:
A.R.S. § 37-604

2. Objective:
The objective of the rule is to inform exchange applicants of the scope of this rule and succeeding rules, i.e., R12-5-902 et seq.

3. Effectiveness:
The rule is effective in that it articulates the scope of subsequent rules.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The rule would be enforced as a statement of scope of purpose for subsequent rules if and when the Department executes an exchange.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

14. Proposed Course of Action:
The Department does not intend to amend this rule.

A.A.C. Rule 12-5-902 Definitions

1. Statutory Authority:
A.R.S. § 37-604

2. Objective:
The purpose of this rule is to define terms used within Article 9, Chapter 5, Title 12 of the A.A.C.

3. Effectiveness:
The rule is not effective.

4. Consistency:
The rule is inconsistent with statute. The statute creating the Selection Board and referenced within this rule, A.R.S. 37-202, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. This rule, however, has the Land Commissioner in place of the State Treasurer.

5. Enforcement policy:
The rule would not be enforced if the Department executed an exchange.

6. Clear, concise, and understandable:
The rule is clear and understandable, but it is not concise as three definitions - Commissioner, Department, and Selection Board - are redundant of statute and one definition - private owner - does not need to be defined as a legal term of art.

14. Proposed Course of Action:
The Department intends to repeal this rule in a future rulemaking in April, 2024.

A.A.C. Rule 12-5-904 Application

1. Statutory Authority:
A.R.S. § 37-604

2. Objective:
The purpose of this rule is to inform exchange applicants of the exchange application requirements.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is mostly consistent with statute, except for the age and residence requirements mentioned, which was removed from§ 37-604(B)(l)(a).

5. Enforcement policy:
The Department would enforce the rule if presented with an exchange applicant.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

14. Proposed Course of Action:
The Department intends to amend this rule to incorporate R12-5-910 in a future rulemaking in April, 2024.

A.A.C. Rule 12-5-910 Maps and Photographs

1. Statutory Authority:
A.R.S. § 37-604

2. Objective:
The purpose of this rule is to inform exchange applicants of map and photograph requirements.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent with statute.

5. Enforcement policy:
The Department would enforce the rule if presented with an exchange applicant.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

14. Proposed Course of Action:
The Department intends to repeal this rule while incorporating the information into R12-5-904 in a future rulemaking in April, 2024.

A.A.C. Rule 12-5-918 Controversy as to Title or Leasehold Rights

1. Statutory Authority:
A.R.S. § 37-604

2. Objective:
The purpose of this rule is to give the Department the right to hold in suspension or reject an application for exchange of State Lands when there are title defects or conflicting interests.

3. Effectiveness:
The rule is effective.

4. Consistency:
The rule is consistent.

5. Enforcement policy:
The Department would enforce the rule if presented with an exchange applicant.

6. Clear, concise, and understandable:
The rule is clear, concise, and understandable.

14. Proposed Course of Action:
The Department does not intend to amend this rule.

Article 11. Special Use Provisions

A.A.C. Rule 12-5-1101 Policy; Use of Lands

1. Statutory Authority:
A.R.S. § 37-132

2. Objective:
The objective of this rule is to demarcate the role and use of Special Land Use Permits and to provide guidance to Special Land Use Permit applicants.

3. Effectiveness:
Though the rule attempts to achieve its stated objective and has done so successfully in the past, it is inconsistent and lacks clarity.

4. Consistency:
The rule itself is partially consistent. For example:

Subsection (l) is not consistent with agency operations as the Department does not age test or citizen-test its applicants;

Subsection (2) is inconsistent with agency operations as the Department no longer has a "Land Division form," though it does provide application forms;

Subsection (5) is inconsistent with the minimum fee charged by the Department;

Subsection (l0)(f) is inconsistent with agency operations because these types of signs are not permitted without application and a subsequent permit;

Subsection (12)(a) is inconsistent with agency operations because it conflicts with A.A.C. R12-5-1201;

Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and

Subsection (16) is inconsistent with agency operations because the Department does not legalize a sign installed and maintained in trespass.

5. Enforcement policy:
The rule is enforced where it is effective.

6. Clear, concise, and understandable:
The rule is not clear, concise, and understandable in the following ways:

The preamble publishes policy, which is improper;

The preamble contains language which is redundant of language elsewhere within the rule;

Subsections (6) and (8) are unnecessary;

Subsection (9) is not clear not concise and should be redrafted;

Subsection (10) is partially not concise where "advertising display" is defined, and should be stricken, while the remainder of the subsection can be transferred to within subsection (9), except for (10)(f); and

Subsection (11) is unnecessary and redundant.

14. Proposed Course of Action:

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections in April, 2024.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

As of Fiscal Year 2021, the Department held: 348 Agricultural Leases covering 157,920 acres of Trust Land which generated $4,265,005 in income; 1,196 Grazing Leases covering 8,344,576 acres which generated $2,749,775 in income; 273 Commercial Leases covering 70,274 acres which generated $31,888,877 in income; 7,818 Right-of-Way Grants covering 128,567 acres which generated $9,614,946 in income; and 652 Use Permits covering 600,900 which generated $4,419,661 in income.

The rental payments from all of the above leases are deposited into funds managed by the State Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and goods directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.

APPENDIX A

Arizona Administrative Code Rules Reviewed

Title 12, Chapter 5, Article 7 Special Leasing Provisions
- R12-5-702 Agricultural Leases
- R12-5-703 Commercial Leases
- R12-5-705 Grazing Leases

Title 12, Chapter 5, Article 8 Rights-of-Way
- R12-5-801 Rights-of-Way
- R12-5-802 Reservoir Dam and Other Sites

Title 12, Chapter 5, Article 9 Exchanges
- R12-5-901 Scope of Rules
- R12-5-902 Definitions
- R12-5-904 Application
- R12-5-910 Maps and Photographs
- R12-5-918 Controversy as to Title or Leasehold Rights

Title 12, Chapter 5, Article 11 Special Leasing Provisions
- R12-5-1101 Policy Use of Lands

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 7. Special Leasing Provisions (Refs & Annos)

A.A.C. R12-5-702

R12-5-702. Agricultural Leases

Currentness

A. Land subject to agricultural lease; term of lease

1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.

a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.

B. Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.

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 lands.

a. Each application shall be limited to the lands in one section or part thereof.

D. Rental rates; appraisal

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 lands 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. Sequence of development and improvement of lands under agricultural development lease

1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.

2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved 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. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner 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 may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.

H. Application for renewal; right of renewal; developmental 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 lands.

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 preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not acquired a water supply deemed by the Commissioner to be adequate.

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 lands.

a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.

Credits

Original rule, Art. III, Subchapter B, Ch. II (Supp. 76-4). Amended by emergency action effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Section R12-5-702 renumbered from Section R12-5-151 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-702, AZ ADC R12-5-702

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 7. Special Leasing Provisions (Refs & Annos)

A.A.C. R12-5-703

R12-5-703. Commercial Leases

Currentness

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. Lands subject to commercial lease. All state lands 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 lands 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 lands not classified as commercial. Applications to lease lands 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 lands 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 lands 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. Division of leases. The State Land Commissioner 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 lands 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 lands; failure to use. No lessee or permittee shall use lands 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 lands 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.

Credits

Original rule, Art. V, Subchapter B, Ch. II (Supp. 76-4). Amended by adding subsection (N) as an emergency effective January 9, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 16, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Section R12-5-703 renumbered from Section R12-5-152 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-703, AZ ADC R12-5-703

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 7. Special Leasing Provisions (Refs & Annos)

A.A.C. R12-5-705

R12-5-705. Grazing Leases

Currentness

A. Definitions. Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit:

1. “Grazing lands” means lands which can be used only for the ranging of animals.

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 lands. 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. 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 lands. Only one section or subdivision thereof may be applied for on one application for an initial lease. Application for renewal of an existing 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 lands 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. Land subject to grazing lease and term of lease. All state lands classified as grazing lands, 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. It is the policy of the Department not to offer open land for lease within an established ranch unit without first offering said lands to the owner or the person having control of the lands in such ranch unit. There is no limit to the amount of grazing land that may be leased to any one individual, corporation, partnership or association.

E. Application to lease lands not classified as grazing. Applications to lease lands 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 lands.

F. 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 lands 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 lands may be taken to the Board of Appeals as provided in the general rules and regulations relating to state lands.

G. Number of leases issued on ranch unit. Leases issued by the Department will include all state grazing lands 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 lands 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 lands in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state lands 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. Rights of grazing lessee. All grazing leases granted by the Commissioner are only a license 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 reserves the right to grant other forms of leases or permits for the use of said lands or the removal of natural products therefrom. No grazing lessee has

the authority or right to issue to any person any rights to the use of said lands 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.

J. Sublease or pasturage agreement. No grazing lessee shall sublet his lease, sell or lease pasturage of lands 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 lands 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 lands in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased lands. 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. 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 lessee 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. Cutting of timber, standing trees or posts. The 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, 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. Posts cut primarily from cedar, mesquite and juniper trees may be used for the erection and use of improvements by the lessee upon state lands without cost, provided the written consent of the Commissioner is first obtained. Such posts may not be used on other than state lands without payment therefor. The lessee is required to file an affidavit with the Department indicating the number of posts cut, the number used for improvement of state land and the number used on other than state lands or stockpiled for future use. At the time approval to cut posts is granted by the Commissioner, the price will be determined by him, which will be comparable to the price of posts from the United States Forest Service, and the price will be payable at the time the affidavit indicating the number of posts cut is filed with the Department. The Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time visit the lessee to determine the number of posts cut. The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing lands 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 lands.

In the event the lessee does not desire to purchase the trees as above provided, the Commissioner, if he deems it for the best interest of the state, may sell the same under such terms and conditions that he may require.

A purchaser other than a lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the land under lease to him and may be required to file a surety bond with the Commissioner in such amount and under such conditions as to indemnify the lessee for any damage which may result due to his 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 lands. 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. Use of state lands; failure to use. No lessee or permittee shall use lands under lease or permit to him except for grazing purposes unless authorized by the Commissioner in writing. Applications for a special use of lands 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. Posting to prohibit hunting and fishing on state land. State land under lease or permit may not be posted to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

Credits

Original rule, Art. II, Subchapter B, Ch. II (Supp. 76-4). Amended effective September 26, 1978 (Supp. 78-5). Section R12-5-705 renumbered from Section R12-5-154 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-705, AZ ADC R12-5-705

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 8. Rights-of-Way (Refs & Annos)

A.A.C. R12-5-801

R12-5-801. Rights-of-way

Currentness

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. Rights of surface and subsurface lessees or permittees

a. The Commissioner has the right to grant rights-of-way without the consent of the surface or subsurface lessee.

b. 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 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. In cases where to utilize the right-of-way applied for, it is necessary to cut a fence belonging to the surface lessee or otherwise enter through a fence, the installation of a standard cattle guard or other facilities 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. Termination of use; abandonment

a. When a right-of-way holder has no further use of the area, he may surrender the contract to the Commissioner.

b. The Commissioner may determine that a right-of-way is 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.

c. The Commissioner shall give right-of-way holder 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way holder fails to correct the defect, the Commissioner may issue an order of abandonment.

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.

D. Right-of-way

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.

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.

4. Provisions of the right-of-way

a. Every right-of-way contract shall provide for:

i. Payment to the Department of the amount established by the Commissioner after determination of the true appraised value.

ii. The installation and construction of necessary machinery, equipment and facilities with the right of removal within 90 days after expiration or termination of the right-of-way.

iii. Fencing and other protective requirements deemed necessary by the Commissioner.

iv. That the grantee shall restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner.

v. That the grantee will 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.

vi. A statement of the purpose for which the right-of-way was granted.

vii. 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.

viii. The right of termination of the right-of-way by the grantee at any time during its term by giving the Commissioner 30 days notice of termination in writing, provided that 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 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 prior to the expiration of the right-of-way contract, the grantee of a right-of-way contract, if he 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.

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. The Commissioner may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the grantee will guarantee restoration of the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.

c. The Commissioner may require the lessee to file with the Department a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the state land covered by the right-of-way, for any loss to such owner or lessee from damage or destruction 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. 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, but then only after approval by the Commissioner and subsequent notification of the release by the Commissioner in writing to the principal and surety.

e. The Commissioner, in his discretion, may reduce or increase the principal amount of the bond.

f. Immediately after determination by the Commissioner that full discharge of the conditions of the obligations under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.

g. 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 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

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 grantee shall report any completed improvements to the Commissioner and secure approval from the Commissioner.

Credits

Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-801, AZ ADC R12-5-801

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 8. Rights-of-Way (Refs & Annos)

A.A.C. R12-5-802

R12-5-802. Reservoir, Dam, and Other Sites

Currentness

A. Definitions

1. “Site lease” shall mean a lease issued upon state lands by the Department for reservoir or dam sites primarily used for purposes other than stock watering on lands 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 lands 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 lands.

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 lands, 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 lands.

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 lands 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 lands under lease to him except for site purposes unless authorized by the Commissioner in writing.

Applications for a special use of lands 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 lands 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.

Credits

Original rule, Art. X, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-802 renumbered from Section R12-5-166 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-802, AZ ADC R12-5-802

End of Document

A.A.C. R12-5-901

R12-5-901. Scope of Rules

Currentness

These rules apply only to exchange of state land under the provisions of A.R.S. §§ 37-604 to 37-608, inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

Credits

No original number assigned (Supp. 76-4). Section R12-5-901 renumbered from Section R12-5-179 (Supp. 93-3). R12-5-901 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-901 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-901, AZ ADC R12-5-901

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 9. Exchanges (Refs & Annos)

A.A.C. R12-5-902

R12-5-902. Definitions

Currentness

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.

Credits

No original number assigned (Supp. 76-4). Section R12-5-902 renumbered from Section R12-5-180 (Supp. 93-3). R12-5-902 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-902 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-902, AZ ADC R12-5-902

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 9. Exchanges (Refs & Annos)

A.A.C. R12-5-904

R12-5-904. Application

Currentness

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application 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 lands 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 lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands 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 lands to be exchanged shall be attached to the application and filed therewith.

Credits

No original number assigned (Supp. 76-4). Section R12-5-904 renumbered from Section R12-5-182 (Supp. 93-3). R12-5-904 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-904 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-904, AZ ADC R12-5-904

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 9. Exchanges (Refs & Annos)

A.A.C. R12-5-910

R12-5-910. Maps and Photographs

Currentness

The applicant shall furnish such map or maps of the lands 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 lands as it may specify in a request therefor.

Credits

No original number assigned (Supp. 76-4). Section R12-5-910 renumbered from Section R12-5-188 (Supp. 93-3). R12-5-910 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-910 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

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A.A.C. R12-5-910, AZ ADC R12-5-910

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 9. Exchanges (Refs & Annos)

A.A.C. R12-5-918

R12-5-918. Controversy as to Title or Leasehold Rights

Currentness

The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

Credits

No original number assigned (Supp. 76-4). Section R12-5-918 renumbered from Section R12-5-196 (Supp. 93-3) R12-5-918 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-918 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-918, AZ ADC R12-5-918

End of Document

Arizona Administrative Code
Title 12. Natural Resources
Chapter 5. State Land Department (Refs & Annos)
Article 11. Special Use Permits (Refs & Annos)

A.A.C. R12-5-1101

R12-5-1101. Policy; Use of Lands

Currentness

It is the policy of the Commissioner in the administration of state lands 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 lands. 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 lands and he will not be permitted to devote them to any other use unless he secures an additional permit.

1. Qualifications 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 lands 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 for 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 per 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 the 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 lands 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 lands. No permittee shall use lands 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 lands under permit to a permittee for 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 in 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.

9. Advertising displays on state lands without permits unauthorized. The erection or maintenance on state lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on state lands, 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. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;

b. 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. Highway markers or signs relating to any city, town, village or historic place or shrine;

d. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;

e. Official signs, notices or symbols for the information of aviators, as to location, direction or landings, and conditions affecting safety in aviation;

f. Signs containing 16 square feet or less bearing an announcement 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 authorities relating to Red Cross Emergency Station.

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 application 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 lands 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 lands 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. Identification of authorized advertising displays. Each advertising display 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 lands 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 an 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 which 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 expenses 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.

17. Restrictions on advertising displays

a. No advertising display shall be permitted which, in the opinion of the Commissioner, would mar the landscape, hide road intersections or crossing, or which, in his opinion, is otherwise objectionable.

b. No advertising display shall be affixed to, or painted on any tree or rock situate on state lands or on any other natural object on such lands.

c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

Credits

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1101 renumbered from Section R12-5-241 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-1101, AZ ADC R12-5-1101

End of Document

APPENDIX B

Authorities ad Related Statutes

Arizona-New Mexico Enabling Act §28
A.R.S § 37-101
A.R.S § 37-107
A.R.S § 37-132
A.R.S § 37-211
A.R.S § 37-281
A.R.S § 37-283
A.R.S § 37-285
A.R.S § 37-287
A.R.S § 37-461
A.R.S § 37-604

Arizona Revised Statutes Annotated
Enabling Act (Refs & Annos)

A.R.S., Enab. Act, Sec. 28

Sec. 28.

Currentness

Sec. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said Territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. The trust funds (including all interest, dividends, other income, and appreciation in the market value of assets of the funds) shall be prudently invested on a total rate of return basis. Distributions from the trust funds shall be made as provided in article 10, Section 7 of the Constitution of the state of Arizona. As amended Dec. 7, 1999, H.R. 747, 113 Stat. 1682.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust, except that amounts in the Miners' Hospital Endowment Fund may be used for the benefit of the Arizona Pioneers' Home. As amended Dec. 7, 1999, H.R. 747, 113 Stat. 1682.

No mortgage or other encumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of the lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication provided for sales and leases of the lands themselves. Nothing herein contained shall prevent: (1) the leasing of any of the lands referred to in this section, in such manner as the legislature of the state of Arizona may prescribe, for grazing, agricultural, commercial, and domestic purposes, for a term of ten years or less; (2) the leasing of any of said lands, in such manner as the legislature of the state of Arizona may prescribe, whether or not also leased for grazing and agricultural purposes, for mineral purposes, other than for the exploration, development, and production of oil, gas, and other hydrocarbon substances, for a term of twenty years or less; (3) the leasing of any said lands, whether or not also leased for other purposes, for the exploration, development, and production of oil, gas and other hydrocarbon substances on, in, or under lands for an initial term of twenty years or less and as long thereafter as oil, gas, or other hydrocarbon substance may be produced therefrom in paying quantities, the leases to be made in any manner, with or without advertisement, bidding, or appraisement, and under such terms and provisions as the legislature of the state of Arizona may prescribe, the terms and provisions to include a reservation of a royalty to said state of not less than 12 ½ per centum of production; or (4) the legislature of the state of Arizona from providing by proper laws of the protection of lessees of said lands, whereby such lessees shall be protected in their rights to their improvements (including water rights) in such manner that in case of lease or sale of said lands to other parties the former lessee shall be paid by the succeeding lessee or purchaser the value of such improvements and rights placed thereon by such lessee. As amended June 5, 1936, c. 517, 49 Stat. 1477; June 2, 1951, c. 120, 65 Stat. 51.

All lands, leaseholds, timber and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid. As amended June 5, 1936, c. 517, 49 Stat. 1477.

No lands shall be sold for less than their appraised value, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided*, that said state, at the request of the secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said state, to be selected from lands of the character named and in the manner prescribed in section twenty-four of this act. As amended June 5, 1936, c. 517, 49 Stat. 1477.

The state of Arizona is authorized to exchange any lands owned by it for other lands, public or private, under such regulations as the legislature thereof may prescribe: *Provided*, That such exchanges involving public lands may be made only as authorized by Acts of Congress and regulations thereunder. Added June 5, 1936, c. 517, 49 Stat. 1477.

There is hereby reserved to the United States and excepted from the operation of any and all grants made or confirmed by this act to said proposed state all land actually or prospectively valuable for the development of water power or power for hydro-electric use or transmission and which shall be ascertained and designated by the secretary of the Interior within five years after the proclamation of the President declaring the admission of the state; and no land so reserved and excepted shall be subject to any disposition whatsoever of said state, and any conveyance or transfer of such land by said state or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants there be, and is hereby, granted to the proposed state an equal quantity of land to be selected from land of the character named and in the manner prescribed in section twenty-four of this act.

Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provisions of the constitution or laws of the said state to the contrary notwithstanding. It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act.

Notes of Decisions (76)

A. R. S., Enab. Act, Sec. 28, AZ ST, ENABLING ACT, Sec. 28
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 1. State Agencies and Officers (Refs & Annos)
Article 1. State Land Department (Refs & Annos)

A.R.S. § 37-101

§ 37-101. Definitions

Effective: August 2, 2012
Currentness

In this title, unless the context otherwise requires:

1. “Agricultural lands” means lands which are used or can be used principally for:

(a) Raising crops, fruits, grains and similar farm products.

(b) Algaculture. For the purposes of this subdivision “algaculture” means the controlled propagation, growth and harvest of algae.

2. “Amortized value” means the value for improvements established pursuant to § 37-281.02, subsection G.

3. “Commercial lands” means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.

4. “Commissioner” means the state land commissioner.

5. “Community identity package” means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.

6. “Department” means the state land department.

7. “Grazing lands” means lands which can be used only for the ranging of livestock.

8. “Holding lease” means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.

9. “Homesite lands” means lands which are suitable for residential purposes.

10. “Improvements” means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.

11. “Infrastructure” means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. “Leapfrog development” means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. “Leased school or university land” means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. “Master developer” means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, or for implementing a development plan containing a master plan area.

15. “Participation contract” means a contract arising out of a sale together with other rights and obligations in trust lands whereby the department receives a share of the revenues generated by subsequent sales or leases.

16. “Section of land” means an area of land consisting of six hundred forty acres.

17. “State lands” means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. “Sublease” means an agreement in which the lessee relinquishes control of the leased land to another party for the purposes authorized in the lease.

19. “Urban lands” means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to § 37-331.01.

20. “Urban sprawl” means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

Credits

Amended by Laws 1979, Ch. 207, § 1; Laws 1981, 1st S.S., Ch. 1, § 2; Laws 1982, Ch. 189, § 1, eff. April 22, 1982; Laws 1989, Ch. 229, § 1; Laws 1990, Ch. 24, § 1; Laws 1990, Ch. 25, § 2; Laws 1990, Ch. 77, § 2; Laws 1992, Ch. 73, § 1; Laws 1994, Ch. 171, § 1; Laws 1996, Ch. 121, § 1; Laws 1996, Ch. 133, § 1; Laws 1998, Ch. 184, § 1, eff. May 28, 1998; Laws 2012, Ch. 202, § 1.

Notes of Decisions (21)

A. R. S. § 37-101, AZ ST § 37-101
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 1. State Agencies and Officers (Refs & Annos)
Article 1. State Land Department (Refs & Annos)

A.R.S. § 37-107

§ 37-107. Fees; accounts

Effective: July 29, 2010
Currentness

A. The commissioner shall prescribe by rule application, permit, transaction, appraisal, service, filing and document fees for transactions related to the selling, leasing, annexation, conveyance, exchange, right-of-way and use of state lands or products of state lands managed by the department. Before adopting any rule setting or changing a fee under this section, the commissioner must submit the proposed fee amount to the joint legislative budget committee for review. The commissioner shall deposit the revenues derived from the fees in the trust land management fund pursuant to § 37-527.

B. The commissioner may establish selling and administrative fees, which may include:

1. Up to three per cent of the consideration paid for all lands and improvements sold or long-term leased.

2. Zoning application fees paid by the department to rezone land.

3. Legal advertising expenses required by law and paid by the department.

C. The revenues derived from the fees established pursuant to subsection B of this section shall be deposited as follows:

1. The revenues derived from the fees collected pursuant to subsection B, paragraph 1 of this section, less any amounts paid as brokerage fees pursuant to § 37-132, subsection B, paragraph 2, shall be deposited in the trust land management fund pursuant to § 37-527.

2. The monies collected pursuant to subsection B, paragraph 2 of this section as actual costs of zoning application fees paid by the department to rezone lands shall be deposited in a separate account of the state land department fund designated as the zoning application fee account. Monies in the account shall be used to pay zoning application fees if developing lands require rezoning by the jurisdiction in which the lands are located. The commissioner shall administer the account.

3. The monies collected under subsection B, paragraph 3 of this section, subsection D of this section and application evaluation and processing costs pursuant to § 37-205, subsection A shall be deposited in separate accounts of the state land department fund to be used to pay costs of legal advertising, costs of appraisals required by the enabling act, by the Constitution of Arizona or by statute and the costs of evaluating and processing applications. The commissioner shall administer the accounts. On notice

from the commissioner, the state treasurer shall invest and divest monies in the state land department fund as provided by § 35-313, and monies earned from investment shall be credited to the fund.

D. The commissioner may require or allow prepayment for the estimated cost of an appraisal required pursuant to § 27-234 and this title. The commissioner shall deposit and administer prepayment monies as provided by subsection C, paragraph 3 of this section. The commissioner shall use monies accepted pursuant to this subsection to conduct contract appraisals. If an auction is held and an applicant who has prepaid the estimated cost of an appraisal or paid an appraisal fee is not the successful bidder, the successful bidder shall reimburse the applicant either for the actual cost of the appraisal or for the appraisal fee, whichever was paid. If the commissioner proceeds to auction on the commissioner's initiative, the successful bidder at auction shall reimburse the department for the actual cost of the appraisal, if there was a contract appraisal, or pay the appraisal fee if a contract appraisal was not obtained. Nothing in this subsection:

1. Requires the commissioner to offer any land at auction or for lease.

2. Requires the commissioner to reimburse an applicant if the land is not auctioned or leased.

3. Affects the status of any other application pending an appraisal.

E. Except as provided under § 37-205, fees paid under this section are not refundable to the applicant, regardless of the outcome of the application.

Credits
Added by Laws 2010, Ch. 243, § 3.

A. R. S. § 37-107, AZ ST § 37-107
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

KeyCite Red Flag - Severe Negative Treatment
Enacted LegislationAmended by 2022 Ariz. Legis. Serv. Ch. 14 (S.B. 1238) (WEST),

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 1. State Agencies and Officers (Refs & Annos)
Article 2. State Land Commissioner

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012
Currentness

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10[1] and, except as provided in § 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.[2]

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4[3] and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to § 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under § 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20[4] and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to § 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to § 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to § 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; Laws 1989, Ch. 171, § 1; Laws 1992, Ch. 190, § 1; Laws 1992, Ch. 357, § 1; Laws 1993, Ch. 169, § 3, eff. April 20, 1993; Laws 1994, Ch. 177, § 3; Laws 1997, Ch. 221, § 167; Laws 1997, Ch. 249, § 1; Laws 1999, Ch. 209, § 1; Laws 2000, Ch. 10, § 1; Laws 2000, Ch. 113, § 158; Laws 2002, Ch. 336, § 2; Laws 2003, Ch. 69, § 2; Laws 2010, Ch. 243, § 6; Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011; Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011; Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012.

Notes of Decisions (40)

Footnotes

1 Section 41-1092 et seq.

2 Section 12-901 et seq.

3 Section 41-741 et seq.

4 Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 2. Investigation, Classification and Appraisal (Refs & Annos)

A.R.S. § 37-211

§ 37-211. Investigations of and experiments on state lands to determine possible uses; reclassification

Currentness

A. The state land commissioner may conduct investigations and experiments on the lands of the state to:

1. Determine which are suitable for agricultural purposes, or which may be suitable therefor by the development of water and otherwise.

2. Determine which are useful for grazing purposes only.

3. Ascertain the requirements of lands susceptible of agricultural development and the method or means best adapted to insure the development.

4. Determine which trust lands are suitable for conservation purposes pursuant to article 4.2 of this chapter.[1]

5. Obtain other information and data which will aid in the leasing, sale and administration of lands belonging to the state.

B. If in the investigation the commissioner determines that lands have been erroneously classified, the classification shall be changed.

Credits
Amended by Laws 1996, Ch. 347, § 2.

Footnotes
1 Section 37-311 et seq.

A. R. S. § 37-211, AZ ST § 37-211
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-281

§ 37-281. Lease of state lands for certain purposes without advertising; terms and conditions

Currentness

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

Credits

Amended by Laws 1960, Ch. 83, § 1; Laws 1993, Ch. 168, § 6, eff. April 20, 1993; Laws 1994, Ch. 177, § 5; Laws 1997, Ch. 249, § 5; Laws 1998, Ch. 184, § 2, eff. May 28, 1998.

Notes of Decisions (37)

A. R. S. § 37-281, AZ ST § 37-281
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-283

§ 37-283. Subleases by grazing lessee; limitation upon grazing use; sublease surcharge

Currentness

A. A grazing lessee shall not sublease his lease or sell or lease pasturage to lands included in his lease, without written permission from the state land department. A grazing lessee, his sublessee or users under pasturage agreement shall not graze, without written permission of the department, in excess of the carrying capacity as previously determined by the department, upon state lands under lease or being used by such persons, within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. If permission is granted for such excess, the department shall assess and collect the rental for the excess on the rental basis provided for in this article.

B. In addition to the annual rental on grazing lands established pursuant to § 37-285, grazing subleases are subject to a surcharge that is equal to twenty-five per cent of the annual rental on grazing land, multiplied by the number of animal unit months to be grazed on the subleased state trust land. The surcharge shall be assessed only for that period of time the state trust land is subleased. The surcharge shall be paid to the department when the annual rental is due, or upon receiving department permission to sublease if the sublease is approved after the annual rental is due.

Credits

Amended by Laws 1982, Ch. 189, § 2, eff. April 22, 1982; Laws 1998, Ch. 184, § 4, eff. May 28, 1998.

Notes of Decisions (1)

A. R. S. § 37-283, AZ ST § 37-283
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-285

§ 37-285. Rental rates for grazing and other lands; grazing land valuation commission; reclassification and reappraisal; definitions

Effective: July 29, 2010
Currentness

A. An agricultural, commercial or homesite lease shall provide for an annual rental of not less than the appraised rental value of the land, and never less than five cents per acre per year. The rental provided in such leases is subject to adjustment each year.

B. A grazing lease shall provide for an annual rental of the grazing land as computed under this section. All grazing land shall be classified and appraised on the basis of its forage and annual carrying capacity, measured in animal unit months. The annual rental rate for grazing land shall be the amount determined by multiplying the number of animal unit months to be grazed on the lands by the true value rental rate per animal unit month as established by the commissioner. The rental rate per animal unit month is the rental rate determined by the commissioner based on the recommendations of the grazing land valuation commission under subsection E of this section.

C. Before September 1, 1994, and at other times the commissioner may propose, but not more frequently than every five years, the governor shall appoint a grazing land valuation commission consisting of five members appointed by the governor pursuant to § 38-211. The commission shall serve for a period of one year from the date the members assume office during which period the commission shall complete the appraisal. The commission shall consist of the following members, each of whom shall have experience in analyzing and valuing the use of forage on grazing land:

1. One member who is a professional appraiser and who is certified in this state.

2. One member who is a professor and who serves on the faculty of the college of agriculture at the university of Arizona.

3. One member who is a retired employee of a financial institution that is actively engaged in agricultural lending.

4. One member who primarily derives income from livestock grazing and who does not hold a state lease.

5. One member who is a conservationist and who represents a natural resource conservation district in this state.

D. Each member of the grazing land valuation commission shall receive compensation at the rate of one hundred dollars for each meeting. Each member of the commission shall receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.[1]

E. The grazing land valuation commission may employ a person who is experienced in analyzing and valuing the use of forage on grazing land and who, together with the members of the commission, shall gather the information that is necessary to prepare an appraisal to determine the true value of the use of forage on state grazing land and shall prepare this appraisal using both the market and income approaches. The appraisal report shall recommend a grazing fee that will equal the true value as recommended by the commission. The information and work products gathered in preparing the appraisal shall be available to the public. In determining the rental rate using the market approach the commission shall determine the typical lease of two years or more of private grazing land located in this state during normal years. The commission shall compare all factors that make up the bundle of rights and obligations in the typical private lease with the factors that make up the bundle of rights and obligations in the typical state lease. The commission shall document all adjustments, calculations and assumptions made in reaching a conclusion of true rental value for the state land grazing fee and shall determine economic benefit, burden or value attributable to each of these factors. These factors shall include the following:

1. All services, equipment and water rights provided by the lessor or lessee.

2. All improvements typically constructed and maintained to facilitate or enhance the use of the land for livestock grazing, wildlife, hunting or recreation.

3. All management and protection services that are typically provided.

4. The tenure, right to renew, assignability, right to reimbursement for improvements, responsibility for property taxes, right of others to share in the use of the land and ability to control access by others.

5. The size, location, accessibility, condition and carrying capacity of the land being leased and all related costs.

F. The commissioner's decision under this section may be appealed by any affected lessee to the board of appeals pursuant to § 37-215, and, except as provided in § 41-1092.08, subsection H, the decision of the board of appeals may be appealed to the superior court pursuant to title 12, chapter 7, article 6.[2]

G. The commissioner may make a reclassification or reappraisal, or both, at any time. If a reclassification or reappraisal, or both, is made pursuant to a request of a lessee, before expiration of the lease, the lessee shall pay a reclassification fee prescribed pursuant to § 37-107 plus the actual expenses incurred in making a reappraisal.

H. The department may authorize nonuse for part or all of the grazing use upon request of the lessee at least sixty days prior to the beginning of the billing date. The rental fee shall be based on the animal unit months used, but the total rental fee for partial or full nonuse shall not be less than five cents per acre per year.

I. For the purposes of this section:

1. “Animal unit” means one weaned beef animal over six months of age, or one horse, or five goats, or five sheep, or the equivalent.

2. “Animal unit month” means one animal unit grazing for one month.

Credits

Amended by Laws 1982, Ch. 189, § 3, eff. April 22, 1982; Laws 1990, Ch. 114, § 7; Laws 1994, Ch. 171, § 2; Laws 1997, Ch. 221, § 172; Laws 2000, Ch. 113, § 160; Laws 2010, Ch. 243, § 13.

Notes of Decisions (12)

Footnotes

1 Section 38-621 et seq.

2 Section 12-901 et seq.

A. R. S. § 37-285, AZ ST § 37-285

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4. Lease of State Lands (Refs & Annos)

A.R.S. § 37-287

§ 37-287. Reservation of rights in state land leases

Currentness

A. Unless the rights and interests described in this section are specifically included in a particular lease, all leases of state lands shall expressly except and reserve to the state:

1. All oils, gases, geothermal resources, coal, ores, minerals, fertilizer and fossils of every kind, which may be in or upon the land leased.

2. Any legal claim existing or which may be established under the mineral land laws of the United States or the state.

3. The right to enter upon the land for the purpose of exploring for those commodities or extracting any or all of such commodities from the land.

4. The right to relinquish to the United States lands needed for irrigation works in connection with a government reclamation project, and to grant or dispose of rights-of-way and sites for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or any other purpose or use on or over the land.

B. The reservations of rights required in subsection A do not apply to existing or future leases under article 5.1 of this chapter,[1] except as required by the state constitution, the enabling act or the commissioner acting in the best interests of the state lands.

C. If the state reserves the rights described in subsection A, the lease shall provide for reasonable compensation to the lessee for any damage resulting from the exercise of those rights.

Credits

Amended by Laws 1977, Ch. 87, § 5, eff. May 23, 1977; Laws 1987, Ch. 366, § 1, eff. May 22, 1987; Laws 1998, Ch. 133, § 19; Laws 2001, Ch. 276, § 8.

Notes of Decisions (2)

Footnotes

1 Section 37-331 et seq.

A. R. S. § 37-287, AZ ST § 37-287
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 10. Rights of Way and Sites for Public Uses

A.R.S. § 37-461

§ 37-461. Grants of rights-of-way and sites for public uses

Currentness

A. The department may grant rights-of-way for any purpose it deems necessary, and sites for reservoirs, dams and power or irrigation plants, or other purposes, on and over state lands, subject to terms and conditions the department imposes. The department may make rules respecting the granting and maintenance of such rights-of-way and sites.

B. The department may grant rights-of-way for transportation purposes to federal agencies, state agencies or political subdivisions of this state for nonexclusive uses for a term exceeding ten years without a public auction. If a grant of a right-of-way or site to any other entity amounts to the disposition of or conveys a perpetual right to use the surface of the land, the department shall grant the right-of-way or site at public auction to the highest and best bidder.

C. The department may grant rights-of-way to any person for nonexclusive uses for a term of not more than fifty years without a public auction.

Credits

Amended by Laws 1973, Ch. 41, § 1; Laws 1988, Ch. 82, § 1; Laws 1997, Ch. 249, § 17; Laws 1999, Ch. 209, § 10; Laws 2002, Ch. 336, § 19.

Notes of Decisions (10)

A. R. S. § 37-461, AZ ST § 37-461
Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 14. Exchange of Public Lands (Refs & Annos)

A.R.S. § 37-604

§ 37-604. Exchange of state land; procedure; limitation and exceptions; definition

Effective: December 13, 2012
Currentness

A. State land may be exchanged for public land in this state to improve the management of state lands for the purpose of sale or lease or conversion to public use of state lands or to assist in preserving and protecting military facilities in this state. Exchanges may be made for land owned or administered by other state agencies, counties, municipalities or the United States or its agencies. Exchanges with the United States or its agencies shall be in conformance with § 37-722, but the department shall also follow the procedures and requirements prescribed by article X, section 12, Constitution of Arizona, subsection C, paragraph 7 of this section and the classification procedures in § 37-212.

B. The department shall adopt rules governing the application and procedure for the exchange of state land. Such rules shall include the following requirements:

1. The application shall include:

(a) The name, mailing address, telephone number and relevant affiliation, if any, of the applicant.

(b) A legal description of all lands to be considered for exchange.

(c) A list of permanent improvements on the state lands to be considered for exchange.

(d) A list of the leasehold interest in the state land to be considered for exchange.

(e) Accompanying agreements, if any, with the leaseholder or owner of improvements on the state land to be considered for exchange.

2. Payment of fees prescribed for that purpose pursuant to § 37-107.

3. Such additional requirements as the department determines to be necessary. On determining that the application is complete and correct, including payment of the required fees, and on completion of processing and analyzing the application, and on determining that the proposed exchange would benefit the applicable trust, the department shall notify and deliver a report

containing details of the proposed exchange to the president of the senate, the speaker of the house of representatives and the state legislators from the legislative districts in which the lands proposed to be exchanged are located.

C. Exchanges of state lands are subject to the following requirements:

1. The commissioner shall determine by at least two independent appraisals that the state lands being considered for exchange are of substantially equal value or of lesser value than the land offered by the applicant.

2. At least two independent analyses of the proposed exchange must be conducted to determine:

(a) The income to the trust from the lands before the exchange and the projected income to the trust after the exchange.

(b) The fiscal impact of the exchange on each county, city or town and school district in which all the lands involved in the exchange are located.

(c) The physical, economic and natural resource impacts of the proposed exchange on the surrounding or directly adjacent communities and the impacts on military facilities, local land uses and land use plans.

3. The commissioner may require the applicant to pay the cost of the independent appraisals and analyses required by this subsection.

4. No county or municipality may be permitted to select lands in another county or municipality.

5. State lands known to contain oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer, in paying quantities, and state lands adjoining lands on which there are producing oil or gas wells, or adjoining lands known to contain any of such substances in paying quantities shall not be exchanged. These prohibitions against exchange shall not prevent the exchange of lands where the state does not own such substances, minerals or metals in the lands to be considered for exchange.

6. All state lands offered for trade pursuant to this section must be located in the same county as the lands offered to the state. However, lands in adjoining counties more than three miles outside the corporate boundaries of incorporated cities and towns having a population of ten thousand people or less and lands in adjoining counties but more than five miles outside the corporate boundaries of incorporated cities and towns having a population in excess of ten thousand people may be exchanged to facilitate consolidating land ownership if the boards of supervisors of the counties in which lands are to be exchanged give their prior approval.

7. Prior to public notice of a proposed exchange of state lands for other lands, the department shall give thirty days' notice in writing to other interested state agencies, counties, municipalities, the military affairs commission established by § 26-261, each military facility at the address on record at the department and to leaseholders on state lands that are to be exchanged and on state lands that are adjacent to the lands to be exchanged.

8. Before any state land may be considered for exchange under this article, the land shall be classified as suitable for such purposes in accordance with § 37-212. Any person adversely affected by such classification may appeal from the decision as provided in § 37-215.

9. After determining that the application is complete and correct and all required payments, appraisals and analyses have been completed, the department shall publish notice of the proposed exchange in the same manner and places as is required for the sale of state lands pursuant to § 37-237, except that the notice shall be published once each week for six consecutive weeks. The notice shall contain a legal description of the properties involved and other pertinent terms and conditions of the exchange. The department shall also schedule at least two public hearings on the exchange contemplated in the notice. One hearing must be held at the state capital and another hearing must be held in a location of general accessibility in the proximate vicinity of the state lands being exchanged. Any person may appear and comment on the proposed exchange at that time.

10. Within sixty days after the conclusion of the last hearing, the commissioner shall determine and issue a written finding recommending either that the exchange be denied or approved and shall transmit the finding to the governor, the president of the senate, the speaker of the house of representatives and the secretary of state.

D. Each exchange transaction must be approved by the qualified electors of this state in the form of a referendum submitted and conducted pursuant to article IV, part 1, section 1, Constitution of Arizona, at the next regular general election. To be approved, the proposition must receive an affirmative vote of a majority of the qualified electors voting on the measure.

E. Lands conveyed to the state under this article shall, on acceptance of title and recording, be dedicated to the same purpose and administered under the same laws to which the lands conveyed were subject, but may be reclassified as provided in § 37-212.

F. This section applies with respect to the exchange of lands held in trust by this state pursuant to the enabling act and the Constitution of Arizona and does not apply with respect to any other state land under the jurisdiction of the department or the commissioner.

G. The provisions of this section do not diminish or otherwise affect the commissioner's fiduciary responsibilities with respect to lands held in trust by this state as provided by the enabling act and the Constitution of Arizona.

H. For the purposes of this section, “military facilities” includes:

1. Military airports, ancillary military facilities, military training routes, high noise or accident potential zones and territory in the vicinity as defined in § 28-8461.

2. Military reservations or other real property owned by, leased to, designated for, reserved to or under the jurisdiction of an active unit of the uniformed services of the United States or any reserve or national guard component of the uniformed services of the United States.

3. Military electronics ranges as defined in § 9-500.28.

4. Military restricted airspace identified pursuant to § 37-102.

5. The Barry M. Goldwater range as described in § 37-620, subsection D, paragraph 3.

Credits

Added by Laws 1971, Ch. 166, § 4. Amended by Laws 1973, Ch. 60, § 4; Laws 1975, Ch. 42, § 1; Laws 1976, Ch. 70, § 3; Laws 1986, Ch. 57, § 1; Laws 1986, Ch. 223, § 2, eff. April 29, 1986; Laws 1987, Ch. 368, § 1; Laws 1988, Ch. 87, § 1; Laws 1990, Ch. 114, § 8; Laws 1992, Ch. 107, § 4; Laws 2010, Ch. 243, § 16; Laws 2012, Ch. 278, § 1, eff. Dec. 13, 2012.

A. R. S. § 37-604, AZ ST § 37-604

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

End of Document

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
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February 5, 2024

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 Stakeholder process update

Dear Chairperson Sornsin:

Pursuant to the request from GRRC Council Members to provide detailed information on the Department's stakeholder engagement relative to the current Proposed Rulemaking process for Articles 1, 7, 8, 9, and 11.

The Department engaged with 55 stakeholders which represented major stakeholder interest groups including, but not limited to, Appraisers, Agribusiness, Agriculture and Range Producers, Public Service Corporations, Municipalities and other Governmental Entities, Communications Providers, and Commercial Professional Groups, as an example.

While the Department has implemented a webpage process to receive comments, it is important to note that this webpage was activated after the Notice of Proposed Rulemaking was submitted to the Secretary of State's Office for publication. As such, the webpage location, and any reference to the webpage, has not been provided to the public for implementation. The Department did, however, advise the Stakeholders of the webpage being another alternative for them to use for the current Rulemaking Comment period, and continues to provide this webpage as another option for Stakeholders and members of the public to utilize in in addition to email or written letter comments for future public comments. As of Feb 1, 2024, the Department has only been provided comments from stakeholders via email at the published rules@azland.gov address.

A timeline of activities is provided below, for the purpose of outlining the Department's activity relative to stakeholder engagement for Rulemaking.

1. The Notice of Proposed Rulemaking was published in the Arizona Administrative Register Volume 29, Issue 46 on Friday, November 17, 2023.

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Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

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2. On Tuesday, November 21, 2023, a letter from the Executive Deputy Commissioner to 55 Stakeholders was sent to notify them individually to the Notice of Proposed Rulemaking was sent out to provide information that the Department had filed a Notice of Proposed Rulemaking, reiterating information provided on the Public Notice in the Register, and providing direct contact information for Lynn Córdova.

3. On Wednesday, November 22, 2023, an email to all 55 Stakeholders was sent to reiterate information on the Department's filing of the Notice of Proposed Rulemaking.

4. On Tuesday, November 28, 2023, an email and a mailed letter was sent out to all 55 Stakeholders notifying them that they should have received an email and a letter regarding the Department's proposed rulemaking and provided a reiteration of information sent to them regarding the proposed rulemaking the week prior. Further, they were all invited to attend either in-person or virtually an informal Stakeholder Meeting on Wednesday, December 6, 2023. They were provided with a link to the Department's RSVP site to receive the address, call in number, and/or virtual meeting link. Additionally, it was noted in bold that if the Stakeholder was unable to attend the meeting, they could still send written comments via email or mail.

5. On Friday, December 1, 2023, phone calls were placed to stakeholders reminding them of the upcoming stakeholder meeting. Additionally, during these calls, verification of receipt was made to ensure that the Stakeholder received the email and/or physical letter. If there was a need, contacts were updated as appropriate, communication was resent as appropriate, and a reminder was provided to those who indicated they received, but did not view the email.

6. On Monday, December 4, 2023, a secondary follow up phone call was made to those who were left messages by Department staff, but did not yet respond to the voicemail.

7. On Wednesday, December 6, 2023, 29 Stakeholders were in attendance at the informal Stakeholder meeting. While the team heard comments, the Stakeholders were encouraged to submit formal comments in writing.

8. Prior to the closing of the comment period on December 29, 2023, two stakeholders made contact with the Department, requesting an extension for comment due to Holiday schedules. The Department agreed to an extension that would not jeopardize the deadline of April 30, 2024 and issued a Notice of Public Information to extend the comment period for Rulemaking to Friday, February 2, 2024.

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Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

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9. On December 26, the Department advised Stakeholders that the comment period for Rulemaking would be extended to 4:00 pm on Friday, February 2, 2024.

10. On December 29, 2023**,** a Notice of Public Information was filed in the Arizona Administrative Register, notifying the Public of the extension for public comment through 4:00 pm on Friday, Feb 2, 2024.

11. As of Friday, February 2, 2024 at 3:30 pm, the Department received 46 comments relative to current rulemaking and 2 comments requesting the extension due to the holidays, which prompted the extension to Feb 2, 2024.

12. The Department will discuss the stakeholder comments regarding the proposed rulemaking as agendized per the Council.

Please feel free to reach out to Lynn Córdova at lcordova@azland.gov or 602-542-2654 should you have any questions.

Sincerely,

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner